

## NETHERLANDS RAILWAY CONCESSION.

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*CONDITIONS of the Concession granted by the Transvaal Government for the construction and working of a railway in the South African Republic from the Portuguese frontier to Pretoria, Barberton, Johannesburg, and the Vaal River.*

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### PART I.

#### THE LINE TO BE CONSTRUCTED.

##### ARTICLE 1.

This Concession comprises the construction and working:—

- (a). Of a railway commencing from the termination of the line from Delagoa Bay on the frontier of the Portuguese territory, and running thence in the direction of the Crocodile River to Nelspruit.
- (b). Of a railway joining the line mentioned in (a) to Pretoria, Johannesburg, and the Vaal River.
- (c). Of a railway from Barberton joining the railway mentioned in (a).

##### ARTICLE 2.

The exclusive right is granted to the Concessionary to construct the work on the conditions of this Concession, when the Volksraad resolves that such shall or may be constructed, railways or steam tramways, in the South African Republic, which either join foreign railways or steam tramways, navigable rivers, or the sea, and which may be deemed to compete with the lines already conceded to the company or portions thereof.

This right is forfeited in the case of those railways or steam tram lines the construction and working of which shall be undertaken by the State.

If the Government, during the existence of this Concession, should decide to entrust the working of such a railway line to others, the Concessionary shall be charged therewith on the conditions of this Concession, unless it shall be otherwise mutually agreed. The Concessionary shall be bound, within three months after the resolution shall have been passed by the Volksraad, to declare whether he will avail himself of his right.

##### ARTICLE 3.

The gauge shall be 1·067m. (3ft. 6in. English measure).

If, however, another gauge be adopted for the railway or tramway on Portuguese territory, then the same shall be compulsory for the line herein referred to.

## ARTICLE 4.

With the exception of necessary sidings with double rails, the railway and the earthworks and artificial works belonging thereto shall be built as for a single line.

## ARTICLE 5.

The direction of the railway between the points mentioned in Article 1 and the places where the stations and stopping places shall be built, and also the works required for the free flow of water, and the free passage of traffic on the existing roads, shall be determined by the Concessionary in consultation with the Commissioner of the Government. Where the Concessionary deems it advisable or necessary, in the interests of the undertaking, he may construct the line entirely or partly on existing roads and streets, provided he leaves sufficient space for ordinary traffic, to the satisfaction of the Government Commissioner.

## ARTICLE 6.

All land required for the railway, the stations, stopping places, platelayers' cottages, dwellings and premises for the staff, and other appurtenances, or establishments; for obtaining ballast, stones and limestones, or other similar materials; for cutting wood; the removal of materials and earth; for the deviation of roads, rivers, spruits and water-leadings; and, generally, for the construction and working of the railway, shall be placed at the disposal of the Concessionary gratis and timely by the Government, but the Concessionary shall compensate it for the price paid by it in those cases in which expropriation may be unavoidable; and while the Concession is in existence, this land shall be conceded to the Concessionary for temporary use, with the exception of such land as is not required for the working of the line.

In determining the limits of this land, the necessary space for constructing a double line and for other extensions, and also for the prevention of grass and forest fires, shall at that time be taken into consideration.

## ARTICLE 7.

The Concessionary shall be exempt from paying customs dues on all material, machinery, raw material, &c., required for the construction and working of the railway.

## ARTICLE 8.

If the Government orders or permits the construction of roads, canals, etc., which intersect or join the railway referred to in the Concession, the same cannot be prohibited by the Concessionary.

All necessary arrangements shall be made by the Government in consultation with the Concessionary, in order that thereby no impediment resulting in extra cost to the Concessionary may be caused to the traffic or railway service.

If the extra cost is unavoidable, as also in case of permanent increase of expenditure for the maintenance of the line or the railway service, a lump sum of equal amount shall be paid to the Concessionary.

## ARTICLE 9.

The railway works shall be commenced within one year after the acceptance of the Concession by the Concessionary, or so much later as the necessary land shall have been placed at the disposal of the Concessionary, and the line from Delagoa Bay to the

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frontier of the Portuguese territory shall have been so far completed that it is possible to commence carrying materials over that line for the railway referred to in this Concession.

The railway mentioned in Article 1 (a) shall be completed and in working order within the period of four years after the commencement of the works.

