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REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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KAAPSTAD, 30 JUNIE 1976

DEPARTMENT OF THE PRIME MINISTER

No. 1110.

30 June 1976.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 90 of 1976: Railway Construction Act, 1976.

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1110.

30 Junie 1976.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 90 van 1976: Spoorwegaanlegwet, 1976.

Wet No. 90, 1976

SPOORWEGAANLEGWET, 1976

WET

Om voorsiening te maak vir die aanlê en uitrus van sekere spoorlyne en vir sake wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 18 Junie 1976.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Aanlê en uitrus
van sekere
spoorlyne.

1. (1) Die Staatspresident kan, so spoedig na die inwerking-treding van hierdie Wet as wat hy doenlik ag, die spoorlyne vermeld in kolom 1 van Bylae 1 by hierdie Wet, van 'n spoorwydte van eenduisend en vyf-en-sestig millimeter en van die benaderde lengte wat ten opsigte van elke spoorlyn in kolom 2 van daardie Bylae teenoor die beskrywing van die betrokke spoorlyn vermeld word, en teen 'n bruto koste, in die geval van elke spoorlyn, van ongeveer die bedrag wat in kolom 3 van daardie Bylae teenoor die beskrywing van die betrokke spoorlyn vermeld word, laat aanlê en uitrus.

(2) Die bevoegdhede deur hierdie artikel verleen, sluit die bevoegdheid in om alle sylyne, stasies, geboue en ander toebehore wat vir die behoorlike eksploitasie van elke sodanige spoorlyn nodig is of daarmee in verband staan, aan te lê en uit te rus.

(3) Die uitdrukking „aanlê en uitrus” omvat „in stand hou” onderwyl die spoorlyne aangelê en uitgerus word.

Koste van aanlê
en uitrus.

2. Die koste van die aanlê en uitrus van die spoorlyne wat deur artikel 1 gemagtig word en in Bylae 1 by hierdie Wet vermeld word, word soos volg bestry:—

(1) In die geval van die eerste spoorlyn, uit 'n lening deur die Staatspresident kragtens wetlike magtiging aangegaan en vir daardie doel deur die Parlement bewillig, of uit ander gelde aldus bewillig.

(2) In die geval van die tweede spoorlyn, uit geld wat deur Richards Bay Iron and Titanium (Edms.) Beperk en Tisand (Edms.) Beperk beskikbaar gestel moet word.

Bevoegdhede in
verband met aanlê
en uitrus.

3. Ten opsigte van die aanlê en uitrus van bedoelde spoorlyne het die Staatspresident die bevoegdhede verleen kragtens die Konsolidasiewet op die Beheer en Bestuur van Spoorweë en Hawens, 1957 (Wet No. 70 van 1957) en die Spoorwegonteieningswet, 1955 (Wet No. 37 van 1955), maar onderhewig aan die verpligtings deur bedoelde Wette opgelê: Met dien verstande dat die breedte van die grond wat geneem word, nie vyf-en-dertig meter vir die bou van 'n spoorlyn wat uiteindelik verdubbel sal word en vyftig meter vir 'n spoorlyn wat uiteindelik vervierdubbel sal word, oorskry nie, met soveel bykomende grond as wat nodig mag wees vir die hellings, deurgrawings, dreinerings, stasies, toegangspaaie en ander werke en sake wat vir die doelindes van die spoorlyne nodig mag wees.

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

ACT

To provide for the construction and equipment of certain lines of railway and for matters incidental thereto.

*(Afrikaans text signed by the State President.)
(Assented to 18 June 1976.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. (1) The State President may, as soon after the commencement of this Act as to him may seem expedient, cause to be constructed and equipped, upon a gauge of one thousand and sixty five millimetres, the lines of railway mentioned in column 1 of Schedule 1 to this Act, of the approximate length set out, as to each railway line, in column 2 of that Schedule opposite the description of the line in question, and at a gross cost in the case of each line, approximating the amount set out in column 3 of that Schedule opposite the description of the line in question.

Construction and equipment of certain lines of railway.

(2) The powers conferred by this section shall include the power to construct and equip all sidings, stations, buildings and other appurtenances necessary for or incidental to the proper working of every such line of railway.

(3) The expression "construct and equip" shall include "maintain" while the lines are in the course of construction and equipment.

2. The cost of construction and equipment of the lines of railway authorised by section 1 and mentioned in Schedule 1 to this Act, shall be defrayed as follows:—

Cost of construction and equipment.

(1) In the case of the first line of railway, out of a loan raised by the State President under the authority of law and appropriated for that purpose by Parliament, or out of any other moneys so appropriated.

(2) In the case of the second line of railway, out of money that shall be made available by Richards Bay Iron and Titanium (Pty.) Limited and Tisand (Pty.) Limited.

3. In respect of the construction and equipment of the said lines of railway, the State President shall have the powers conferred by the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957) and the Railway Expropriation Act, 1955 (Act No. 37 of 1955), but subject to the obligations imposed by these Acts: Provided that the width of the land taken shall not exceed thirty-five metres for the construction of a line which is eventually to be doubled and fifty metres for a line which is eventually to be quadrupled together with such additional land as may be required for the slopes, cuttings, drainage, stations, approach roads and other works and matters which may be necessary for the purpose of the lines.

Powers incidental to construction and equipment.

Wet No. 90, 1976

SPOORWEGAANLEGWET, 1976

Bekräftiging
van sekere
ooreenkomste met
betrekking tot
spoorlyne van—

4. Die ooreenkomste aangegaan op onderskeidelik 19 November 1975 en 18 Februarie 1976 tussen die Regering van die Republiek in sy Administrasie van Spoorweë en Hawens (hieronder „die Administrasie” genoem), en—

(a) Thabazimbi na
’n eindpunt
op die plaas
Naauw
Ontkome, en

(a) Suid-Afrikaanse Yster en Staal Industriële Korporasie, Beperk, waarvan ’n afskrif in Bylae 2 by hierdie Wet opgeneem is; en

(b) Nseleni na ’n
eindpunt op
Lot K.44
No. 13587.

(b) Richards Bay Iron and Titanium (Edms.) Beperk en Tisand (Edms.) Beperk, waarvan ’n afskrif in Bylae 3 by hierdie Wet opgeneem is,

word hierby bekräftig en bevestig, en die Administrasie word hierby gemagtig om te doen wat ook al nodig mag wees om aan genoemde ooreenkomste uitvoering te gee.

Kort titel.

5. Hierdie Wet heet die Spoorwegaanlegwet, 1976.

Bylae 1

SPOORLYNE DEUR ARTIKEL 1 GEMAGTIG

Kolom 1	Kolom 2	Kolom 3
Beskrywing van spoorlyn	Benaderde lengte	Geraamde koste
	Kilometer	R
1. Van ’n aansluiting by Thabazimbi, die eindpunt van die spoorlyn tussen Northam en Thabazimbi, na ’n eindpunt op die plaas Naauw Ontkome in die landdrostrik Waterberg (Provinsie Transvaal)	113	41 000 000
2. Van ’n aansluiting by Nseleni op die spoorlyn Empangeni—Golela na ’n eindpunt op Lot K. 44 No. 13587 geleë in die County Zululand (Provinsie Natal)	7	2 352 000

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

4. The agreements concluded respectively on 19 November 1975, and 18 February 1976, between the Government of the Republic in its Railways and Harbours Administration (hereinafter called "the Administration"), and—

Ratification of certain agreements relating to lines of railway from—

- (a) South African Iron and Steel Industrial Corporation, Limited, a translation of which is set out in Schedule 2 to this Act; and (a) Thabazimbi to a terminal on the farm Naauw Ontkomen, and
- (b) Richards Bay Iron and Titanium (Pty.) Limited and Tisand (Pty.) Limited, a translation of which is set out in Schedule 3 to this Act, (b) Nseleni to a terminal on Lot K.44 No. 13587.

are hereby ratified and confirmed, and the Administration is hereby empowered to do whatever may be necessary to give effect to the said agreements.

5. This Act shall be called the Railway Construction Act, Short title. 1976.

Schedule 1

LINES OF RAILWAY AUTHORISED BY SECTION 1

Column 1	Column 2	Column 3
Description of line	Approximate length	Estimated cost
	Kilometres	R
1. From a junction at Thabazimbi, the terminal point of the Northam—Thabazimbi line, to a terminal point on the farm Naauw Ontkomen in the Magisterial District of Waterberg, (Province of the Transvaal)	113	41 000 000
2. From a junction at Nseleni, on the Empangeni—Golela line, to a terminal point on Lot K. 44 No. 13587 situated in the County of Zululand (Province of Natal)	7	2 352 000

Wet No. 90, 1976

SPOORWEGAANLEGWET, 1976

Bylae 2

MEMORANDUM VAN OOREENKOMS TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA IN SY ADMINISTRASIE VAN SPOORWEE EN HAWENS, VAN DIE EEN KANT, EN DIE SUID-AFRIKAANSE YSTER EN STAAL INDUSTRIËLE KORPORASIE, BEPERK, VAN DIE ANDER KANT.

MEMORANDUM VAN OOREENKOMS aangegaan tussen die REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA in sy ADMINISTRASIE VAN SPOORWEE EN HAWENS (hierna „die Administrasie” genoem), hierin verteenwoordig deur die MINISTER VAN VERVOER van die Republiek van Suid-Afrika, van die een kant, en die SUID-AFRIKAANSE YSTER EN STAAL INDUSTRIËLE KORPORASIE, BEPERK, saamgestel en regspersoonlikheid verleen kragtens die bepalings van die Yster- en Staalnywerheidwet, 1928 (Wet No. 11 van 1928) (hierna „die Korporasie” genoem), van die ander kant.

NADemaal die Korporasie die Administrasie versoek het om 'n spoorlyn met 'n spoorwydte van 1 065 mm van Thabazimbi tot by 'n eindpunt op die plaas Naauw Ontkomen in die landdrosdistrikt Waterberg in die provinsie Transvaal, 'n afstand van ongeveer 113 kilometer (hierna „die spoorlyn” genoem), aan te lê, uit te rus, in stand te hou en te eksploiteer vir die vervoer van verkeer na en van 'n gebied waarin die Korporasie sekere mynbouwerksaamhede uitvoer of waarby hy andersins belang het;

EN NADemaal die Administrasie ingestem het om, indien en wanneer deur die Parlement daartoe gemagtig, die spoorlyn aan te lê, uit te rus, in stand te hou en te eksploiteer, onderworpe aan die bepalings en voorwaardes hierna uiteengesit;

DERHALWE kom die genoemde partye hierby soos volg ooreen:

1. Hangende die goedkeuring en magtiging van die Parlement, wat die Administrasie voornemens is om aan te vra so spoedig doenlik nadat hierdie ooreenkoms gesluit is, word die verpligtings van die Administrasie kragtens hierdie ooreenkoms slegs as voorlopig beskou. As die aanlê van die spoorlyn nie binne 'n tydperk van twaalf maande na ondertekening hiervan deur die Parlement goedgekeur word nie, vervel hierdie ooreenkoms tensy dit met wedersydse toestemming hernuwe word.

