

1907.

VICTORIA.

# OCEAN MAIL CONTRACT.

## DRAFT AGREEMENT.

RETURN to an Order of the House,  
Dated 24th July, 1907, for—

A COPY of the Draft Agreement for the Ocean Mail Contract.

(*Mr. Swinburne.*)

Ordered by the Legislative Assembly to be printed, 24th July, 1907.

[Approximate Cost of Return.—Preparation, not given; Printing (400 copies), £2 10s.]

### ARTICLES OF AN AGREEMENT

made and entered into this day of 1907, between the Hon. JOHN MARK DAVIES, His Majesty's Attorney-General in and for the State of Victoria and Acting Premier in and for the same on behalf of the Government of the said State, of the one part, and SIR JAMES LAING AND SONS LTD., of Sunderland, England, Shipbuilders (hereinafter called the Contractor, in which expression the successors and permitted assigns of the said Sir James Laing and Sons shall be deemed to be included), of the second part, and F. THONEMANN, of Collins-street, Melbourne, trustee for the holders for the time being of debentures intended to be issued by the Contractor herein called the Trustee, of the third part. WHEREAS by an Agreement dated the 7th day of July, 1906, made between the Hon. AUSTIN CHAPMAN, His Majesty's Postmaster-General in and for the Commonwealth of Australia, on behalf of the Government of the said Commonwealth, of the one part, and the said SIR JAMES LAING AND SONS LTD. (therein as well as hereinafter called the Contractor), of the other part (a copy of which said Agreement is annexed hereto), it was agreed among other things that for a period of ten years from and after the 1st day of February, 1908, the Contractor should in the manner and subject to the conditions specified in the General Conditions of Tender annexed to the said Agreement by means of mailships between the ports of Adelaide and Brindisi (which port of Brindisi was thereby substituted for Naples mentioned in the said General Conditions of Tender and should be deemed to be the approved port in Southern Europe therein referred to) and between the ports of Brindisi and Adelaide, and between all other ports from which the said mailships should start or at which they should call or arrive under the provisions of the said Agreement

now in recital, convey all mails which the Postmaster-General for the Commonwealth of Australia or any of his officers or agents should from time to time and at any time or times require to be conveyed, and that subject to all the conditions contained in the said General Conditions of Tender the yearly subsidy or sum payable to the Contractor by the said Postmaster-General in consideration of the faithful performance and observance by the Contractor of all the covenants, agreements, stipulations, provisos and conditions in the said Agreement now in recital and except where or to the extent the same are inconsistent with or modified by provisions therein contained in the said General Conditions of Tender contained should be at the rate of £125,000 per annum. AND WHEREAS by clause numbered 40 of the said General Conditions of Tender it was provided that the said in part recited Agreement should not be binding until it had been approved of by a resolution of the Commonwealth Parliament. AND WHEREAS by a certain other Agreement made and entered on the 22nd January, 1907, between the said parties to the said in part recited Agreement after reciting (*inter alia*) that the Commonwealth Parliament had, by a resolution, approved of the said in part recited Agreement, subject to the terms thereof being altered, amended, and added to in the manner hereinafter set forth, and the Contractor agreeing thereto, it was thereby agreed, covenanted, and declared by the said parties thereto that the said in part recited Agreement of the 7th day of July, 1906, should be deemed to be altered, amended, and added to in the manner set forth in the said resolution, and in the said Supplementary Agreement now in recital, a copy of which Supplementary Agreement is also hereto annexed. AND WHEREAS the Contractor intends to provide part of the capital which will be

required for the purpose of the said Agreement by borrowing upon debentures of the Contractor AND WHEREAS the said Government of the State of Victoria, for the consideration hereinafter appearing, has agreed with the Contractor conditionally to guarantee the payment by the Postmaster-General of the Commonwealth of Australia or other the proper authority of the Commonwealth to the Contractor, or, if the Commonwealth so agree on the order or by direction of the said Contractor to the trustees for the time being of the holders of the debentures for any sum so borrowed as aforesaid of a yearly subsidy or sum of £125,000 for and during the term of ten years from the 1st day of February, 1908, and that notwithstanding any failure or default by the said Contractor to carry out observe and perform the whole or any of the terms of the said in part recited Agreement with the said Commonwealth NOW THIS AGREEMENT WITNESSETH:—

1. In these presents, unless there be something in the subject or context inconsistent therewith, "Trustee" means the present trustee of this Agreement or others the trustees or trustee for the time being thereof.