If the provisions contained in the two preceding paragraphs of this article, as regards the commencement and completion of this railway are not complied with, the Government shall have the right to seize all the property of the Concessionary, on payment to the company of the sum required for the complete liquidation of the company, and on returning 90 per cent. of the paid-up capital of the company.

### ARTICLE 10.

If notice has been given by the Concessionary of the intention to extend the railway to Pretoria, this extension and also the whole line to the Vaal River shall be completed and in working order within the period of ten years after the completion of the railway to Nelspruit.

If this latter obligation is not fulfilled, or if the extension of the railway is not commenced within a period of five years after the completion of the railway to Nelspruit, the Government shall have the right to seize all the property of the Concessionary on payment to the company of the sum required for the complete liquidation of the company, and on re-paying the paid-up capital of the company.

The Concessionary undertakes speedily to complete the railways mentioned in Article 1, and unless unforeseen circumstances occur, they shall be opened for traffic on or before the 31st December, 1894, with the exception of the section which connects Pretoria and Johannesburg with the Vaal River, upon which traffic shall commence six months after it shall be possible that traffic on the Free State Railway to and beyond the Vaal River can take place, or six months after the traffic on the railway from Delagoa Bay to Pretoria shall have commenced. If this should occur at an earlier date, and for each day's delay a fine will be incurred, in the first case, of fifty pounds and in the second case of twenty-five pounds.

The railway company shall be charged in its books with the amount of these fines.

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## PART II.

### SUPERVISION OF THE WORKS.

#### ARTICLE 11.

The Government has the right to cause the construction of the works and the working of the line to be supervised.

For this purpose it may, at all times, have the condition of the works and the material inspected.

Its officers charged with such inspection shall have access to all premises intended for the public and the service.

#### ARTICLE 12.

The existing laws, or those still to be framed, on the railway policy in the South African Republic, are applicable to the railway referred to in this Concession, but the

Government shall not thereby prejudice the rights granted by this Concession to the Concessionary.

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PART III.

THE WORKING OF THE LINE AND THE MATERIALS.

ARTICLE 13.

Steam shall be the locomotive power employed.

ARTICLE 14.

The Concessionary is bound, during the existence of the Concession, to maintain the railway and everything belonging to it in good order, and not to discontinue the service, except when compelled to do so by sheer force of circumstances.

ARTICLE 15.

The carriages shall be fitted up for at least two classes of travellers.

ARTICLE 16.

The Concessionary is bound to lay down regulations for his service, and to submit these for the approval of the local Government Commissioner, in order that the latter may convince himself that nothing occurs therein which is in conflict with the conditions of this Concession, and with the common law of the country.

These regulations are also binding on third parties.

The service shall not be commenced before these regulations have been approved of.

If, within three months after they have been submitted to him, the Government Commissioner has not dealt therewith, he shall be considered to have approved thereof.

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PART IV.

TARIFFS AND CONVEYANCE.

ARTICLE 17.

The Concessionary may demand payment to be fixed by him for the conveyance of persons, goods, cattle, etc., and also for unloading, loading, delivery, and all similar services, for wagon hire, etc.

The import, export, and transit duties due to the Portuguese Government for the goods conveyed by the railway (and also for cattle), shall be collected by and on behalf of the Concessionary, according to rules to be laid down in consultation with the Government Commissioner in accordance with the instructions of the Government.

The tariff for the conveyance of persons and goods, shall, however, without previous consent of the Government, never exceed:—

For persons, first class, 3d. per mile (1½d. per kilometer); lowest class, 2d. per mile (1¼d. per kilometer).

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For ordinary freight goods, 6d. per ton per mile (3½d. per kilometer), with a minimum of £1 per consignment.

For rough goods (coal, ores of not greater value than £45 per ton, stones, unsawn wood, etc.) in quantities of at least five tons, 3d. per ton per mile (1½d. per kilometer), with a minimum of £1 per consignment.

### ARTICLE 18.

To all tariffs and amendments thereto, the necessary publicity shall be given before they are carried into effect, and no tariff shall be amended before it shall have been in operation at least three months.

### ARTICLE 19.

The Concessionary shall be bound to convey, without distinction and without partiality, whatever shall be offered for conveyance, subject to the general exceptions provided for.