2. (1) Na die inwerkingtreding van 'n Parlements-wet wat die aanlê en uitrus van die spoorlyn magtig en hierdie ooreenkoms bekragtig, en onderworpe daaraan dat die Parlement fondse vir die doel beskikbaar stel, moet die Administrasie met alle redelike spoed voortgaan om die spoorlyn aan te lê en uit te rus: Met dien verstande dat die Administrasie nie aanspreeklik is vir vertraging met die voltooiing van die aanlê en met die uitrus van die spoorlyn weens enige oorsaak hoegenaamd waaroor hy geen beheer het nie.

(2) Die Administrasie het die reg om, na oorlegpleging met die Korporasie, van tyd tot tyd sodanige bykomende of verbeterde spoorlyne of ander geriewe wat regstreeks met die spoorlyn in verband staan, aan te lê of te voorsien as wat hy nodig ag om hom in staat te stel om enige verkeer oor die spoorlyn doeltreffend die hoof te bied. Die koste van bykomende of verbeterde spoorlyne of ander geriewe wat aldus aangelê of voorsien word, word geag deel uit te maak van die koste van die aanlê en uitrus van die spoorlyn vir die doeleindes van hierdie ooreenkoms.

3. (1) Onderworpe aan die goedkeuring van die Parlement verskaf die Administrasie die nodige geld vir die aanlê en uitrus van die spoorlyn waarvan die koste volgens raming ongeveer een en veertig (41) miljoen rand sal bedra, met uitsondering van rollende materiaal.

(2) Die roete van die spoorlyn en die ligging van stasies en sylyne moet nagenoeg wees soos aangetoon op die bygaande plan wat deur beide partye onderteken is: Met dien verstande dat die Administrasie, na oorlegpleging met die Korporasie, die roete van die spoorlyn en die ligging van stasies en sylyne kan wysig slegs om aan die vereistes van ingenieurswerk te voldoen, onderworpe aan enige beperking opgelê deur die wetteregtelike magtiging waarkragtens die spoorlyn aangelê word.

4. (1) Die spoorlyn moet aangelê en uitgerus word ooreenkomstig die standaard wat deur die Administrasie vir soortgelyke lyne aanvaar is en moet gebou word met spoorstawe van minstens 48 kg per meter.

(2) Vir die doel van hierdie ooreenkoms sluit die koste van die aanlê en uitrus van die spoorlyn alle uitgaweposte in, met inbegrip van rente, wat ooreenkomstig die Administrasie se gewone rekeninggebruik teen die spoorlyn in rekening gebring word, asook alle koste wat deur die Administrasie in die opmeet van die roete van die spoorlyn aangegaan is, welke bedrag deur die Korporasie aan die Administrasie terugbetaal sal word indien die spoorlyn op versoek van die Korporasie om watter rede ook al nie gebou sou word nie, maar uitgesonder enige bedrag/bedrae wat ingevolge klousule 9 hiervan deur die Korporasie aan die Administrasie terugbetaal is, en uitgesonder ook die koste van lokomotiewe, ander rollende materiaal en verskuifbare uitrusting wat in verband met rollende materiaal gebruik word in die eksploitasie van die spoorlyn nadat dit voltooi is.

5. (1) Nadat die spoorlyn voltooi is en die Administrasie se Siviele Hoofingenieur gesertifiseer het dat dit gereed is vir die vervoer van openbare verkeer, moet dit onverwyld deur die Administrasie oopgestel word vir die vervoer van openbare verkeer.

(2) Onderworpe aan die bepalings van klousule 6 is die reisgeld, koste en tariewe vir die vervoer van passasiers, pakkette, lewende hawe en alle soorte goedere oor die spoorlyn, asook vir aanverwante dienste, dieselfde as dié wat die Administrasie van tyd tot vasstel, soos wat in die algemeen op sy spoorweë van toepassing is.

(3) Geen bepaling in hierdie ooreenkoms word geag hoegenaamd aan die Administrasie se wetteregtelike bevoegdheid om tariewe en reisgeld vas te stel en te verander, afbreuk te doen of dit te beperk nie.

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

Schedule 2

TRANSLATION OF MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA IN ITS RAILWAY AND HARBOURS ADMINISTRATION, OF THE ONE PART AND THE SOUTH AFRICAN IRON AND STEEL INDUSTRIAL CORPORATION, LIMITED, OF THE OTHER PART

MEMORANDUM OF AGREEMENT made and entered into between the GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA in its RAILWAYS AND HARBOURS ADMINISTRATION (hereinafter referred to as "the Administration"), herein represented by the MINISTER OF TRANSPORT of the Republic of South Africa, of the one part, and the SOUTH AFRICAN IRON AND STEEL INDUSTRIAL CORPORATION, LIMITED, constituted and incorporated under the provisions of the Iron and Steel Industrial Act, 1928 (Act No. 11 of 1928) (hereinafter referred to as "the Corporation"), of the other part.

WHEREAS the Corporation has petitioned the Administration to construct, equip, maintain and work a line of railway of a gauge of 1 065 mm from Thabazimbi to a terminal point on the farm Naauw Ontkomen, in the Magisterial District of Waterberg, Province of the Transvaal, a distance of approximately 113 kilometres (hereinafter termed "the railway") for the conveyance of traffic to and from an area in which the Corporation is carrying on, or is otherwise interested in, certain mining operations;

AND WHEREAS the Administration has agreed, if and when authorised by Parliament to do so, to construct, equip, maintain and work the railway, subject to the terms and conditions hereinafter set forth;

Now, THEREFORE, the parties do hereby agree as follows:—

1. Pending the approval and sanction of Parliament, which the Administration proposes to seek as soon as may be practicable after the execution of this Agreement, the obligations of the Administration under this Agreement shall be taken to be provisional only. Should the construction of the railway not be authorised by Parliament within a period of twelve months from the date hereof, this Agreement shall lapse, unless renewed by mutual consent.

2. (1) After the commencement of an Act of Parliament authorising the construction and equipment of the railway and ratifying this Agreement, and subject to an appropriation by Parliament of funds for the purpose, the Administration shall proceed with all reasonable expedition to construct and equip the railway: Provided that the Administration shall not be liable for any delay in completing the construction and equipment of the railway owing to any cause whatever over which the Administration has no control.

(2) The Administration shall have the right, after consultation with the Corporation, to construct or provide from time to time such additional tracks or other facilities directly connected with the railway as it may deem necessary in order to enable it efficiently to cope with any increase in traffic over the railway. The cost of additional or improved tracks or other facilities so constructed or provided shall be deemed to form part of the cost of construction and equipment of the railway for the purposes of this Agreement.

3. (1) Subject to the approval of Parliament, the Administration shall provide the money necessary for the construction and equipment of the railway, the estimated cost of which is approximately forty-one (41) million rand excluding rolling-stock.

(2) The route of the railway and the sites of stations and sidings shall be approximately as shown on the plan annexed hereto and signed by both parties: Provided that the Administration may, after consultation with the Corporation, modify, for engineering exigencies only, the route of the railway and the sites of stations and sidings, subject to any limitation imposed by the statutory authority under which the railway is constructed.

4. (1) The railway shall be constructed and equipped according to the standards adopted by the Administration for other lines of similar type, and shall be constructed with S.A.R. rails of a weight of not less than 48 kg per metre.

(2) For the purpose of this Agreement the cost of construction and equipment of the railway shall include all items of expenditure, including interest, chargeable to the railway in accordance with the Administration's usual accounting practice, as well as all costs incurred by the Administration on the survey of the route of the railway which amount will be refunded to the Administration by the Corporation in the event of the railway not being built at the request of the Corporation for whatever reason, but excluding any amount/s repaid by the Corporation to the Administration in terms of clause 9 hereof, and excluding also the cost of locomotives, other rolling-stock and any moveable equipment used in connection with rolling-stock in the working of the railway after completion.

5. (1) When the railway has been completed and has been certified by the Administration's Chief Civil Engineer as being ready for the conveyance of public traffic, it shall forthwith be opened by the Administration for the conveyance of public traffic.

(2) Subject to the provisions of clause 6, the fares, charges and rates for the conveyance over the railway line of passengers, parcels, livestock and goods of any description, and related services, shall be those fixed by the Administration from time to time and applicable generally over its railway system.

(3) Nothing contained in this Agreement shall be deemed to diminish or restrict in any way the Administration's statutory power to fix and alter rates and fares.

Wet No. 90, 1976

SPOORWEGAANLEGWET, 1976

6. (1) Onderworpe aan die bepalings hierna uiteengesit, onderneem die Korporasie om gedurende die tydperk van dertig (30) jaar in klousule 7 hiervan genoem, ten opsigte van alle verkeer (behalwe passasiers, pakkette, bagasie en pos) wat deur of ten behoeve van hom per trein in die rigting van Thabazimbi oor die spoorlyn of 'n gedeelte daarvan versend word, aanspreeklik te wees vir 'n spesiale ekstrakoste soos hierna uiteengesit, en om dié spesiale ekstrakoste aan die Administrasie te betaal benewens die gewone tarief wat van tyd tot tyd in die Offisiële Spoorweg-tariefboek voorgeskryf word vir die vervoer van sodanige goedere oor die Administrasie se spoorweë in die algemeen. Daar word ooreengekom dat, indien dit sou blyk dat die vervoer van passasiers, pakkette, bagasie en pos die vlak van die ekstrakoste wesenlik beïnvloed, die Administrasie stappe sal doen om ook 'n spesiale ekstrakoste, waaroor daar in die lig van omstandighede deur die Administrasie besluit sal word, op hierdie verkeer te hef. Die gelde wat die Administrasie uit sodanige spesiale ekstrakoste toeval, moet gebruik word om—

- (a) verliese te bestry wat gedurende die tydperk van dertig (30) jaar gely mag word in die bedryf van die spoorlyn op die grondslag in klousule 5 (2) hiervan uiteengesit, met die uitdruklike verstandhouding dat die koste van die kapitaal wat in die spoorlyn belê is, nie in rekening gebring moet word wanneer sodanige bedryfsverliese bepaal word nie; en
- (b) 'n fonds op te bou wat voorsiening sal maak vir die verhaal van die kapitaalbelegging in die spoorlyn, met inbegrip van rente op die saldo van die genoemde kapitaalbelegging, binne die tydperk van dertig (30) jaar.