The "Debentures" means the debentures of the Contractor for the time being outstanding and entitled to the benefit of these presents.

The "Debenture holders" means the holders for the time being of the debentures.

"Mail Contract" means the Agreements dated the 7th July, 1906, and the 22nd January, 1907, respectively, between the Postmaster-General of the Commonwealth and Sir James Laing and Sons Ltd. hereinbefore partly recited and the General Conditions of Tender referred to therein.

2. The Government of the State of Victoria will, upon the Contractor completely performing, observing, and carrying out each and all of the conditions hereunder set forth, enter into an agreement with the Contractor guaranteeing payment to the Contractor by the Government of the Commonwealth of Australia of the yearly subsidy or sum of £125,000 mentioned in the Mail Contract for the period of ten years from the 1st day of February, 1908, notwithstanding any failure or default of the Contractor to carry out, observe, and perform the whole or any of the terms of the Mail Contract.

#### CONDITIONS.

- (a) Upon the Contractor, within the time required by the Mail Contract, providing and delivering to the Postmaster-General for the said Commonwealth, the Guarantee Bond for the sum of £25,000, being the second security required under the said Mail Contract.
- (b) Upon the Contractor raising a capital of £1,800,000 for the purposes of the Mail Contract, and also a sum of £1,750,000 upon debentures irredeemable for a period of ten years from the 1st February, 1908, for the purposes of the Mail Contract.
- (c) Upon the Contractor with all due and reasonable despatch completely building, equipping, furnishing ready for sea, and putting into running as mail ships for the purposes of the Mail Contract eight steam-ships each of the actual cost of £380,000, constructed in accordance with plans, specifications, and drawings approved by the representative of the Government of the Commonwealth of Australia.
- (d) Upon the Contractor giving to the Government of the State of Victoria, or to such person or body for the benefit of the State of Victoria as His

Majesty's Treasurer for the State of Victoria shall direct a first mortgage in form and in accordance with the requirements of the stipulations and conditions hereafter expressed or referred to over each of the steam-ships so built, equipped, furnished, and put into running as aforesaid, and their appurtenances, and over each and every share in such ships, free and clear of and from all claims of the debenture holders, or any other person or persons, body or bodies, corporate or unincorporate, to secure the due observance and performance of the Mail Contract, and of this Agreement, and of the mortgage security hereinafter mentioned.

3. The documents required to complete the mortgage security in the conditions under clause 2 hereof mentioned shall be prepared by the Government of the State of Victoria or its agents, and shall contain such covenants, powers, and provisions, and shall be in such form generally, whether by way of absolute transfer or transfers, a deed or deeds, instrument or instruments of defeasance, or a regular mortgage deed or deeds, instrument or instruments as the Government of the State of Victoria or its agents may be advised to or may require, and in particular, and without limiting the generality of the preceding words, shall contain the provisions in clauses 4 to 12 hereof, both inclusive, and also provisions similar in substance and effect to those contained in clauses 13, 14, 16 and 18 hereof.