### ARTICLE 20.

The Concessionary shall be bound to convey gratis all sealed post parcels which may be delivered at the station by the postal administration.

For the conveyance of State post carriages, 8d. per mile (5d. per kilometer) shall be paid to the company.

### ARTICLE 21.

The Concessionary is also bound to undertake the telegraph service along the railway line, gratis for the Government, and on payment from the public.

### ARTICLE 22.

When there is danger of war, in time of war, or in cases of internal troubles, the Government may, in the interests of defence or of the public peace, dispose of the railway and of everything required for the use thereof, and may cause the ordinary traffic to be discontinued entirely or partly, and may order all measures to be taken which to it appear necessary, subject to compensation to the Concessionary.

### ARTICLE 23.

The Concessionary is bound at all times to grant free access to the rooms in the station intended for the public and the service, and, if necessary, to the railway, to the officers of the police and of the customs department, and in the discharge of their duties.

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## PART V.

### THE ACCEPTANCE AND LAPSE OF THE CONCESSION.

#### ARTICLE 24.

The Concession is accepted by the Concessionary as soon as a capital of five million guilders shall have been obtained in shares and debentures, and the conveyance over the Portuguese territory shall have been arranged to the satisfaction of the Concessionary.

## ARTICLE 25.

The Concession may be withdrawn :—

- (a) If the guaranteed capital mentioned in Article 36 shall not have been placed at the disposal of the Government within the stipulated time by the Concessionary.
- (b) If the Concessionary does not comply with the provisions of Article 28.

The Government is, moreover, competent to withdraw the Concession if it shall not have been accepted within six months after the Concessionary has received notice to do so, referring to this Article.

## ARTICLE 26.

The provisions contained in Articles 9, 10, and 25 shall not apply if the Concessionary shows that the delay or neglect was caused by main force or by acts or neglect of the Government or its officers.

The Government is, moreover, competent to extend all the periods fixed in this Concession at the request of the Concessionary.

The Concessionary shall be considered to be in default, simply by the expiration of the periods fixed, and without it being necessary that this should appear by any act.

## ARTICLE 27.

The Government has the right to appropriate the railway, provided it also appropriates all the property of the Concessionary, twenty years after the railway shall have been brought into working order, and thereafter at the expiration of every ten years, provided that at least one year previously notice be given to the company in Holland of the intention to appropriate.

The Government shall then pay the amount required for the complete liquidation of the company, together with a sum equal to twenty times the average dividend which has been paid out to the shareholders during the three last years of the working of the line, with a minimum of twenty times the interest guaranteed to each of the shareholders, and at least at par, after the deduction of the fine mentioned in Article 10.

*(Modified Article 27, as per First Volksraad "besluit" Article 1333, dated 7th September, 1893.)*

## "ARTICLE 27."

"The Government has at all times the right to nationalise the railway, and all the properties of the grantee, but not until it shall have previously given a year's notice to the company in Holland of its intention to do so.

"If the nationalisation takes place on 1st January, 1915, or at intervals of a period of ten years later, then the Government shall pay the money required for the whole liquidation of the company, besides a sum equivalent to twenty times the dividend that was paid out on an average to the shareholders during the last three years of the exploitation, with a minimum of twenty times the guaranteed annual interest to those upon whose shares an annual interest of 5 per cent. or higher, and the full nominal amount of those shares upon which a lower annual interest has been guaranteed. From this amount will be deducted any eventual fines due by the company by virtue of Article 10.

"If the nationalisation should take place before the 1st of January, 1915, or before the expiration of the next period of ten years, it shall take place upon

“the same basis as laid down in the second paragraph of this article, yet, in addition, the nationalisation price shall be increased by one per cent. of the nominal share capital for every year that the nationalisation takes place before the 1st of January, 1915, or after the 1st of January, 1915, or the next following stipulated period.”

PART VI.

GENERAL AND FINANCIAL PROVISIONS.

ARTICLE 28.

The Concessionary is bound within six months after the Concession shall have been accepted by him, to establish a “Joint Stock Mercantile Company” in Holland, named the “Netherlands South African Railway Company,” and to make over to this company the Concession gratis, *in toto*, and without reservation, and at least half of the number of directors of this company shall be Hollanders.

ARTICLE 29.