(2) Van die datum waarop die spoorlyn vir openbare verkeer oopgestel word, moet die spesiale ekstrakoste genoem in subklousule (1) hiervan aanvanklik gehef word teen die tarief van ses komma drie (6,3) sent per een honderd (100) kilogram. Die ekstrakoste van ses komma drie (6,3) sent per een honderd (100) kilogram is gebaseer op die vervoer oor die spoorlyn van 3,64 miljoen ton kooksteen-kool per jaar in gelyke hoeveelhede na die Korporasie se staalwerke by Vanderbijlpark en Newcastle in druklugremsteen-kooltrokke van 76 per trein. Op die eerste dag van April en Oktober van elke jaar vir so lank as wat dit ooreenkomstig subklousule (1) hiervan nodig mag wees, moet die Administrasie in oorleg met die Korporasie die tarief waarteen die gemelde spesiale ekstrakoste gehef word, soos wat dit dan van toepassing is, in hersiening neem om te verseker dat die bedrag wat die Administrasie gedurende die betrokke boekjaar by wyse van die spesiale ekstrakoste ooreenkomstig hierdie klousule en klousule 10 hiervan toeval, so na moontlik sal ooreenstem met die bedrag waarmee die bedryfskoste van die spoorlyn plus die bedrag wat ooreenkomstig subklousule (1) (b) hiervan nodig is, die normale tariefinkomste oortref wat uit die spoorlyn verkry word. Daar moet vir hierdie doel by die berekening van die bedrag wat ooreenkomstig subklousule (1) (b) hiervan vir die betrokke boekjaar nodig is, behoorlik rekening gehou word met die waarskynlike tonnemate wat gedurende die oorblywende gedeelte van die gemelde tydperk van dertig (30) jaar versend sal word en die bedrae wat as spesiale ekstrakoste ten opsigte van sodanige tonnemate betaal moet word. Na gelang van wat nodig skyn te wees ten einde hierdie oogmerk te bereik, moet die tarief ten opsigte van voornoemde spesiale ekstrakoste by sodanige hersiening of verhoog of verlaag of onveranderd gelaat word vir die daaropvolgende tydperk van ses maande.

7. (1) Van die datum waarop die spoorlyn vir openbare verkeer oopgestel word en vir elke daaropvolgende boekjaar van die Administrasie vir 'n tydperk van dertig (30) jaar, moet die Administrasie rekenings opstel en hou om die bedryfsresultate van die spoorlyn aan te toon, en 'n afskrif van elke jaarstaat moet so spoedig doenlik na die afsluiting van elke boekjaar aan die Korporasie by sy kantoor in Ellisras besorg word. Die rekenings moet ooreenkomstig die Administrasie se gewone rekeninggebruik opgestel word, en die jaarstaat moet besonderhede verstrek van die uitgawe en inkomste asook van die bedrag waarmee die fonds genoem in klousule 6 (1) (b) hiervan gekrediteer is en moet aantoon watter rentekoers van toepassing is op die saldo van die kapitaal wat in die aanleg en uitrusting belê is.

(2) Indien die resultate van die bedryf van die spoorlyn, genoem in klousule 6 (1) (a) hiervan, bereken ooreenkomstig subklousule (1) van hierdie klousule, in enige boekjaar 'n surplus toon, het die Korporasie geen aanspraak daarop nie, maar word sodanige surplus deur die Administrasie gehou en word die fonds genoem in klousule 6 (1) (b) hiervan, daarmee gekrediteer.

(3) Indien die resultate van die bedryf van die spoorlyn, genoem in klousule 6 (1) (a) hiervan, in enige jaar 'n verlies toon soos deur die Administrasie ooreenkomstig sy gewone rekeninggebruik bereken, onderneem die Korporasie om sodanige verlies binne dertig (30) dae nadat die Korporasie deur die Administrasie van die bedrag van sodanige verlies in kennis gestel is, aan die Administrasie te vergoed. Rente teen die heersende beleggingskoers wat op die Administrasie se permanente beleggings aan die begin van die bepaalde boekjaar van toepassing is, moet na verstryking van die genoemde tydperk van dertig (30) dae deur die Korporasie betaal word op alle uitstaande bedrae ten opsigte van bedryfsverliese.

(4) Die rentekoste genoem in klousules 4 (2), 6 (1) (b) en subklousule (1) van hierdie klousule moet bereken word teen die beswaarde gemiddelde koers van toepassing op die Administrasie se nuwe leningsfondse ten tyde van die belegging in die aanleg en uitrusting.

8. (1) Afrekening tussen die partye by die Ooreenkoms sal plaasvind aan die einde van die tydperk van dertig (30) jaar genoem in klousule 7 hiervan.

(2) Indien die resultate van die bedryf van die spoorlyn, genoem in klousule 6 (1) (a) hiervan, vir die tydperk vanaf die sluitingsdatum van die laaste volle boekjaar van die Administrasie binne die tydperk van dertig (30) jaar tot op die datum waarop die genoemde tydperk van dertig (30) jaar verstryk, 'n verlies toon soos deur die Administrasie ooreenkomstig sy gewone rekeninggebruik bereken, moet sodanige verlies ooreenkomstig klousule 7 (3) hiervan uitgewis word.

(3) Indien die resultate van die bedryf van die spoorlyn, genoem in klousule 6 (1) (a) hiervan, vir die tydperk vanaf die sluitingsdatum van die laaste volle boekjaar van die Administrasie binne die tydperk van dertig (30) jaar tot op die datum waarop die genoemde tydperk van dertig (30) jaar verstryk, 'n surplus toon soos deur die Administrasie ooreenkomstig sy gewone rekening-

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6. (1) Subject to the provisions hereinafter set forth, the Corporation undertakes during the period of thirty (30) years mentioned in clause 7 hereof, to hold itself liable for, and to pay to the Administration, in respect of all traffic (excluding passengers, parcels, baggage and mail) consigned by it or on its behalf by train over the railway or a portion thereof in the direction of Thabazimbi, a special surcharge, as hereinafter provided, in addition to the normal tariff prescribed from time to time in the Official Railway Tariff Book for the conveyance of any such commodity over the Administration's railway system generally. It is agreed that, if it should become evident that the level of the surcharge is materially affected by the conveyance of passengers, parcels, baggage and mail, the Administration shall take steps to also levy a special surcharge, the amount of which the Administration will determine in the light of circumstances, in respect of this traffic. The moneys accruing to the Administration from such special surcharge shall be used to—

- (a) defray any losses which, during the period of thirty (30) years, may be sustained in the working of the railway on the basis set out in clause 5 (2) hereof, it being specifically understood that the cost of the capital invested in the railway shall not be taken into account in determining such operating loss; and
- (b) build up a fund which will provide for recovery of the capital invested in the railway, including interest charges on the remaining balance of the said capital investment, within the period of thirty (30) years.

(2) From the date on which the railway is opened for the conveyance of public traffic, the special surcharge mentioned in subclause (1) hereof shall initially be levied at the rate of six comma three (6,3) cents per one hundred (100) kilogram. The surcharge of six comma three (6,3) cents per one hundred (100) kilogram is based on the conveyance over the railway of 3,64 million tons of coking coal per annum in equal quantities to the Corporation's steel works at Vanderbijlpark and Newcastle in air-brake coal trucks of 76 per train. On the first day of April and October of each year for so long as may be necessary in accordance with subclause (1) hereof, the Administration shall, in consultation with the Corporation, review the rate of the afore-mentioned special surcharge, as it is applicable then, in order to ensure that the amount accruing to the Administration, during the financial year in question, by way of the special surcharge in terms of this clause and clause 10 hereof, shall tally, as nearly as may be, with the amount by which the working costs of the railway plus the amount required in terms of subclause (1) (b) hereof, exceed the normal tariff income derived from the railway. The amount required for the financial year concerned in terms of subclause (1) (b) hereof shall, for this purpose, take proper account of the likely tonnages to be consigned over the remainder of the said thirty (30) year period and the amounts to be paid as special surcharge in respect of such tonnages. Depending on what may seem to be necessary in order to attain this object, the rate of the afore-mentioned special surcharge shall at the time of such review, be either increased or decreased or left unchanged for the ensuing period of six months.

7. (1) From the date of opening of the railway for public traffic and for each financial year of the Administration thereafter for a period of thirty (30) years, the Administration shall prepare and maintain accounts to indicate the results of working the railway, and a copy of each annual statement shall be supplied to the Corporation at its offices in Ellisras as soon as practicable after the close of each financial year. The accounts shall be prepared in accordance with the Administration's usual accounting practice and the annual statement shall give particulars of expenditure and revenue as well as of the amount credited to the fund referred to in the clause 6 (1) (b) hereof and shall indicate the rate of interest charges applicable to the balance of the capital invested in construction and equipment.

(2) If, in any one financial year, the results of the working of the railway referred to in clause 6 (1) (a) hereof, calculated as provided in subclause (1) of this clause, show a surplus, the Corporation shall have no claim thereto but such surplus shall be retained by the Administration and shall be credited to the fund referred to in clause 6 (1) (b) hereof.

(3) If, in any one year, the results of the working of the railway, referred to in clause 6 (1) (a) hereof, show a loss, as assessed by the Administration in accordance with its usual accounting practice, the Corporation undertakes to make good such loss to the Administration within thirty (30) days after it has been notified by the Administration of the amount of such loss. Interest based on the current investment rate applicable to the Administration's permanent investments at the commencement of the particular financial year, shall be payable by the Corporation on any amounts outstanding in respect of working losses after the said period of thirty (30) days has lapsed.

(4) The interest charges referred to in clauses 4 (2), 6 (1) (b) and subclause (1) of this clause shall be assessed at the weighted average rate applicable to new Loan Funds of the Administration at the time of investment in construction and equipment.

8. (1) Settlement between the parties to the Agreement will be effected at the end of the period of thirty (30) years referred to in clause 7 hereof.