4. The document or documents constituting the said mortgage security shall contain a covenant or agreement by the Contractor to all times keep the said steam-ships and any ships substituted therefor, their hulls, tackle, machinery, fittings, and furniture insured in the name of the Government of the said State in the fair insurable value thereof against perils of the sea, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart, and counter-mart, surprisals, takings at sea, arrests, restraints, and detentions of all kings, princes, and people of what nation, condition or quality soever, barratry of the master and mariners, and of all other perils, losses and misfortunes that shall come to the hurt, detriment or damage of the same or any part thereof in a company or companies approved by the Government of the State of Victoria, and to make all payments required for the above purpose at least one week prior to the same becoming due, and to deliver to the Government of the State of Victoria, or its agents, the policy or policies of such insurance, also not later than six days before such payments becoming due the receipt or receipts for each such payment, and if the Contractor shall make default in any of the foregoing matters, then the Government of the State of Victoria or its agents may at its or their discretion insure and keep insured the said ships, and the expenses of so doing shall be repaid by the Contractor on demand, and shall be deemed to be secured by the said mortgage security.

5. The document or documents constituting the mortgage security shall also contain a covenant or agreement by the Contractor to keep the said steam-ships and any ships substituted therefor, their hulls, tackle, machinery, fittings and furniture in thoroughly sea-worthy condition and good repair throughout, and to permit the said State Government at all reasonable times (but so as not to interfere with the regular employment of the mail ships) to inspect the said steam-ships or their substitutes in order to see that the same are kept in such condition as aforesaid, and in the event of the said Government being of the opinion on any such inspection that the said steam-ships or

their substitutes or any of them are not in such condition as aforesaid, the said Government may give notice thereof in writing to the Contractor, who shall forthwith, at his own cost and charges, put the said steam-ships or their substitutes in such good condition in accordance with the notice so given.

6. The said document or documents constituting the mortgage security shall also contain a covenant or agreement by the Contractor that if at any time during the continuance of the security there be a total loss, actual or constructive, of any of the said steam-ships or their substitutes, the proceeds of the insurance on such steam-ships or their substitutes so lost shall be applied in or towards providing another steam-ship in substitution therefor, and that in the case of each ship so substituted that the Contractor will forthwith when built give a first mortgage over the same and its appurtenances to the Government of the State or the person or body for its benefit nominated by the Treasurer in form and in accordance with the requirements of the stipulations and conditions contracted for in the case of the steam-ships originally provided under the Mail Contract, adjusted to suit the circumstances connected with the lapse of time as the case may require.

7. The said document or documents constituting the mortgage security shall provide that the security created by the said document or documents shall become enforceable upon any breach by the Contractor of any of the provisions of the Mail Contract or of this Agreement or of the said document or documents constituting the said mortgage security.

8. The said document or documents constituting the mortgage security shall provide that upon the said security becoming enforceable at any time or times the Government of the State of Victoria or its agents may, without any further consent on the part of the Contractor, enter upon and take possession of the said steam-ships or their substitutes or any of them, and may on like discretion sell and convert the same or any part thereof into money with full power upon every such sale to make any special or other stipulation as to title or evidence of title as the said Government or its agents shall deem expedient, and with full power to buy in, rescind, vary, or resell the same without being responsible for any loss which may be occasioned thereby, and for the purposes aforesaid to execute and do all such assurances and things as it or they shall think fit.

9. The document or documents constituting the mortgage security shall also provide that the Government of the State of Victoria and its agents shall hold the moneys to arise from any sale or conversion as aforesaid upon trust, in the first place to pay or retain the costs and expenses incurred in or about the said sale and conversion, and in and about executing any of the powers or authorities conferred by this Agreement, or the documents constituting the said mortgage security, or incidental thereto, and in the next place in and towards providing for paying, satisfying, and discharging any moneys paid, and (or) thereafter becoming payable or accruing, due by the Government of the State of Victoria under the guarantee of the said Government given pursuant to clause 2 hereof, and also in and towards payment, satisfaction, and discharge of so much of the annual sum of £5,000 payable to the Government of the State of Victoria under clause 16 of this Agreement as shall for the time being be unpaid, and (or) as shall thereafter be payable or accruing due under and in pursuance of the said clause, and the surplus, if any, of such moneys shall be paid to the Contractor, or at the Contractor's option declared in writing to the Government of the State of Victoria to the Trustee.

