

SESS. II.—1884.
NEW ZEALAND.

PROPOSED CONTRACT FOR CONVEYANCE OF MAILS BY DIRECT STEAMERS.

Presented to both Houses of the General Assembly by Command of His Excellency.

TERMS and CONDITIONS of proposed Contract between the Postmaster-General of New Zealand and the New Zealand Shipping Company (Limited) for Conveyance of Mails between Plymouth and New Zealand by the Company's Direct Steamers.

ARTICLES of AGREEMENT made and entered into this day of , 1884, between the Honourable Sir JULIUS VOGEL, the Postmaster-General of the Colony of New Zealand, appointed under the provisions of "The Post Office Act, 1881," and acting for and on behalf of the Government of the said colony, of the one part, and THE NEW ZEALAND SHIPPING COMPANY (LIMITED), of Christchurch, in the said colony (hereinafter referred to as "the company"), of the other part: Witness that, for the considerations herein set forth, the company doth, for itself, its successors and assigns, hereby covenant with the said Postmaster-General and his successors; and the said Postmaster-General, on behalf of himself and his successors and of the Government of the said colony, doth hereby covenant with the company and its successors, in manner following, that is to say,—

1. In the construction of these presents the following words and expressions shall, unless inconsistent with the context, have the meanings hereby assigned to them:—

"Postmaster-General" means the Postmaster-General for the time being of the Colony of New Zealand, and includes also any member of the Executive Council of the colony acting for and on behalf of the Postmaster-General:

"Company" means the New Zealand Shipping Company (Limited), and includes its successors and assigns:

"Mails" includes all boxes, bags, or packets of letters, newspapers, or printed papers, patterns, and all other articles transmissible by means of the Post Office, without regard either to the place to which they may be addressed or to that in which they may have originated, and also all empty bags, empty boxes, and other stores and articles used or to be used in carrying on the Post Office service:

"Mail" means the aggregate of mails transmitted at any one time by any of the vessels for the time being employed in the mail service under this contract:

"Hours" mean hours calculated according to Greenwich time:

"Master" includes any officer for the time being having command or charge of any steam vessel employed in performing this contract.

2. The company shall from time to time, and at all times hereafter during a period of five years computed from the day of , 188 (unless previously terminated in pursuance of the provision for that purpose hereinafter contained), convey all Her Majesty's mails, and all other mails of whatever country or place which the Postmaster-General shall at any time and from time to time require the company to convey, from and to the Port of Plymouth, in England, and either of the Ports of Auckland, Wellington, Lyttelton, or Port Chalmers, in New Zealand, and any port or ports intermediate between Plymouth and New Zealand at which the steam-vessels hereinafter

mentioned may call, as hereinafter provided, or any of such ports, within the times and in the manner provided for.

3. So long as the whole or any part of the services hereby agreed to be performed in pursuance of this contract ought to be performed, the company shall and will provide, and keep seaworthy and in complete repair and readiness for such a purpose, the steam-vessels now in the possession of the company, known by the names of the "Ruapehu," "Tongariro," "Aorangi," "Kaikoura," and "Rimutaka," respectively, and any other steam-vessels that may from time to time be lawfully used for the purposes of this contract: Provided that should any of the said steam-vessels become disabled through tempestuous weather, or by reason of accident beyond the control of the company, the company may provide and equip a steam-vessel or steam-vessels as a substitute or substitutes, capable of performing the voyage within the time specified, and any substitute vessel shall not (except in any special case with the permission in writing of the Postmaster-General) be of less gross tonnage than 2,500 tons, and all the provisions of this contract, so far as applicable, shall extend to any such substitute vessel as aforesaid during the period she is necessarily used for that purpose.

4. The said steam-vessels, and all other steam-vessels to be employed under this contract, shall be always furnished with all necessary and proper machinery, engines, apparel, furniture, stores, tackle, boats, and all other necessary nautical and other appliances necessary for equipping the said vessels and rendering them constantly efficient for the performance of the voyages within the times hereinafter specified and for the service hereby agreed to be performed, and also manned and provided with competent and legally-qualified officers, the master having ample experience in command of screw steam-vessels, and with a sufficient number of efficient engineers and a sufficient crew of able seamen and other men, and with a competent surgeon.