(2) If the results of the working of the railway, referred to in clause 6 (1) (a) hereof, for the period from the closing date of the last whole financial year of the Administration within the period of thirty (30) years up to the expiry date of the said period of thirty (30) years show a loss, as assessed by the Administration in accordance with its usual accounting practice, such loss shall be defrayed in terms of clause 7 (3) hereof.

(3) If the results of the working of the railway, referred to in clause 6 (1) (a) hereof, for the period from the closing date of the last financial year of the Administration within the period of thirty (30) years up to the expiry date of the said period of thirty (30) years show a surplus, as assessed by the Administration in accordance with its usual accounting practice, the Corporation

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gebruik bereken, het die Korporasie geen aanspraak op sodanige surplus nie, maar sodanige bedrag moet by die geld genoem in klousule 6 (1) (b) hiervan gevoeg word.

(4) Indien die bedrag wat ingevolge klousule 6 (1) (b) vereis word, aan die einde van die genoemde tydperk van dertig (30) jaar nie ten volle verhaal is nie, onderneem die Korporasie om die uitstaande bedrag binne dertig (30) dae nadat hy daarvan in kennis gestel is, aan die Administrasie te vergoed. Rente ooreenkomstig klousule 7 (4) moet deur die Korporasie betaal word op alle bedrae wat na verloop van die genoemde tydperk van dertig (30) dae uitstaande is.

(5) Indien die bedrag wat ooreenkomstig klousule 6 (1) (b) ingevorder is, aan die einde van die genoemde tydperk van dertig (30) jaar meer is as die bedrag wat nodig is, het die Korporasie geen aanspraak op sodanige surplus nie.

(6) Na afrekening tussen die partye aan die einde van die genoemde tydperk van dertig (30) jaar ooreenkomstig die bepalinge van hierdie klousule—

- (a) bly die spoorlyn 'n bate van die Administrasie sonder dat die Administrasie die Korporasie hoegenaamd daarvoor betaal of vergoed;
- (b) moet die spesiale ekstrakoste opgehef word, en die Korporasie is daarna onder geen verdere verpligting om die Administrasie te vergoed vir verliese wat met die bedryf van die spoorlyn gely mag word nie; en
- (c) sal die Administrasie ophou om die finansiële state genoem in klousule 7 hiervan te hou of om die Korporasie ooreenkomstig klousules 3 en 11 hiervan te raadpleeg.

9. (1) Die Korporasie stem hierby in om op aanvraag, of binne sodanige tydperk as wat die Administrasie na sy goëddunke mag bepaal, aan die Administrasie die totale bedrag terug te betaal van—

- (a) vergoeding wat die Administrasie mag betaal het aan 'n derde party of partye wie se regte op minerale van watter aard ook al onteien is of aangetas is as gevolg van die aanlê van die spoorlyn deurdat die ontginning van sodanige minerale onder of naby die spoorlyn vanweë die toepassing van die mynwette verbied of beperk word; en
- (b) alle regskoste wat die Administrasie aangegaan het met die skikking of bestryding van 'n eis om vergoeding wat deur 'n eienaar of 'n derde party teen hom ingestel is:

Met dien verstande dat geen bepaling in hierdie subklousule geag moet word 'n verpligting op die Korporasie te lê met betrekking tot minerale, of die aantasting van regte op minerale, onder grond waaroor die spoorlyn loop en waarvan die Administrasie op die datum van die aanlê en uitrus van die spoorlyn die eienaar is nie.

(2) Die Administrasie moet onverwyld alle redelike en gepaste stappe doen om alle eise om vergoeding wat deur eienaars en/of derde partye soos vermeld teen hom ingestel word, op die voordeligste voorwaarde te skik en moet die Korporasie raadpleeg alvorens hy 'n finale skikking met so 'n eiser aangaan. Indien sodanige eis nie buite die hof geskik kan word op voorwaarde wat na die mening van die Korporasie billik en redelik is nie, moet die Administrasie op risiko en koste van die Korporasie enige regsgeding bestry wat die eiser teen die Administrasie mag instel om die bedrag van die verskuldigde vergoeding te bepaal. Met betrekking tot die wyse waarop so 'n regsgeding bestry moet word, en die omvang van die verweer, onderneem die Administrasie om indien doenlik te handel volgens en gevolg te gee aan sodanige opdragte as wat die Korporasie van tyd tot tyd, solank die verrigtinge voortduur, aan hom mag gee, met inbegrip van opdragte om een of ander bedrag by die hof in te betaal, of om die eis teen 'n onderling aanvaarde bedrag te skik, of om teen 'n uitspraak of bevel van die hof van eerste instansie te appelleer of nie daarteen te appelleer nie.

(3) Daar word hierby ooreengekom dat indien regte op minerale van watter aard ook al, wat by die Korporasie berus (hetsy sodanige regte voor of na die datum van hierdie ooreenkoms verkry is), tesame met die eiendomsreg op die grond vir die spoorlyn onteien word, of as gevolg van die aanlê van die spoorlyn aangetas word deurdat die ontginning van sodanige minerale onder of naby die spoorlyn vanweë die toepassing van die mynwette verbied of beperk word, die Korporasie die Administrasie hierby onvoorwaardelik onthef van alle aanspreeklikheid om hom, sy opvolgers of regverkrygendes te vergoed vir die aantasting, soos voormeld, van sodanige regte op minerale.

10. Die Administrasie onderneem om, solank as wat die Korporasie onder verpligting bly om die spesiale ekstrakoste genoem in klousule 6 (1) hiervan te betaal, voorsiening in die Offisiële Spoorwegtariefboek te maak vir die betaling van dergelike ekstrakoste teen dieselfde tarief per een honderd (100) kilogram op alle verkeer (behalwe passasiers, pakkette, bagasie en pos waar hierdie verkeer nie die vlak van ekstrakoste wesenlik beïnvloed nie) wat deur of ten behoeve van ander afsenders per trein in die rigting van Thabazimbi oor die spoorlyn of 'n gedeelte daarvan versend word, en dat daar met alle gelde wat uit sodanige ekstrakoste verkry word, volgens voorskrif van klousule 7 van hierdie ooreenkoms gehandel sal word.

11. Daar rus geen beperking op die Administrasie se bedryfsbevoegdheid ten opsigte van enige soort verkeer hoegenaamd oor die spoorlyn nie, en die Administrasie kan enige spoorlyn(e) aanlê en toestemming verleen vir die aanlê van private sylyne as 'n verlenging of vertakking van die spoorlyn: Met dien verstande dat alvorens die Administrasie sodanige spoorlyn(e) aanlê of toestemming vir die aanlê van sodanige private sylyn verleen, hy die Korporasie moet raadpleeg en alle verhoë in aanmerking moet neem wat die Korporasie in verband daarmee mag indien.

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shall have no claim to such surplus but such amount shall be added to the moneys mentioned in clause 6 (1) (b) hereof.

(4) If, at the end of the said period of thirty (30) years, the amount required in terms of clause 6 (1) (b) has not been recovered in full, the Corporation undertakes to make good the amount outstanding to the Administration within thirty (30) days after notification thereof. Interest in accordance with clause 7 (4) shall be payable by the Corporation on any amounts outstanding after the said period of thirty (30) days has lapsed.

(5) If, at the end of the said period of thirty (30) years, the amount which has been recovered in terms of clause 6 (1) (b) is in excess of the amount required, the Corporation shall have no claim to such surplus.

(6) Once settlement has been effected between the parties at the end of the said period of thirty (30) years, in accordance with the provisions of this clause—

- (a) the railway shall remain an asset of the Administration without any payment or compensation whatsoever by the Administration to the Corporation;
- (b) the special surcharge shall be withdrawn and the Corporation shall thereafter be under no further obligation to reimburse the Administration for losses that may be incurred in the working of the railway; and
- (c) the Administration shall cease to maintain the financial statements referred to in clause 7, or to consult the Corporation in accordance with clauses 3 and 11 hereof.

9. (1) The Corporation hereby agrees to repay to the Administration on demand, or within such period as the Administration may in its discretion determine, the total amount of—

- (a) any compensation which the Administration may have paid to a third party or parties whose rights to minerals of whatever nature have been expropriated or injuriously affected as a result of the construction of the railway, in that, by reason of the operation of the Mining Laws, the mining of such minerals under or in the vicinity of the railway is prohibited or restricted; and
- (b) any legal costs incurred by the Administration in settling or contesting any claim for compensation preferred against it by an owner or third party:

Provided that nothing in this subclause contained shall be deemed to impose on the Corporation any obligation with respect to any minerals, or the injurious affection of any rights to minerals, underlying any land traversed by the railway of which the Administration is the owner at the date of construction and equipment of the railway.

(2) The Administration shall forthwith take all reasonable and proper steps to settle, on the most advantageous terms, all claims for compensation preferred against it by owners and/or third parties as aforesaid, and shall consult the Corporation before arriving at a final settlement with any such a claimant. If any such claim cannot be settled out of court on terms which, in the opinion of the Corporation are fair and reasonable, the Administration shall, at the risk and expense of the Corporation contest any legal proceedings which the claimant may bring against it for the determination of the amount of the compensation payable. The Administration undertakes that, in regard to the manner in which and the extent to which any such proceedings are to be contested it will, if practicable, act in accordance with and give effect to such directions as may be given to it by the Corporation from time to time as long as the proceedings continue, including directions to pay any amount into court, or to settle the claim at a mutually agreed upon figure, or to appeal or not to appeal against any judgment or order of the court of first instance.

(3) It is hereby agreed that if, as a result of the construction of the railway, rights to minerals of whatever nature vested in the Corporation (whether such rights were acquired before or after the date of this Agreement) are expropriated together with the ownership in the land for the railway, or are injuriously affected as a result of the construction of the line in that, by reason of the operation of the Mining Laws, the mining of such minerals under or in the vicinity of the railway is prohibited or restricted, the Corporation shall hereby unconditionally release the Administration from any and all liability to compensate it, its successors or assigns, in respect of the injurious affection, as aforesaid, of such rights to minerals.

10. The Administration undertakes, for as long as the Corporation remains under obligation to pay the special surcharge mentioned in clause 6 (1) hereof, to make provision in the Official Railway Tariff Book for the payment of a like surcharge at the same rate per one hundred (100) kilogram on all traffic (excluding passengers, parcels, baggage and mail where this traffic does not materially affect the level of surcharge) consigned by or on behalf of any other senders by train over the railway or any portion thereof in the direction of Thabazimbi, and that all moneys derived from such surcharge will be dealt with as provided in clause 7 of this Agreement.