The company shall not deal with any undertakings other than those mentioned in this Concession, except with the consent of the Government of the Republic.

This consent is now given for the construction and working, or the working of a railway or tramway on Portuguese territory, from Delagoa Bay to the frontier of the Republic, which, according to Article 1, must be conjoined by the railway mentioned in this Concession.

ARTICLE 30.

The company is bound to liquidate in case the Government avails itself of the right of appropriation reserved to it in this Concession.

(*Modified Article 30, as per First Volksraad “besluit,” Article 1333, dated 7th September, 1893.*)

“ARTICLE 30.”

“When the Government avails itself of the right to nationalise the railway from the Portuguese boundary to Pretoria, Barberton, Johannesburg and Vaal River, this agreement shall be deemed to be cancelled, and the tramways and line (herein referred to) within the meaning of this agreement, with everything pertaining thereto, shall become the property of the Republic.”

ARTICLE 31.

For constructing and bringing into working order the railways mentioned in Article 1, and whatever belongs thereto, including the cost of acquiring, if necessary, the Concession for the line Delagoa Bay—Transvaal frontier, all additional costs of construction, temporary works, management, obtaining or making over money, and also paying for account of the Republic, of the redemption and interest guaranteed by it on behalf of those railways, the company shall be entitled, subject to the provisions hereinafter contained, to issue to an amount of £9,600 per mile (£6,000 or 72,000 guilders per kilometer), shares and debentures bearing the counter-signature of the Government Commissioner in Holland, and which are thereby, by virtue of Article 32, directly guaranteed by the South African Republic.

Of this amount, one-fourth at most shall be obtained by issue of shares. The rate of interest of the debentures shall, in future, not amount to more than 4 per cent. (amended by resolution of the Hon. Volksraad, May 8th, 1891. See appendix A.).

The company may exceed the amount of £9,600 per mile, if under control, and with the cognizance of the Government Commissioner, with the consent of the Government, with advice and consent of the Executive Council, if this shall appear to be necessary for the completion of the railways under construction.

The rate of interest, the currency, the time, and the further conditions of issue or sale by the company of the shares and debentures mentioned in this Article, and also the proportion of the amount of the shares to that of the debentures, shall be determined by the company in consultation with the Government Commissioner in Holland, who, on instruction of the Government, shall countersign the documents in proof also of this consultation having taken place.

If this consultation has not led to agreement, the issue shall take place on the conditions desired by the Government Commissioner in Holland, in accordance with his instructions, but the shares or debentures not placed shall then be taken by the Government.

The Government shall have the right of option when the shares are issued on fixed conditions.

For the issue of shares or debentures, for purposes other than the above-mentioned, the express consent of the Government of the South African Republic, with advice and consent of the Executive Council is also required.

#### ARTICLE 32.

The South African Republic guarantees directly to the holders of all shares countersigned by the Government Commissioner in Holland, the interest therein expressed, calculated on the nominal amount of the company's capital paid up by them, and to the holders of all debentures, countersigned by the Government Commissioner in Holland, the redemption and interest, in accordance with the conditions of issue.

In the meantime the company binds itself, while any line or part of a line, the construction of which the company is bound to commence has not yet been brought into working order, and it has sufficient means for the purpose at its disposal, to advance to the Republic what it, for the reasons aforesaid, shall appear to owe in interest during that time to the holders of shares and debentures issued for the construction of that line, or of any section of that line.

The amount of this advance, for which the Republic shall be charged in the books of the company, may be called up when the Republic avails itself of its right to appropriate or when the company is in liquidation for other reasons.

#### ARTICLE 33.

In order to ascertain what the Republic, by virtue of the preceding Article, may become indebted for, or may have to pay in any year, the company shall open an account which shall be closed on the 31st December of each year, on which account are brought as assets all receipts without distinction belonging to the revenue account, and as liabilities:—

- (1). All expenditure, except such as belongs to the construction and capital account, and except such as has been incurred for the guaranteed interest and redemption.



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(2). Ten per cent. of the gross receipts of the working of the line, for the reserve fund mentioned in Article 35.

This account shall be framed in consultation with the Commissioner of the Government of the South African Republic in Holland.