5. The Postmaster-General shall have full power, whenever and as often as he thinks requisite, by any of his officers or agents, to survey all or any of such vessels and the hulls thereof, and the engines, machinery, and tackle, boats, and all other nautical and other appliances as aforesaid; and any defect or deficiency that may be discovered on any such survey shall be forthwith repaired or supplied by the company; and for the purposes aforesaid the said vessels shall, if necessary, be opened in their hulls whenever the Postmaster-General or any of his officers or agents may require.

6. If any such vessel or any part thereof, or any engines, machinery, tackle, boats, or nautical or other appliances as aforesaid, shall on any such survey be declared by the officers or agents of the Postmaster-General to be unseaworthy or not adapted to the service hereby agreed to be performed, every vessel which shall be so disapproved of, or in which such deficiency or defect shall appear, shall be deemed insufficient for any service hereby agreed to be performed, and shall not be again employed in the conveyance of mails until such defect or deficiency has been repaired or supplied to the satisfaction of the Postmaster-General or his officer or agent requiring the same.

7. The company shall provide, to the satisfaction of the Postmaster-General, on board all steam-vessels employed under this contract, safe and convenient places, secured against vermin, and otherwise secured, as places of deposit for the mails, with all necessary locks and fastenings, and shall be liable for all damage or injury to any of the mails from whatever cause the same may arise (except fire, the act of God, or the Queen's enemies).

8. The company shall also, when required, provide, to the satisfaction of the Postmaster-General, necessary and suitable accommodation, including lights, for the purpose of sorting and making-up the mails on board the said vessels employed under this contract, and, on being required to do so by the Postmaster-General, shall erect or set up in each of the said vessels a separate and convenient room for such purposes, with all necessary furniture, lamps, fittings, and other conveniences, all of which shall be kept cleansed and kept in repair, and the oil for the lamps supplied, from time to time by the servants of and at the cost of the company. The master of each of the said vessels shall also, if required, provide assistance for conveying the mails between the mail-room and the sorting-room without charge.

9. The company shall be responsible for the safe custody of all mails (except as before provided), and the master shall, on its behalf, do all things necessary for the safe delivery of such mails and every part thereof, and also for obtaining proper receipts or acknowledgments for such delivery; and, upon being required thereto by the Postmaster-General or by the Postmaster-General of Great Britain, or any of the officers or agents of either of such Postmasters-General, the master or any of the officers of any of the said steam-vessels shall make any postal declaration required by any law or regulations relating to the postal services of Great Britain or of the Colony of New Zealand.

10. The master of every such steam-vessel shall also, on being required by the Postmaster-General, furnish an abstract of the said vessel's log, and also certificates or other documents showing the prompt and due delivery of mails to the proper authorities.

11. In case of the loss of any of the mails by wreck of any mail-vessel or otherwise, the company shall, with all possible despatch, at their own cost, do all such acts and take all such measures as may be reasonably done to recover the mails so lost.

12. The mails shall be conveyed once in every four weeks in each year between Plymouth aforesaid and either of the Ports of Auckland, Wellington, Lyttelton, or Port Chalmers (hereinafter referred to as "New Zealand ports"), and in the same manner between one of the New Zealand ports and Plymouth, and the vessels employed shall leave a New Zealand port and Plymouth on the days and times to be appointed by the Postmaster-General, and the days or times so appointed may be varied or altered as the Postmaster-General shall think fit: Provided that the dates of final despatch from a New Zealand port and Plymouth respectively shall alternate with the days of the despatch of the mails by the San Francisco service so long as that service in its present or any modified condition shall be continued, the intent being that regular fortnightly mail communication, as nearly as possible, between New Zealand and the United Kingdom shall be maintained: Provided also, that if the Postmaster-General or his agent shall at any time deem it

requisite for the public service that any vessel should be delayed beyond the appointed time of departure, it shall be lawful for the Postmaster-General, or his agent, to order such delay, not exceeding twenty-four hours, at either the final port of departure from New Zealand or Plymouth, by letter addressed to and delivered to the commander of the vessel, or the person acting as such, or left for him at the office of the contractor in the port or on board the vessel three hours at least before the hour appointed for departure. Payment for such detention to be at the rate of £200 for the said period of twenty-four hours.

13. The service shall commence with the despatch of the “ ” from Plymouth on the day of , and with the despatch of the “ ” from a New Zealand port on the day of .