11. There shall be no restriction on the running powers of the Administration in respect of any class of traffic whatsoever over the railway, and the Administration may construct any line/s of railway, and consent to the construction of private sidings as an extension of or as a branch from the railway: Provided that before constructing any such line/s of railway or consenting to the construction of any such private siding, the Administration shall consult the Corporation and shall take into consideration all representations that the Corporation may make with respect thereto.

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12. Daar word ooreengekom dat ingeval die Korporasie gedurende 'n tydperk van dertig (30) jaar van die datum waarop die spoorlyn vir verkeer oopgestel word ander vervoermiddele vir sy produkte wil oorweeg, goedkeuring vooraf van die Administrasie verkry moet word.

GETEKEN namens en ten behoeve van die Regering van die Republiek van Suid-Afrika in sy Administrasie van Spoorweë en Hawens in Pretoria op die 19de dag van November 1975.

(Geteken) S. L. MULLER

Minister van Vervoer

GETUIE:

1. (Geteken) G. BASSON
2. (Geteken) J. M. MULLER

GETEKEN namens en ten behoeve van SUID-AFRIKAANSE YSTER EN STAAL INDUSTRIËLE KORPORASIE, BEPERK in Pretoria op die 3de dag van Oktober 1975, kragtens 'n besluit van die Direksie van die Korporasie gedateer die 24ste dag van September 1975.

(Geteken) L. DUNCKER

Besturende Direkteur

GETUIE:

1. (Geteken) B. C. ALBERTS
2. (Geteken) J. GILLILAND

Bylae 3

MEMORANDUM VAN OOREENKOMS TUSSEN DIE REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA IN SY ADMINISTRASIE VAN SPOORWEE EN HAWENS, VAN DIE EEN KANT, EN RICHARDS BAY IRON AND TITANIUM (EDMS.) BEPERK EN TISAND (EDMS.) BEPERK AAN DIE ANDER KANT.

MEMORANDUM VAN OOREENKOMS aangegaan tussen die REGERING VAN DIE REPUBLIEK VAN SUID-AFRIKA in sy ADMINISTRASIE VAN SPOORWEE EN HAWENS (hierna „die Administrasie” genoem), hierin verteenwoordig deur die MINISTER VAN VERVOER van die Republiek van Suid-Afrika, van die een kant, en RICHARDS BAY IRON AND TITANIUM (EDMS.) BEPERK en TISAND (EDMS.) BEPERK, maatskappye ingelyf met beperkte aanspreeklikheid kragtens die Maatskappywet, 1926 (hierna „die Maatskappye” genoem), van die ander kant.

NADemaal die Maatskappye aangebied het om 'n spoorlyn met 'n spoorwydte van eenduisend en vyf en sestig (1 065) millimeter van Nselenistasie tot by 'n eindpunt op Lot K. 44 No. 13587 geleë in die County Zululand, in die provinsie Natal, 'n afstand van ongeveer sewe (7) kilometer (hierna „die spoorlyn” genoem), op eie koste aan te lê en uit te rus en die Administrasie versoek het om dit in stand te hou en te eksploiteer vir die vervoer van verkeer na en van 'n gebied waarin die Maatskappye sekere mynbou- en smelterywerksaamhede uitvoer of waarby hulle andersins belang het;

EN NADemaal die Administrasie ingestem het om, indien en wanneer deur die Parlement daartoe gemagtig, die grond wat vir die aanlê van die spoorlyn nodig is, op koste van die Maatskappye te onteien of op 'n ander wyse aan te skaf, en die Maatskappye toe te laat om die spoorlyn aan te lê en uit te rus, met inbegrip van enige veranderings en/of aanbouings wat as gevolg van die aanlê van die spoorlyn by die bestaande Nselenistasie nodig is, en daarna die spoorlyn as 'n bate oor te neem en in stand te hou en te eksploiteer, onderworpe aan die bepalinge en voorwaardes hierna uiteengesit;

DERHALWE kom die partye hierby soos volg ooreen:

1. Hangende die goedkeuring en magtiging van die Parlement, wat die Administrasie voornemens is om aan te vra so spoedig doenlik nadat hierdie ooreenkoms gesluit is, word die verpligtinge van die Administrasie kragtens hierdie ooreenkoms slegs as voorlopig beskou. As die aanlê van die spoorlyn nie binne 'n tydperk van twaalf maande na ondertekening hiervan deur die Parlement goedgekeur word nie, verval hierdie ooreenkoms tensy dit met wedersydse toestemming hernuwe word.

2. (1) Na die uitvaardiging van 'n Parlements-wet wat die aanlê en uitrus van die spoorlyn magtig en hierdie ooreenkoms bekragtig, moet die Administrasie, op koste van die Maatskappye, met alle redelike spoed voortgaan om die grond te onteien of andersins te verkry (met inbegrip van regte op minerale indien die Administrasie dit wenslik ag) wat vir die aanlê en uitrus van die spoorlyn nodig is: Met dien verstande dat die Administrasie nie aanspreeklik is vir enige vertraging of ander probleem wat ondervind word met die verkryging van die grond wat nodig is vir die aanlê en uitrus van die spoorlyn weens enige oorsaak hoegenaamd waaroor hy geen beheer het nie. Die aard en bedrag van vergoeding, hetsy in geld of goedere, vir enige grond of ander regte wat ooreenkomsstig hierdie klousule bekom word, sal deur die Administrasie na eie goeddunke bepaal word.

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12. It is agreed that, in the event of the Corporation wishing to consider other means of conveyance for its products during a period of thirty (30) years from the date of opening of the railway for traffic, the Administration's prior approval shall be obtained.

SIGNED for and on behalf of the Government of the Republic of South Africa in its Railways and Harbours Administration at Pretoria on this the 19th day of November 1975.

(Signed) S. L. MULLER

Minister of Transport

As WITNESSES:

1. (Signed) G. BASSON
2. (Signed) J. M. MULLER

SIGNED for and on behalf of the SOUTH AFRICAN IRON AND STEEL INDUSTRIAL CORPORATION, LIMITED, at Pretoria on this the 3rd day of October, 1975 under the authority of a resolution of the Board of Directors of the Corporation dated the 24th day of September, 1975.

(Signed) L. DUNCKER

Managing Director

As WITNESSES:

1. (Signed) B. C. ALBERTS
2. (Signed) J. GILLILAND

Schedule 3

TRANSLATION OF MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA IN ITS RAILWAYS AND HARBOURS ADMINISTRATION, OF THE ONE PART AND RICHARDS BAY IRON AND TITANIUM (PTY.) LIMITED AND TISAND (PTY.) LIMITED, OF THE OTHER PART.

MEMORANDUM OF AGREEMENT made and entered into between the GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA in its RAILWAYS AND HARBOURS ADMINISTRATION (hereinafter referred to as "the Administration"), herein represented by the MINISTER OF TRANSPORT of the Republic of South Africa, of the one part, and RICHARDS BAY IRON AND TITANIUM (PTY.) LIMITED and TISAND (PTY.) LIMITED, being companies incorporated with limited liability under the Companies Act, 1926 (hereinafter referred to as "the Companies"), of the other part.

WHEREAS the Companies have offered to construct and equip, at their own cost, and have petitioned the Administration to maintain and work a line of railway of a gauge of one thousand and sixty-five (1 065) millimetres from Nseleni station to a terminal point on Lot K.44 No. 13587 situated in the County of Zululand, Province of Natal, a distance of approximately seven (7) kilometres (hereinafter termed "the railway") for the conveyance of traffic to and from an area in which the Companies are carrying on, or are otherwise interested in, certain mining operations and smelting works;

AND WHEREAS the Administration has agreed, if and when authorised by Parliament to do so, to expropriate the land required for the construction of the railway at the cost of the Companies, or to acquire it in some other manner, and to allow the Companies to construct and equip the railway, including any alterations and/or additions required at the existing Nseleni station as a result of the construction of the railway, and thereafter to take over the railway as an asset and maintain and work it subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties do hereby agree as follows:

1. Pending the approval and sanction of Parliament, which the Administration proposes to seek as soon as may be practicable after the execution of this Agreement, the obligations of the Administration under this Agreement shall be taken to be provisional only. Should the construction of the railway not be authorised by Parliament within a period of twelve months after signing hereof, this Agreement shall lapse, unless renewed by mutual consent.

2. (1) After the promulgation of an Act of Parliament authorising the construction and equipment of the railway and ratifying this Agreement, the Administration shall, at the cost of the Companies, proceed with all reasonable expedition to expropriate or otherwise acquire the land (including rights to minerals if deemed desirable by the Administration) required for the construction and equipment of the railway: Provided that the Administration shall not be liable for any delay or other problem encountered in acquiring the land required for the construction and equipment of the railway owing to any cause whatever over which the Administration has no control. The nature and amount of compensation, whether in cash or in kind, for any land or other rights acquired in accordance with this clause shall be determined by the Administration in its sole discretion.

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(2) Die Administrasie het die reg om, na oorlegging met die Maatskappye, van tyd tot tyd sodanige bykomende of verbeterde spoorlyne of ander geriewe wat regstreeks met die spoorlyn in verband staan, op die Administrasie se koste aan te lê of te voorsien as wat hy nodig ag om hom in staat te stel om enige verkeer oor die spoorlyn doeltreffend te vervoer. Die koste van bykomende of verbeterde spoorlyne of ander geriewe wat aldus aangelê of voorsien word, word geag deel uit te maak van die koste van die aanlê en uitrus van die spoorlyn vir die doeleindes van hierdie ooreenkoms.

3. (1) Die geraamde kapitaalbelegging in die aanlê en uitrus van die spoorlyn sal ongeveer twee miljoen drie honderd twee en vyftigduisend rand (R2 352 000) bedra.

(2) Die roete van die spoorlyn en die ligging van stasies en sylyne moet nagenoeg wees soos aangetoon op die bygaande plan wat deur beide partye onderteken is.

4. Die spoorlyn moet deur die Maatskappye aangelê en uitgerus word ooreenkomstig die standaard wat deur die Administrasie vir soortgelyke lyne aanvaar is en moet gebou word met spoorstawe van minstens agt en veertig (48) kilogram per meter.