10. The document or documents constituting the mortgage security shall also provide that after the Government of the State of Victoria shall have made such entry or taken possession as aforesaid, and until the whole of the said steam-ships or their substitutes shall be sold and converted, the said Government or its agents may, if it or they shall think fit (but not otherwise), carry on the business of the Contractor in and with the said steam-ships or their substitutes, or any of them, and may manage and conduct the same as it or they shall in its or their discretion think fit, and for the purposes aforesaid employ such agents, managers, receivers, officers, engineers, servants, seamen, firemen, and workmen upon such terms as to remuneration and otherwise as it or they may think proper, and may insure the said steam-ships and their substitutes, or any of them, and may renew or repair such steam-ships or their substitutes, or any of them, or the tackle, machinery, furniture, or fittings therein as shall be worn out, lost, or otherwise become un-serviceable, and generally may do or cause to be done all such acts and things, and may enter into such arrangements respecting the steam-ships or their substitutes, or any of them, or the working of the same, or any of them, as the said Government or its agents could do if absolutely entitled thereto, and without being responsible for any loss or damage which may be occasioned thereby, and without being accountable in respect of such entry and possession on the footing of a mortgagee in possession, or on the footing of wilful default.

11. The document or documents constituting the mortgage security shall also provide that the Government of the State of Victoria or its agents shall, out of the income from the said steam-ships or their substitutes, and the moneys made by it on them in carrying on the said business, pay and discharge the expenses incurred in and about, carrying on, and managing the said business, or in the exercise of any of the powers under the last preceding clause hereof, or otherwise, in respect of the premises, and all outgoing which it or they shall think fit to pay, and shall pay and apply the residue of the said income and moneys in the same manner as is hereinbefore provided with respect to the moneys to arise from the sale and conversion of the said steam-ships or their substitutes, or any of them.

12. The document or documents constituting the mortgage security shall also provide that the Government of the State of Victoria or its agents may at any time after the security has become enforceable appoint a receiver of the said steam-ships and their substitutes, or any of them, and may remove any receiver so appointed, and appoint another in his stead, and the following provisions shall have effect:—

- (a) The receiver, unless otherwise directed by the Government of the State of Victoria or its agents, may exercise all the powers and authorities under clause 10 hereof.
- (b) The Government of the State of Victoria or its agents may from time to time fix the remuneration of the receiver, and direct payment thereof out of the property subject to the said security.
- (c) Save so far as directed by the Government of the State of Victoria or its agents, all moneys from time to time received by the receiver shall be paid over to the Government of the State of Victoria or its agents, to be held by it or them on the terms set forth in clause 11 hereof, and concerning the moneys to arise under clause 10 hereof.

13. That if at any time during the said term of ten years it shall be found necessary by the Contractor to effect any repairs to any of the said steam-

ships or any ships substituted therefor, then all such repairs shall be effected and done at Melbourne in so far as the same are possible, and all victualling of the said mail-ships shall also be done at Melbourne in so far as the same is possible. And further in the event of any of the said steam-ships or any ships substituted therefor requiring to be docked while in Commonwealth waters then such vessels shall be docked in such ports of the Commonwealth as the Premier for the time being of the State of Victoria shall require, in so far as such docking shall be possible. Provided nevertheless that in the event of the Government of any other State or States in Australia electing to share with the Government of the State of Victoria in any guarantee given by it pursuant to the terms of this Agreement, then such repairs, victualling, and docking shall be done, performed, and carried out at such place or places in Australia as the Premiers for the time being of the States (including Victoria) sharing in such guarantee shall agree upon and direct. The document or documents constituting the mortgage security shall contain a clause similar in substance and effect to this clause.

14. The Government of the State of Victoria or its agents shall during the term of the Mail Contract have a first call to the extent of 1,200 tons of refrigerated space in each of the Contractor's said steam-ships or any ships substituted therefor during the butter and fruit seasons. Provided nevertheless that in the event of the Government of any other State or States in Australia electing to share with the Government of the State of Victoria in any guarantee given by it pursuant to the terms of this Agreement, then the said space shall be distributed between the State or States (including Victoria), sharing in such guarantee according to the population of the said States, determined as in manner hereinafter appearing, or as the Premiers for the time being of the said States shall from time to time agree upon and direct. The document or documents constituting the mortgage security shall contain a clause similar in substance and effect to this clause.