14. Any of the vessels employed under this contract may on the route from Plymouth to a New Zealand port, or on the route from a New Zealand port to Plymouth, call at any intermediate port or ports for coaling or other purposes.

15. For the conveyance of mails under this contract the Postmaster-General will pay to the company at the following rates: Letters, 12s. per lb.; packets, 1s. per lb.; newspapers, 6d. per lb. And all moneys payable hereunder shall be paid quarterly, at Christchurch, in the said colony, or at such other place as may from time to time be agreed upon; the first quarter's payment to commence on the day of , 188 , subject to the provisions of this contract: Provided that the payments hereby agreed to be made shall be open to be reconsidered in the event of the Postmaster-General of Great Britain, or his department, retaining for that department more than the equivalent of the British inland rate of postage on the outward correspondence, or deciding to allow the colony a larger share of the outward postages, or in case of the Colony of New Zealand proposing to reduce its rates of postage; but such reconsideration shall only take effect after the Postmaster-General has given six calendar months' previous notice in writing to the company of his intention so to do. And it is hereby agreed that all mail matter posted in New Zealand between the date of despatch of the San Francisco mail and the departure of the vessels under this contract shall, unless specially addressed to be forwarded by another route, be sent by such contract vessels. This shall also apply to correspondence posted in the United Kingdom and Ireland, so far as the Postmaster-General of New Zealand may be able to influence the Imperial Post Office authorities: Provided that nothing in this clause shall be deemed to give the company any claim against the Postmaster-General in the event of the postal authorities in Great Britain sending any such mail matter by a different route.

16. The mails shall be safely conveyed from Plymouth to a New Zealand port in 1,080 hours, and from a New Zealand port to Plymouth in 1,008 hours, such respective periods to be calculated from the times appointed for the departure of the mail respectively from Plymouth or the final port of departure in New Zealand.

17. If, during the continuance of this contract, the mails shall be conveyed within the periods hereinbefore specified, then there shall be paid to the company, for each hour less than the number of hours within which the mails are so required to be conveyed, the sum of five pounds (£5) over and above any moneys payable hereunder; and if the time occupied in so conveying the mails is in excess of the said number of hours, then the moneys hereby made payable shall be reduced by four pounds (£4) for every hour so in excess: Provided that the Postmaster-General shall have power to remit all or any part of such reduction if he shall be satisfied that the delay in conveying the mail was attributable to causes over which the company had no control.

18. If, from any cause whatever, at any time or times during the continuance of this contract, one of the said steam-vessels shall not be at Plymouth and at a New Zealand port respectively ready to put to sea in due time to perform the services hereby contracted to be performed, the company shall pay, as and by way of liquidated damages, to the Postmaster-General, for the use of the Government of the colony, in respect of every mail that shall be delayed by reason of such default, a sum of two hundred pounds (£200), and the further sum of fifty pounds (£50) for every successive twenty-four hours which shall elapse between the time at which the mail shall be appointed to leave the port and the time at which the vessel conveying the same shall actually leave the port; whether the vessel shall be one of those hereinbefore specially named, or any other vessel which the Postmaster-General may employ, or sanction being employed, for the purpose: Provided that the Postmaster-General shall have the same power of remission or reduction of any such sum hereby made payable as under like circumstances those mentioned in the last preceding clause hereof: Provided also that the maximum penalty for any one month shall not exceed one thousand pounds (£1,000.)

19. So long as the efficient performance of the services hereby contracted for are not interfered with, the company may carry mails for any other country or colony at rates not less than those payable by the Postmaster-General hereunder, or such other rates as may from time to time be approved by the Postmaster-General; but the company shall have no claim against the Postmaster-General or the Government of New Zealand to any postage, nor to any money on account thereof, for mails carried in any vessel employed under this contract, or on account of any services rendered, except as herein specially agreed to be paid.

20. The company shall, when required, provide suitable first-class accommodation for a Mail Officer or Agent on board each of the steam-vessels employed under this contract, and such Officer or Agent shall be entitled to such accommodation, and shall be victualled by the company, as a chief-cabin passenger, without charge either for passage or victualling, and whilst the vessel stays at any port except the Port of Plymouth or a New Zealand port.