5. (1) Wanneer die spoorlyn voltooi is en die Administrasie se Siviele Hoofingenieur gesertifiseer het dat dit gereed is vir die vervoer van openbare verkeer, moet dit onverwyld as 'n bate van die Administrasie oorgeneem en vir die vervoer van openbare verkeer oopgestel word. Die Maatskappye ontvang egter geen krediet of betaling ten opsigte van die kapitaalbelegging in die aanlê en uitrus van die spoorlyn op daardie datum nie, maar moet gedurende die tydperk van twintig (20) jaar in klousule 8 hiervan genoem vergoed word vir die betrokke kapitaalkoste op die wyse in klousule 7 (1) hiervan uiteengesit.

(2) Onderworpe aan die bepalinge van klousule 6 hiervan is die reisgeld, koste en tariewe vir die vervoer van passasiers, pakkette, lewende hawe en alle soorte goedere en vir aanverwante dienste dieselfde as dié wat in die algemeen op sy spoorweë van toepassing is, of sodanige spesiale kontraktarief waaroor ooreengekom mag word.

(3) Geen bepaling in hierdie ooreenkoms word geag hoegenaamd aan die Administrasie se wetteregtelike bevoegdheid om tariewe en reisgeld vas te stel en te verander, afbreuk te doen of dit te beperk nie.

6. (1) Daar word uitdruklik verstaan dat die ondergenoemde prosedure waarvolgens 'n spesiale ekstrakoste gehef moet word op die uitgaande verkeer wat deur of ten behoeve van die Maatskappye versend word en wat o.a. voorsiening maak vir die verhalings van die kapitaal wat t.o.v. die aanlê en uitrus van die spoorlyn bestee is, alleenlik aangeneem is met die oog daarop om 'n grondslag te vind waarop die kapitaalkoste verhaal kan word op alle verkeer (behalwe passasiers, pakkette, bagasie en pos) wat oor die spoorlyn of 'n gedeelte daarvan versend word.

(2) Met inagneming van die bepalinge van subklousule (1) van hierdie klousule en onderworpe aan die bepalinge hierna uiteengesit, onderneem die Maatskappye om gedurende die tydperk van twintig (20) jaar in klousule 8 hiervan genoem, ten opsigte van alle verkeer (behalwe passasiers, pakkette, bagasie en pos) wat deur of ten behoeve van hulle per trein in die rigting van Nseleni oor die spoorlyn of 'n gedeelte daarvan versend word, aanspreeklik te wees vir 'n spesiale ekstrakoste soos hierna uiteengesit, en om dié spesiale ekstrakoste aan die Administrasie te betaal benewens die gewone tarief wat van tyd tot tyd in die Offisiële Spoorwegtariefboek voorgeskryf word vir die vervoer van sodanige goedere oor die Administrasie se spoorweë in die algemeen. Daar word ooreengekom dat, indien dit sou blyk dat die vervoer van passasiers, pakkette, bagasie en pos die vlak van die ekstrakoste wesenlik beïnvloed, die Administrasie stappe sal doen om ook 'n spesiale ekstrakoste waaroor daar in die lig van omstandighede deur die Administrasie besluit sal word, op hierdie verkeer sal hef. Die gelde wat die Administrasie uit sodanige spesiale ekstrakoste toeval, moet gebruik word om—

(a) verliese te bestry wat gedurende die tydperk van twintig (20) jaar gely mag word in die bedryf van die spoorlyn op die grondslag in klousule 5 (2) hiervan uiteengesit, met die uitdruklike verstandhouding dat die koste van die kapitaal wat deur die Maatskappye in die spoorlyn belê is, nie in rekening gebring moet word wanneer sodanige bedryfsverlies bepaal word nie; en

(b) die kapitaal te verhaal wat t.o.v. die aanlê en uitrus van die spoorlyn bestee is, met inbegrip van rente teen elf (11) persent per jaar op die saldo van die genoemde kapitaalbelegging, binne die tydperk van twintig (20) jaar waarna in klousule 8 hiervan verwys word, of tot tyd en wyl die kapitaal wat deur die Maatskappye belê is, verantwoord is, watter ook al die kortste is.

(3) Van die datum waarop die spoorlyn vir openbare verkeer oopgestel word, moet die spesiale ekstrakoste genoem in subklousule (1) hiervan, aanvanklik gehef word teen die tarief van tien (10) sent per eenhonderd (100) kilogram. Op die eerste dag van April en Oktober van elke jaar vir so lank as wat dit ooreenkomstig subklousule (2) hiervan nodig mag wees, moet die Administrasie in oorleg met die Maatskappye die tarief waarteen die gemelde spesiale ekstrakoste gehef word, in hersiening neem om te verseker dat die bedrag wat die Administrasie gedurende die betrokke boekjaar by wyse van die spesiale ekstrakoste ooreenkomstig hierdie klousule en klousule 11 hiervan toeval, so na moontlik sal ooreenstem met die bedrag waarmee die bedryfskoste van die spoorlyn, plus die bedrae wat ooreenkomstig subklousule (2) (b) hiervan nodig is, die inkomste oortref wat uit die spoorlyn verkry word, voordat die bedrag wat die voormelde spesiale ekstrakoste oplewer, in rekening gebring word. Na gelang van wat nodig skyn te wees ten einde hierdie oogmerk te bereik, moet die tarief ten opsigte van voornoemde spesiale ekstrakoste by sodanige hersiening of verhoog of verlaag of onveranderd gelaat word vir die daaropvolgende tydperk van ses maande.

7. (1) Die Administrasie onderneem om—

(a) die Maatskappye, in die verdelingsverhouding van vyf en sewentig (75) persent ten opsigte van Richards Bay Iron and Titanium (Edms.) Beperk en vyf en twintig (25) persent ten opsigte van Tisand (Edms.) Beperk, maandeliks te krediteer en aan hulle te

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(2) The Administration shall have the right, after consultation with the Companies, to construct or provide from time to time, at the Administration's cost, such additional or improved railway tracks or other facilities directly connected with the railway as it may deem necessary to enable it to cope efficiently with any traffic over the railway. The cost of additional or improved railway tracks or other facilities so constructed or provided shall be deemed to form part of the cost of construction and equipment of the railway for the purposes of this Agreement.

3. (1) The estimated capital investment in the construction and equipment of the railway will amount to approximately two million three hundred and fifty-two thousand rand (R2 352 000).

(2) The route of the railway and the location of stations and sidings shall be approximately as shown on the plan annexed hereto and signed by both parties.

4. The railway shall be constructed and equipped by the Companies according to the standards adopted by the Administration for similar lines and shall be constructed with rails of a mass of not less than forty-eight (48) kilogram per metre.

5. (1) When the railway is completed and the Administration's Chief Civil Engineer has certified that it is ready for the conveyance of public traffic, it shall forthwith be taken over as an asset of the Administration and opened for the conveyance of public traffic. The Companies shall, however, receive no credit or payment in respect of the capital investment in the construction and equipment of the railway on that date but shall, during the period of twenty (20) years mentioned in clause 8 hereof, be compensated for the capital costs involved in the manner set out in clause 7 (1) hereof.

(2) Subject to the provisions of clause 6 hereof, the fares, charges and rates for the conveyance of passengers, parcels, livestock and all classes of goods, and related services, shall be those fixed by the Administration from time to time and applicable generally over its railway system, or such special contract rate as may be agreed upon.

(3) Nothing contained in this Agreement shall be deemed to diminish or restrict in any way the Administration's statutory power to fix and alter rates and fares.

6. (1) It is specifically understood that the under-mentioned procedure, whereunder a special surcharge shall be levied on the outgoing traffic consigned by or on behalf of the Companies and which, *inter alia*, makes provision for the recovery of the capital invested in the construction and equipment of the railway, has been adopted solely with a view to arriving at a basis on which the capital costs can be recovered on all traffic (excepting passengers, parcels, baggage and mail) consigned over the railway or portion thereof.

(2) Having regard to the terms of subclause (1) of this clause, and subject to the provisions hereinafter set forth, the Companies undertake during the period of twenty (20) years mentioned in clause 8 hereof, to hold themselves liable for, and to pay to the Administration, in respect of all traffic (excepting passengers, parcels, baggage and mail) consigned by them or on their behalf by train over the railway or a portion thereof in the direction of Nseleni, a special surcharge, as hereinafter provided, in addition to the normal tariff prescribed from time to time in the Official Railway Tariff Book for the conveyance of such commodity over the Administration's railway system generally. It is agreed that if it should become evident that the level of the surcharge is materially affected by the conveyance of passengers, parcels, baggage and mail, the Administration shall take steps to also levy a special surcharge on this traffic, the amount of which the Administration will determine in the light of circumstances. The moneys accruing to the Administration from such special surcharge shall be used to—

(a) defray any losses which, during the period of twenty (20) years, may be sustained in the working of the railway on the basis set out in clause 5 (2) hereof, it being specifically understood that the cost of the capital invested in the railway by the Companies shall not be taken into account in determining such operating loss; and

(b) recover the capital invested in the construction and equipment of the railway, including interest charges at eleven (11) per cent per annum on the remaining balance of the said capital investment, within the period of twenty (20) years referred to in clause 8 hereof, or until such time as the capital invested by the Companies has been accounted for, whichever is the shortest.

(3) From the date on which the railway is opened for the conveyance of public traffic, the special surcharge mentioned in subclause (1) hereof shall initially be levied at the rate of ten (10) cents per one hundred (100) kilogram. On the first day of April and October of each year for so long as may be necessary in accordance with subclause (2) hereof, the Administration shall, in consultation with the Companies, review the rate at which the afore-mentioned special surcharge is levied to ensure that the amount accruing to the Administration during the financial year in question by way of the special surcharge in terms of this clause and clause 11 hereof, shall tally, as nearly as may be, with the amount by which the working costs of the railway plus the amounts required in terms of subclause (2) (b) hereof, exceeds the revenue derived from the railway before taking into account the amount accruing from the afore-mentioned special surcharge. Depending on what may seem to be necessary to attain this object, the rate of the afore-mentioned special surcharge shall at the time of such review, be either increased or decreased or left unchanged for the ensuing period of six months.