The amount of the redemption and interest guaranteed in the first section of the preceding Article, reduced by the balance of this account, shall be the amount which the Republic, in accordance with the provisions of the second section of Article 32, shall have to pay annually to the company in Holland, within three months, at the latest, after the account has been tendered to the Commissioner. The amount which the company may receive from this source from the Republic, the company shall not be liable to refund to the Republic.

If the company neglects to pay out the redemption and interest guaranteed to the share and debenture holders by Article 32, and the Republic is compelled to pay this directly to the share and debenture holders, the amount of this payment shall be deducted from the first payment above-mentioned, due to the company by the Republic.

### ARTICLE 34.

If the balance of the account mentioned in the preceding article amounts to more than the guaranteed interest and redemption, 85 per cent. of the surplus shall be paid to the Republic and five per cent. to the management and staff of the company.

The payment to the South African Republic shall take place at the office of the company in that country, within three months at the latest after the account shall have been tendered to the Commissioner of the Government of the South African Republic in Holland.

### ARTICLE 35.

The reserve fund mentioned in Article 33, shall serve as far as possible to defray costs of repairs of extraordinary damage done to the line, works and rolling material, and generally the costs of all necessary renovations and extensions of the railways worked by the company. This fund shall be administered and invested separately, the interest being annually added to the capital.

As soon as, and as long as, a sum equal to forty-two hundred guilders (£350) per kilometer of £560 per mile in working order, has been reached, then the contributions otherwise destined for it shall be used for the redemption of loans.

This fund shall be considered to belong to the property of the company mentioned in Articles 9, 10 and 27.

### ARTICLE 36.

As guarantee for the observance of the conditions of this Concession, the Concessionary, on accepting this Concession, shall pay to the Treasury of the South African Republic the sum of 100,000 guilders, which shall be refunded to the company one year after the railway shall have been brought into working order to Nelspruit, or, if the Concessionary constructs the extension line to Pretoria, as soon as the line shall be in working order to that place, or so much longer previously, as the Republic shall avail itself of its rights to appropriate.

On the guarantee fund 5 per cent. interest shall be annually paid to the company from the date of payment to the date of re-payment, payable in Holland on or before the 15th of January in each year.

## ARTICLE 37.

The Government of the South African Republic shall appoint a Commissioner and a deputy in the South African Republic, and also with the company in Holland.

The Government Commissioners, or in the event of their inability, their deputies, shall have the right to be present at all the meetings of the company, the local Commissioner or his deputy, in the case of the Transvaal Republic, and the Government Commissioner, or his deputy in the case of meetings of the shareholders in Holland, and shall have the right to an advising voice in these meetings. They shall exercise an unlimited control over and superintend all matters pertaining to, and transactions of the company, and shall also have the right of access to the offices, to inspect the books, and to verify the accounts.

## ARTICLE 38.

All disputes about the provisions of the Concession, and the way in which it is carried into effect, between the Government of the South African Republic or its officers, and the company or its officers, which cannot be settled amicably, shall be decided by two arbitrators, and when these do not agree in their award, by an umpire, who shall, as good men, without formality, pronounce judgment in the last resort. Each of the parties shall appoint one of these arbitrators, and these two arbitrators shall, before proceeding to deal with the dispute, appoint a third, who shall be umpire on all points upon which the two arbitrators cannot agree.

If the two arbitrators cannot agree on the selection of an umpire, the appointment of that umpire shall be made by the High Court of the South African Republic, if a local matter is the subject of dispute, and otherwise by the Court of Justice in Amsterdam.

## ARTICLE 39.

In all cases in which consultation between the company and the Government of the South African Republic or its Commissioner is required, dispute shall be considered to have arisen if an agreement cannot be arrived at between them.

This Concession was approved of by resolution of the Honourable Volksraad on 26th June, 1890, and serves to replace the concession granted by the Government of the South African Republic, empowered thereto by the Honourable Volksraad by resolution of 27th May, 1895, with the amendment introduced therein by resolution of the Honourable Volksraad of 12th July, 1888.

## APPENDIX A.

## NETHERLANDS RAILWAY CONCESSION.

Article 31, third paragraph, amended by Article 32 of the Volksraad besluiten, dated May 8th, 1891 (minutes page 13), as follows:—

“The rate of interest of the debentures shall in future not amount to more than 4 per cent. without the consent of the Executive Council.”