21. Every such Mail Officer or Agent shall be recognized by the company and its officers as the Agent of the Postmaster-General, and as having full authority in all cases to require a due and strict performance of this contract: Provided that no such Officer or Agent shall have power to interfere with any master or officer of any of the vessels employed under this contract in the performance of his duty, and every such Officer and Agent shall be subject to all general orders

issued by the master for the good order, health, and comfort of the passengers and crew, and the safety of the vessels.

22. During the continuance of this contract, and so long as the same shall be faithfully carried out, all steam-vessels employed therein shall be exempt from the payment of light dues at New Zealand ports, and also from the payment of harbour dues, as defined by "The Harbours Act, 1878," at the first port of arrival in the colony.

23. This contract or any part thereof shall not be assigned, underlet, or disposed of by the company without the consent in writing of the Postmaster-General first obtained for that purpose.

24. In case this contract or any part thereof shall be assigned, or underlet, or otherwise disposed of by the company, otherwise than with such consent as last aforesaid, or in case of any great or habitual non-performance or non-observance of this contract, or of any of the covenants, matters, or things herein contained, and on the part of the company, their officers, agents or servants, or any of them, to be observed and performed, and whether there be or be not any penalty or sum of money payable by the company for any such non-observance or non-performance, it shall be lawful for the Postmaster-General, if he shall be of opinion that the company is not *bonâ fide* carrying out the provisions herein contained, by writing under his hand, to determine this contract without any previous notice to the company or their agents. The company shall not be entitled to any compensation in respect of such determination, nor shall such determination deprive the Postmaster-General of any right or remedy to which he would be otherwise entitled by reason of any non-observance or non-performance of any of the provisions herein contained.

25. If, within but not after twenty-eight days after any notice of the determination of this contract shall have been given to the company, the company shall give notice in writing to the Postmaster-General that it requires the question whether there was such a great or habitual non-performance or non-observance of this contract on the part of the company as to justify the Postmaster-General in determining the same to be referred to arbitration, then such question shall be determined by arbitration in the manner hereinafter provided.

26. In case the arbitrator or arbitrators, or the umpire, shall at any time or times decide that the Postmaster-General was not justified in determining the contract, the Postmaster-General shall have and be entitled from time to time to exercise the power hereinbefore given to determine the contract as fully and effectually as if he had not on any previous occasion or occasions attempted to exercise such power; and the company shall not be entitled to any compensation in respect of the attempted determination of the contract or any loss or damages which may be incurred by the company by reason thereof.

27. The Postmaster-General may except from any such determination as aforesaid any voyage or voyages, and if any vessel or vessels shall have started before the determination or before the masters thereof could have received news of such determination, or if any such vessel should, after the determination, start with a mail on any voyage or voyages so excepted as aforesaid, such voyage or voyages shall be continued and performed, and the mails be delivered and received, as if this contract had remained in force with regard to any such vessel or vessels, and with respect to such vessels this contract shall be considered as having terminated only when such vessels shall have reached their port of destination and the mails carried by them shall have been delivered.

28. Every notice or direction which is hereby authorized to be given to the company, their agents, officers, or servants, may be delivered to the master of any of the said vessels or other officer or agent of the company in charge or having the management of any vessel employed in the performance of this contract on board such vessel, or left for the company on board such vessel, or at the office or place of business of the company at Plymouth, or London, or a New Zealand port, and any notices or directions so given or left shall be binding on the company: Provided that any notice of the determination of this contract given under the powers hereinbefore contained shall be given to the company or left for it at its last known office or place of business in Wellington, or at any other New Zealand port the Postmaster-General may think fit.

29. If the company shall fail to commence the performance of the services hereby contracted to be performed according to the provisions hereof, or, having commenced the same, shall refuse or wilfully neglect to carry on the same according to the true intent and meaning of these presents, the company shall forfeit and pay to the Postmaster-General the sum of seven thousand five hundred pounds (£7,500) as by way of liquidated damages, and not by way of penalty.

30. All and every the sums of money hereby stipulated to be paid by the company shall be considered as liquidated damages whether any damage or loss shall or shall not have been sustained, and may be set off by the Postmaster-General against any moneys payable to the company under or by virtue of this contract, or may be enforced against the company as a debt due, with full costs of suit, at his discretion: Provided that the payment by the company of any sums of money for any default or neglect in the observance or performance of the covenants or agreements herein contained shall not in any manner prejudice the right of the Postmaster-General to treat such defaults or neglects as a non-observance or non-performance of this contract on the part of the company.