7. (1) The Administration undertakes to—

(a) credit and pay to the Companies monthly, in the ratio of seventy-five (75) per cent in respect of Richards Bay Iron and Titanium (Pty.) Limited and twenty-five (25) per cent in respect of Tisand (Pty.) Limited, that portion of the special surcharge provided for

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betaal daardie gedeelte van die spesiale ekstrakoste waarvoor daar in klousule 6 (2) (b) hiervan voorsiening gemaak word, bereken op uitgaande verkeer wat deur of ten behoewe van die Maatskappye oor die spoorlyn versend word; en

- (b) die Maatskappye aan die end van elkeen van die Administrasie se boekjare in die verdelingsverhouding soos aangetoon in subklousule (1) (a) van hierdie klousule te krediteer met en aan hulle te betaal daardie gedeelte van die tariefskaal en/of spesiale ekstrakoste wat bydraes verteenwoordig tot die kapitaalkoste van die kapitaal wat deur die Maatskappye in die aanlê en uitrus van die spoorlyn belê is, bereken teen 'n rentekoers van elf (11) persent per jaar op die saldo van die genoemde kapitaalbelegging, ten opsigte van alle verkeer wat oor die lyn versend word, maar uitgesonder die krediet waarvoor daar in subklousule (1) (a) van hierdie klousule voorsiening gemaak is.

(2) Daar word ooreengekom dat indien die kapitaal wat deur die Maatskappye in die aanlê en uitrus van die spoorlyn belê is, ten volle verantwoord sou wees voor die vervaldatum van die tydperk van twintig (20) jaar genoem in klousule 8 hiervan, die Maatskappye nie op enige verder krediet ten opsigte van kapitaalkoste geregtig sal wees nie en dat die gedeelte van die spesiale ekstrakoste waarvoor daar in klousule 6 (2) (b) hiervan voorsiening gemaak word, opgehef sal word.

8. (1) Van die datum waarop die spoorlyn vir openbare verkeer oopgestel word en vir elke daaropvolgende boekjaar van die Administrasie vir 'n tydperk van twintig (20) jaar, moet die Administrasie rekenings opstel en hou om die bedryfsresultate van die spoorlyn aan te toon, en 'n afskrif van elke jaarstaat moet so spoedig doenlik na die afsluiting van elke boekjaar aan die Maatskappye by hulle kantoor/kantore in Johannesburg besorg word. Die rekenings moet ooreenkomstig die Administrasie se gewone rekeninggebruik opgestel word, en die jaarstaat moet besonderhede verstrek van die uitgawe en inkomste asook van die bedrag van die kapitaalbelegging wat verantwoord is soos genoem in klousule 6 (2) (b) hiervan.

(2) Indien die resultate van die bedryf van die spoorlyn, genoem in klousule 6 (2) (a) hiervan bereken ooreenkomstig subklousule (1) van hierdie klousule, in enige boekjaar 'n surplus toon moet die Maatskappye met sodanige surplus gekrediteer en dit aan hulle betaal word op dieselfde wyse as waarvoor daar in klousule 7 (1) (b) hiervan voorsiening gemaak word totdat die kapitaal wat in die aanlê en uitrus van die spoorlyn belê is, ten volle verantwoord is. Die Maatskappye het egter geen aanspraak daarop nadat die genoemde kapitaalbelegging ten volle verantwoord is nie, en gedurende die oorblywende gedeelte van die genoemde tydperk van twintig (20) jaar word sodanige surplus deur die Administrasie gehou.

(3) Indien die resultate van die bedryf van die spoorlyn, genoem in klousule 6 (2) (a) hiervan, in enige jaar 'n verlies toon soos deur die Administrasie ooreenkomstig sy gewone rekeninggebruik bereken, onderneem die Maatskappye om sodanige verlies in die verdelingsverhouding soos aangetoon in klousule 7 (1) (a) binne dertig (30) dae nadat hulle deur die Administrasie van die bedrag van sodanige verlies in kennis gestel is, aan die Administrasie te vergoed. Rente teen die rentekoers wat op die Administrasie se jongste permanente belegging, binne die voorgaande twaalf maande gedoen, van toepassing was of indien geen belegging gemaak is nie teen die rentekoers op die jongste permanente belegging deur die Staatskuldkommissaris gedurende die genoemde tydperk gemaak, moet na verstryking van die genoemde tydperk van dertig (30) dae deur die Maatskappye in die verdelingsverhouding soos aangetoon in klousule 7 (1) (a), betaal word op alle uitstaande bedrae ten opsigte van bedryfsverliese.

9. (1) Afrekening tussen die partye by die ooreenkoms sal plaasvind aan die einde van die tydperk van twintig (20) jaar genoem in klousule 8 hiervan.

(2) Indien die resultate van die bedryf van die spoorlyn, genoem in klousule 6 (2) (a) hiervan, vir die tydperk vanaf die sluitingsdatum van die laaste volle boekjaar van die Administrasie binne die tydperk van twintig (20) jaar tot op die datum waarop die genoemde tydperk van twintig (20) jaar verstryk, 'n verlies toon soos deur die Administrasie ooreenkomstig sy gewone rekeninggebruik bereken, moet sodanige verlies ooreenkomstig klousule 8 (3) hiervan bestry word.

(3) Indien die resultate van die bedryf van die spoorlyn, genoem in klousule 6 (2) (a) hiervan, vir die tydperk vanaf die sluitingsdatum van die laaste volle boekjaar van die Administrasie binne die tydperk van twintig (20) jaar tot op die datum waarop die genoemde tydperk van twintig (20) jaar verstryk, 'n surplus toon soos deur die Administrasie ooreenkomstig sy gewone rekeninggebruik bereken, het die Maatskappye geen aanspraak op sodanige surplus nie.

(4) Na afrekening tussen die partye aan die einde van genoemde tydperk van twintig (20) jaar ooreenkomstig die bepalings van hierdie klousule—

- (a) bly die spoorlyn 'n bate van die Administrasie sonder dat die Administrasie die Maatskappye hoegenaamd daarvoor betaal of verder vergoed;
- (b) moet die spesiale ekstrakoste, indien van toepassing op daardie tydperk, opgehef word, en die Maatskappye is daarna onder geen verdere verpligting om die Administrasie te vergoed vir verliese wat met die bedryf van die spoorlyn gely mag word nie; en
- (c) sal die Administrasie ophou om die finansiële state genoem in klousule 8 hiervan te hou of om die Maatskappye ooreenkomstig klousules 2 (2) en 12 hiervan te raadpleeg.

10. (1) Die Maatskappye stem hierby in om in die verdelingsverhouding soos aangetoon in klousule 7 (1) (a) op aanvraag, of binne sodanige tydperk as wat die Administrasie na sy goedgekeurde na oorlegpleging met die Maatskappye mag bepaal, aan die Administrasie die totale bedrag terug te betaal van—

- (a) die koste van onteining of die koste aangegaan om die grond wat vir die aanlê en uitrus van die spoorlyn nodig is, andersins te verkry;

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in clause 6 (2) (b) hereof, calculated on outgoing traffic consigned over the railway by or on behalf of the Companies; and

(b) credit and pay to the Companies, in the ratio indicated in subclause (1) (a) of this clause, at the end of each of the Administration's financial years, that portion of the tariff rate and/or special surcharge which represents contributions towards the capital costs of the capital invested by the Companies in construction and equipment of the railway, calculated at an interest rate of eleven (11) per cent per annum on the remaining balance of the said capital investment, in respect of all traffic consigned over the line, but excluding the credit allowed for under subclause (1) (a) of this clause.

(2) It is agreed that, should the capital invested by the Companies in the construction and equipment of the railway be fully accounted for before the expiry date of the period of twenty (20) years mentioned in clause 8 hereof, the Companies shall not be entitled to any further credits in respect of capital costs, and the portion of the special surcharge provided for in clause 6 (2) (b) hereof shall be withdrawn.

8. (1) From the date of opening of the railway for public traffic and for each of the Administration's financial years thereafter for a period of twenty (20) years, the Administration shall prepare and maintain accounts to indicate the results of working the railway, and a copy of each annual statement shall be supplied to the Companies at their office/s in Johannesburg as soon as practicable after the closing of each financial year. The accounts shall be prepared in accordance with the Administration's usual accounting practice and the annual statement shall give particulars of expenditure and revenue as well as of the amount of the capital investment accounted for, as referred to in clause 6 (2) (b) hereof.

(2) If, in any financial year, the results of the working of the railway referred to in clause 6 (2) (a) hereof, calculated in accordance with subclause (1) of this clause, show a surplus, such surplus shall be credited and paid to the Companies in the same manner as provided for in clause 7 (1) (b) hereof until the capital invested in the construction and equipment of the railway has been fully accounted for. The Companies shall, however, have no claim thereto after the said capital investment has been fully accounted for, and during the remainder of the said period of twenty (20) years such surpluses shall be retained by the Administration.

(3) If, in any year, the results of the working of the railway, referred to in clause 6 (2) (a) hereof, show a loss, as assessed by the Administration in accordance with its usual accounting practice, the Companies undertake to make good such loss to the Administration, in the ratio indicated in clause 7 (1) (a), within thirty (30) days after they have been notified by the Administration of the amount of such loss. Interest based on the rate applicable to the Administration's latest permanent investment made within the preceding twelve months, or if no investment was made, at the rate of interest applicable to the latest permanent investment made by the Public Debt Commissioners during the said period, shall be payable by the Companies in the ratio indicated in clause 7 (1) (a) on any amounts outstanding in respect of working losses after the said period of thirty (30) days has lapsed.

9. (1) Settlement between the parties to the Agreement shall be effected at the end of the period of twenty (20) years referred to in clause 8 hereof.

(2) If the results of the working of the railway, referred to in clause 6 (2) (a) hereof, for the period from the closing date of the last whole financial year of the Administration within the period of twenty (20) years up to the date on which the said period of twenty (20) years expires, show a loss, as assessed by the Administration in accordance with its usual accounting practice, such loss shall be defrayed in terms of clause 8 (3) hereof.

(3) If the results of the working of the railway referred to in clause 6 (2) (a) hereof, for the period from the closing date of the last financial year of the Administration within the period of twenty (20) years up to the date on which the said period of twenty (20) years expires, show a surplus, as assessed by the Administration in accordance with its usual accounting practice, the Companies shall have no claim to such surplus.

(4) After settlement between the parties at the end of the said period of twenty (20) years, in accordance with the provisions of this clause—

- (a) the railway shall remain an asset of the Administration without any payment or further compensation whatsoever by the Administration to the Companies;
- (b) the special surcharge, if applicable at that time, shall be withdrawn and the Companies shall thereafter be under no further obligation to reimburse the Administration for losses that may be incurred in the working of the railway; and
- (c) the Administration shall cease to maintain the financial statements referred to in clause 8, or to consult the Companies in accordance with clauses 2 (2) and 12 hereof.

