

servants, and whether there be or be not any penalty or sum of money payable by the Contractors for any breach, it shall be lawful for the said Postmasters-General, if they shall jointly think fit (and notwithstanding there may or may not have been any former breach of this contract), by writing under their hands, to determine this agreement without any previous notice to the Contractors or their agents: Provided that on the said Postmasters-General determining the contract they shall offer to the Contractors, by giving four months' previous notice, the alternative of an arbitration by two indifferent persons upon the whole ground of complaint—one arbitrator to be named by the Contractors and the other by the Postmaster-General of Victoria—or, if the arbitrators differ, by an umpire to be chosen by them before entering upon the arbitration; and if either party shall fail to name an arbitrator after notice in writing by the other or their agents requiring them so to do, or shall name an arbitrator who neglects to act or proceed with due diligence in the business of the arbitration, or who will not join in naming an umpire, then by the decision of the arbitrator named by the other party, and any such decision as aforesaid shall in all cases be binding and conclusive: Provided that any such arbitration shall be held and conducted at Melbourne.

39. During the continuance of this contract, and so long as the same shall be faithfully carried out by the Contractors, no charge for pilotage, tonnage, lighthouse, or harbour dues shall be made at any port in New Zealand for any of the steam-vessels employed in carrying out this contract; and no charge for tonnage, lighthouse, or harbour dues shall be made at Melbourne for any of the steam-vessels employed in carrying out this contract.

40. If the Contractors shall fail to commence the performance of the services herein agreed to be by them performed according to the provisions hereof, or, having commenced the same, shall refuse or wilfully neglect to carry on the same, they shall forfeit and pay to the said Postmasters-General, or either of them, the sum of twenty-five thousand pounds as liquidated damages.

41. The Contractors shall use their best endeavours to procure the mails carried under this contract to be taken to and from San Francisco and New York free from charge, under the postal convention between Great Britain and the United States; and so long as the freedom of charge shall not exist, the said Postmasters-General may deduct from the payments to be made to the Contractors a sum at the rate of one thousand pounds per annum—the sum so to be deducted (if any) to belong to the Governments of Victoria and New Zealand in equal shares.

42. In order to encourage trade between the United States and the Australian Colonies, the Contractors will use their best endeavours to obtain from the United States Government and Legislature a concession that *Phormium tenax* fibre and wool, the produce of Victoria or New Zealand, or of any of the colonies that may make arrangements under the provision to that effect hereinbefore contained for the carriage of mails under this contract, shall be admitted duty free into the United States.

43. It shall be lawful for the Postmaster-General of Victoria and also for the Postmaster-General of New Zealand respectively, by writing under their respective hands, at any time and from time to time to delegate any of the powers, whether joint or several, vested in them or him respectively by virtue of this contract, to such person or persons as they or he may think fit.

44. That if, on the determination of this agreement, any vessel or vessels should have started or should start with the mails in conformity with this agreement, such voyage or voyages shall be continued and performed, and the mails be delivered and received during the same, as if this agreement had remained in force with regard to any such vessels and services; and with respect to such vessels and services as last aforesaid, this agreement shall be considered as having terminated, when such vessels and services shall have reached their port or place of destination, and been performed.

45. That all and every the sums of money hereby stipulated to be paid by the Contractors as penalties shall be so considered, whether any damage or loss have or have not been sustained, and notwithstanding the provisions for retaining or setting off the same hereinbefore contained, may be enforced by both or either of the Postmasters-General as a debt due with full costs of suit, at their or his discretion: Provided always that the payment by the Contractors of any sums of money by way of penalties shall not in any manner prejudice the rights of the Postmasters-General to treat the failure (if any) on the part of the Contractors in the performance of this contract as a breach thereof.

46. That all notices or directions which are hereby authorized to be given to the Contractors, their officers, servants, or agents, may be delivered to the master of any of said vessels or other officer or agent of the Company in the charge or management of any vessel employed in the performance of this agreement on board such vessel, or left on board such vessel, or left for the Contractors at the office or house of business, at Melbourne or Auckland, of their agents, and any notices or directions so given or left shall be binding on the Contractors.

47. The Contractors may carry mails and mail matter between the United States and the Hawaiian Islands, or between those Islands and New Zealand or Victoria, on such terms as they may see fit, and may receive such payment, by way of postage or subsidy, as may be agreed to be paid therefor; and for the special service the Contractors alone shall receive pay. But no mails shall be carried under this contract between the said Islands and New Zealand or Victoria which do not originate in, or whose final destination shall not be in, said Islands.

48. The Contractors shall enter jointly and severally into a bond with the said Postmasters-General, similar in all respects *mutatis mutandis* with that now existing between the Contractors and the Government of New Zealand, for the performance of the contract referred to in Article three, in the penal sum of twenty-five thousand pounds conditioned for the faithful performance of this contract with each of the said Postmasters-General respectively.

49. If any dispute, question, difference, or controversy shall arise between the said Postmasters-General or their respective Governments respectively, 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 hereof, or the rights, duties, or liabilities of the said Governments respectively, in connection with the premises, then and in every or any such case, the matter in difference shall be referred to the arbitrament and the determination of the Governor for the time being of the Province