31. If any dispute, question, difference, or controversy shall arise between the Postmaster-General and the company touching these presents, or any clause or thing herein contained, or the construction thereof, or any matter in any way connected with these presents, or the operation thereof, or the rights, duties, or liabilities of the Postmaster-General or of the company, then and in every such case the matter in difference shall be referred to arbitration in manner hereinafter mentioned; and the award of the arbitrator or arbitrators, or of the umpire, appointed as hereinafter mentioned, as the case may be, shall be binding and conclusive in every respect.

32. Unless the Postmaster-General and the company shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute, question, difference, or controversy shall be referred, and every

appointment of an arbitrator shall be made on the part of the Postmaster-General under his hand, and on the part of the company under its corporate seal, and such appointment shall be made in duplicate, and delivered one part to the other party, and the other part to the arbitrator on the part of the party by whom the same shall be made; and, after such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party act as a revocation.

33. If, for the space of twenty days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters required to be referred to arbitration, shall have been served upon the Postmaster-General, or given to the company, or left at its last known office or place of business in Wellington, as the case may be, by the one party or the other party, to appoint an arbitrator, such last-mentioned party fail to appoint an arbitrator, then, upon such failure, the party making the request, and having appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

34. If, before the matters so referred shall be determined, any arbitrator appointed by either party die or become incapable, the party by whom such arbitrator was appointed, his successors in office, or successors and assigns, may nominate and appoint in writing some other person to act in his place; and if, for the space of twenty days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

35. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him; and, if such umpire shall die or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

36. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for fourteen days after the request of either party to such arbitration neglect, to appoint an umpire, the Governor for the time being of the Colony of New Zealand shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him, shall be final.

37. If, when a single arbitrator shall have been appointed, or shall be proceeding *ex parte* under any of the provisions herein contained, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration in the same manner as if no such arbitrator had been appointed.

38. If, when more than one arbitrator shall have been appointed, either of the arbitrators refuse or for fourteen days neglect to act, the other arbitrator may proceed *ex parte*; and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

39. If, when more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within three calendar months after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid, and the umpire shall make his award within three calendar months after the time when his duties shall commence, or within such extended time (if any) as shall have been appointed for that purpose by the umpire under his hand.

40. The said arbitrator or arbitrators, or their umpire, may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

41. The costs of every such arbitration and of the award shall be in the discretion of the arbitrator, arbitrators, or umpire, who may direct to and by whom and in what manner the same or any part thereof shall be paid.

42. The arbitration shall take place and be conducted at Wellington aforesaid, and the arbitrator or arbitrators, or the umpire, as the case may be, shall deliver his or their award in writing to the Postmaster-General, and the Postmaster-General shall retain the same, and shall forthwith, on demand, at his own expense, furnish a copy thereof to the company, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by the company or any person appointed by it for that purpose.

43. This submission to arbitration may be made a rule of the Supreme Court of New Zealand, on the application of the Postmaster-General or the company.

44. And it is hereby lastly agreed that, notwithstanding the execution of this contract by the Postmaster-General, the same shall not be or become operative so as to bind the Postmaster-General or the Government of the colony unless and until the execution thereof by him has been ratified by a resolution of the House of Representatives, to be passed for that purpose during the present session of the General Assembly; and if the House of Representatives shall not pass such a resolution, or shall pass a resolution disapproving of the execution of the said contract, then this contract and every article and thing herein contained shall be void and of no effect, and the company shall have no claim for any compensation by reason of the passing of any such resolution.

45. Notice in writing signed by the Postmaster-General of the passing of any such resolution as aforesaid, accompanied by a copy thereof when given to the company, shall be sufficient notice

to it that such resolution has been passed, and the company shall accept the same and act thereon according to the terms of such resolution.

In witness thereof the said Postmaster-General hath hereunto set his hand and seal, and the company has hereunto caused its common seal to be affixed, the day and year first above written.

On behalf of the New Zealand Shipping Company (Limited), I hereby agree to the proposed terms of contract set forth in this document, which the Board of Directors undertake to execute in the manner required by law, and in terms of the company's articles of association.

ISAAC GIBBS,
Secretary,

Wellington, 30th October, 1884.

New Zealand Shipping Company (Limited).