10. (1) The Companies hereby agree to repay to the Administration, in the ratio indicated in clause 7 (1) (a), on demand, or within such period as the Administration may in its discretion determine after consultation with the Companies, the total amount of—

- (a) the cost of expropriating or otherwise acquiring the land required for the construction and equipment of the railway;

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- (b) vergoeding wat die Administrasie mag betaal het aan 'n derde party of partye wie se regte op minerale van watter aard ook al onteien is of aangetas is as gevolg van die aanlê van die spoorlyn deurdat die ontginning van sodanige minerale onder of naby die spoorlyn vanweë die toepassing van die mynwette verbied of beperk word; en
- (c) alle regskoste wat die Administrasie aangegaan het met die skikking of bestryding van 'n eis om vergoeding wat deur 'n derde party teen hom ingestel is:

Met dien verstande dat geen bepaling in hierdie subklousule geag moet word 'n verpligting op die Maatskappye te lê met betrekking tot minerale, of die aantasting van regte op minerale, waarvan die Administrasie op die datum van hierdie ooreenkoms die eienaar is nie.

(2) Die Administrasie moet onverwyld alle redelike en gepaste stappe doen om alle eise om vergoeding wat deur derde partye soos in subklousule (1) (b) van hierdie klousule vermeld teen hom ingestel word, op die voordeligste voorwaardes te skik en moet die Maatskappye raadpleeg alvorens hy 'n finale skikking met so 'n eiser aangaan. Indien sodanige eis nie buite die hof geskik kan word op voorwaardes wat na die mening van die Maatskappye billik en redelik is nie, moet die Administrasie op risiko en koste van die Maatskappye in die verdelingsverhouding soos aangetoon in klousule 7 (1) (a) enige regsgeding bestry wat die eiser teen die Administrasie mag instel om die bedrag van die verskuldigde vergoeding te bepaal. Met betrekking tot die wyse waarop so 'n regsgeding bestry moet word, en die omvang van die verweer, onderneem die Administrasie om indien doenlik te handel volgens en gevolg te gee aan sodanige opdragte as wat die Maatskappye van tyd tot tyd, solank die verrigtinge voortduur, aan hom mag gee, met inbegrip van opdragte om enige bedrag by die hof in te betaal, of om die eise teen 'n onderling aanvaarde bedrag te skik, of om teen 'n uitspraak of bevel van die hof van eerste instansie te appelleer of nie daarteen te appelleer nie.

(3) Daar word hierby ooreengekom dat indien regte op minerale van watter aard ook al, wat by die Maatskappye gesamentlik en afsonderlik berus (hetsy sodanige regte voor of na die datum van hierdie ooreenkoms verkry is), tesame met die eiendomsreg op die grond vir die spoorlyn onteien word, of as gevolg van die aanlê van die spoorlyn aangetas word deurdat die ontginning van sodanige minerale onder of naby die spoorlyn vanweë die toepassing van die mynwette verbied of beperk word, die Maatskappye die Administrasie hierby onvoorwaardelik onthef van alle aanspreeklikheid om hulle, hul opvolgers of regverkrygendes te vergoed vir die aantasting, soos voormeld, van sodanige regte op minerale.

11. Die Administrasie onderneem om, solank as wat die Maatskappye onder verpligting bly om die spesiale ekstrakoste genoem in klousule 6 (2) hiervan te betaal, voorsiening in die Offisiële Spoorwegtariefboek te maak vir die betaling van dergelike ekstrakoste teen dieselfde tarief per een honderd (100) kilogram op alle verkeer (behalwe passasiers, pakkette, bagasie en pos waar hierdie verkeer nie die vlak van ekstrakoste wesenlik beïnvloed nie) wat deur of ten behoeve van ander afsenders per trein in die rigting van Nseleni oor die spoorlyn of 'n gedeelte daarvan versend word, en dat daar met alle gelde wat uit sodanige ekstrakoste verkry word, volgens voorskrif van klousules 6 en 7 van hierdie ooreenkoms gehandel sal word.

12. Daar rus geen beperking op die Administrasie se bedryfsbevoegdheid ten opsigte van enige soort verkeer hoegenaamd oor die spoorlyn nie en die Administrasie kan enige spoorlyn(e) aanlê en toestemming verleen vir die aanlê van private syllyn(e) as 'n verlenging of vertakking van die spoorlyn: Met dien verstande dat alvorens die Administrasie sodanige spoorlyn(e) aanlê of toestemming vir die aanlê van sodanige private syllyn verleen, hy die Maatskappye moet raadpleeg en alle verstoë in aanmerking moet neem wat die Maatskappye in verband daarmee mag indien.

13. Daar word ooreengekom dat ingeval die Maatskappye gedurende 'n tydperk van twintig (20) jaar van die datum waarop die spoorlyn oopgestel word ander vervoermiddele vir hul produkte wil oorweeg, goedkeuring vooraf van die Administrasie verkry moet word.

GETEKEN namens en ten behoeve van die Regering van die Republiek van Suid-Afrika in sy Administrasie van Spoorweë en Hawens in Kaapstad op die 18de dag van Februarie 1976.

(Geteken) S. L. MULLER

Minister van Vervoer

GETUIE:

1. (Geteken) G. BASSON
2. (Geteken) J. M. MULLER

GETEKEN namens en ten behoeve van RICHARDS BAY IRON AND TITANIUM (EDMS.) BPK. in Johannesburg op die tweede dag van Februarie 1976 kragtens 'n besluit van die Direksie van die Maatskappy gedateer die twee en twintigste dag van Oktober 1975.

(Geteken) P. J. VAN ROOY

Direkteur

GETUIE:

1. (Geteken) J. K. ENGELBRECHT
2. (Geteken) T. MINNAAR

GETEKEN namens en ten behoeve van TISAND (EDMS.) BPK. in Johannesburg op die tweede dag van Februarie 1976 kragtens 'n besluit van die Direksie van die Maatskappy gedateer die sewe en twintigste dag van Januarie 1976.

(Geteken) P. J. VAN ROOY

Direkteur

GETUIE:

1. (Geteken) J. K. ENGELBRECHT
2. (Geteken) T. MINNAAR

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

- (b) any compensation which the Administration may have paid to a third party or parties whose rights to minerals of whatever nature have been expropriated or injuriously affected as a result of the construction of the railway, in that, by reason of the operation of the Mining Laws, the mining of such minerals under or in the vicinity of the railway is prohibited or restricted; and
- (c) any legal costs incurred by the Administration in settling or contesting any claim for compensation preferred against it by a third party:

Provided that nothing in this subclause contained shall be deemed to impose on the Companies any obligation with respect to minerals, or the injurious affection of any rights to minerals, of which the Administration is the owner at the date of this Agreement.

(2) The Administration shall forthwith take all reasonable and proper steps to settle, on the most advantageous terms, all claims for compensation preferred against it by third parties as mentioned in subclause (1) (b) of this clause, and shall consult the Companies before arriving at a final settlement with such a claimant. If any such claim cannot be settled out of court on terms which, in the opinion of the Companies, are fair and reasonable, the Administration shall, at the risk and expense of the Companies, in the ratio indicated in clause 7 (1) (a), contest any legal proceedings which the claimant may bring against the Administration for the determination of the amount of the compensation payable. The Administration undertakes that, in regard to the manner in which and the extent to which any such proceedings are to be contested, it will, if practicable, act in accordance with and give effect to such directions as may be given to it by the Companies from time to time as long as the proceedings continue, including directions to pay any amount into court, or to settle the claim at a mutually agreed upon figure, or to appeal or not to appeal against any judgment or order of the court of first instance.

(3) It is hereby agreed that if, as a result of the construction of the railway, rights to minerals of whatever nature vested in the Companies jointly and severally (whether such rights were acquired before or after the date of this Agreement) are expropriated together with the ownership in the land for the railway, or are injuriously affected as a result of the construction of the line in that, by reason of the operation of the Mining Laws, the mining of such minerals under or in the vicinity of the railway is prohibited or restricted, the Companies hereby unconditionally release the Administration from any and all liability to compensate them, their successors or assigns in respect of the injurious affection, as aforesaid, of such rights to minerals.

11. The Administration undertakes, for as long as the Companies remain under obligation to pay the special surcharge mentioned in clause 6 (2) hereof, to make provision in the Official Railway Tariff Book for the payment of a like surcharge at the same rate per one hundred (100) kilogram on all traffic (excluding passengers, parcels, baggage and mail where this traffic does not materially affect the level of surcharge) consigned by or on behalf of other senders by train over the railway or a portion thereof in the direction of Nseleni and that all moneys derived from such surcharge will be dealt with as provided in clauses 6 and 7 of this Agreement.

12. There shall be no restriction on the running powers of the Administration in respect of any class of traffic whatsoever over the railway, and the Administration may construct any line/s of railway, and consent to the construction of private sidings as an extension of or as a branch from the railway: Provided that before constructing any such line/s of railway or consenting to the construction of any such private siding, the Administration shall consult the Companies and shall take into consideration all representations that the Companies may make with respect thereto.

13. It is agreed that, in the event of the Companies wishing to consider other means of conveyance for their products during a period of twenty (20) years from the date of opening of the railway for traffic, the Administration's prior approval shall be obtained.

SIGNED for and on behalf of the Government of the Republic of South Africa in its Railways and Harbours Administration at Cape Town on this the 18th day of February, 1976.

(Signed) S. L. MULLER
Minister of Transport

AS WITNESSES:

1. (Signed) G. BASSON
2. (Signed) J. M. MULLER

SIGNED for and on behalf of RICHARDS BAY IRON AND TITANIUM (PTY.) LIMITED, at Johannesburg on this the 2nd day of February, 1976 under the authority of a resolution of the Board of Directors of the Company dated the 22nd day of October, 1975.

(Signed) P. J. VAN ROOY
Director

AS WITNESSES:

1. (Signed) J. K. ENGELBRECHT
2. (Signed) T. MINNAAR

SIGNED for and on behalf of TISAND (PTY.) LIMITED, at Johannesburg on this the 2nd day of February, 1976 under the authority of a resolution of the Board of Directors of the Company dated the 27th day of January 1976.

(Signed) P. J. VAN ROOY
Director

AS WITNESSES:

1. (Signed) J. K. ENGELBRECHT
2. (Signed) T. MINNAAR