15. The charges for freight and passages by the said steam-ships or any ships substituted therefor shall not exceed the rates now current for similar services between Australia and England in connexion with the mail steamers of the Peninsular and Oriental Company's line and the Orient-Pacific Company's line. The document or documents constituting the mortgage security shall contain a clause similar in substance and effect.

16. The said Contractor shall if the said guarantee be given as hereinbefore mentioned pay to the Government of the State of Victoria in each and every year for a period of ten years from the 1st day of February, 1908, the sum of £5,000 as and by way of a bonus to the said State for such guarantee or undertaking on the part of the said State such payments to be made by equal half-yearly instalments on the            day of            and the            day of            in each year, the first of such instalments to be paid on the            day of            now next. The document or documents constituting the mortgage security shall contain a clause similar in substance and effect.

17. The Government of the said State of Victoria shall have the right to nominate and be represented by a person on the board of management in London, and also by a person on the board of management in Melbourne of any Contractor. The Contractor for the time being shall provide or procure the necessary power or authority in the Articles

of Association, Rules, Regulations, or Deed of Partnership of the Contractor for the purpose of giving effect to this clause. Provided nevertheless that in the event of the Government of any other State or States electing to share with the Government of the State of Victoria in any guarantee given by it pursuant to the terms of this Agreement, then such representatives shall be agreed upon and appointed by the Premiers for the time being of the said States, including Victoria. The document or documents constituting the mortgage security shall contain a clause similar in substance and effect.

18. The Contractor shall not exercise any of the powers or authorities given or reserved to him under or make any of the agreements required or referred to in clauses 15 and 16 of the Mail Contract of the 7th day of July, 1906, as amended by the Agreement of the 22nd day of January, 1907, or under or pursuant to clauses 20, 36, and 37 of the said General Conditions of Tender without the consent, in writing, of the Government of the State of Victoria or its agents, first had and obtained. Provided nevertheless that in the event of the Government of any other State or States in Australia electing to share with the Government of the State of Victoria in any guarantee given by it pursuant to the terms of this Agreement, the Contractor shall not exercise any of such powers or authorities or make any of the said agreements without the consent in writing of the Government of all the States (including Victoria) sharing in such guarantee. The document or documents constituting the mortgage security shall contain a clause similar in substance and effect.

19. All or any other of the States of the said Commonwealth shall have the right, within six months from the date hereof, to share with the Government of the State of Victoria in the proposed guarantee hereby provided, so that the liability of each State under the said guarantee shall be in proportion to the population of the said respective States (including the State of Victoria) according to last official census taken in such States respectively, and the Government of the State or States so sharing in the said proposed guarantee shall be entitled to share in all benefits, obligations, and securities which may accrue to the said State of Victoria under these presents in the like proportion. In case the said other States, or any of them, shall, within the time aforesaid, elect to share in the said proposed guarantee, then the said steam-ships, or any ships substituted therefor, employed by the Contractor in the carrying out of the Mail Contract with the said Commonwealth shall call at the capitals of the said States, or of such of them as shall have elected to share in the said proposed guarantee. Provided, however, that the said steam-ships, or their substitutes, shall not be bound to call at the capital of the State of Queensland unless the Government of the State of Queensland shall agree to pay to the said Contractor the sum of £26,000 per annum (being subsidy at present paid by such State to the Orient Steam Navigation Company Limited) for the said term of ten years, as and by way of a further subsidy to the said Contractor for calling at Brisbane, the capital of the said State.

20. This Agreement shall not be binding until it has been approved of by a resolution of both Houses of the Parliament of the State of Victoria, and further, this Agreement shall not be binding on the Government of the State of Victoria if the Government of the Commonwealth of Australia object to the same.