



Port Loading Protocols Document Map

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Port Loading Protocols

1 Introduction

- (a) These Port Loading Protocols (“**Protocols**”) provide information in relation to the pathway for the export of Grain commodities from a Viterro Operations Port Terminal and set out the processes and procedures which Viterro Operations will apply to allocate Capacity and to order and manage vessels for loading.
- (b) In these Protocols, “Viterro Operations” means Viterro Operations Limited and includes associated entities, related bodies corporate and where applicable, their successors and permitted assigns.
- (c) These Protocols apply to all Grain commodities exported from a Viterro Operations Port Terminal. In the case of Bulk Wheat, these Protocols also form part of the Access Undertaking provided by Viterro Operations to the Australian Competition & Consumer Commission [while it remains in force](#).
- (d) These Protocols apply equally to all Clients, including Viterro’s Trading Division.
- (e) Any receipt, handling and shipment of Grain at or from a Viterro Operations Port Terminal Facility by a Client is also subject to the rights and obligations set out in the relevant Services Agreement.
- (f) Terms used in these Protocols are defined in section 16 of these Protocols. Any terms not defined in these Protocols will have the same meaning as set out in the Access Undertaking and, failing that, the Services Agreement. [The rules of interpretation that apply to these Protocols are set out in section 17.](#)

2 How to make a Booking

2.1 Overview

- (a) This section provides details of how Clients can make a Booking to export Grain through the Port Terminals.
- (b) The primary method of allocation of Capacity will be by Auction conducted in accordance with these Protocols.
- (c) If Capacity is not acquired by Clients at Auction, or if Additional Capacity becomes available, then subject to clause 2.2(b), clause 2.2(e), clause 2.4(g) and clause 2.4(i), Clients may apply for the Capacity or Additional Capacity on a first-in-first-served basis in accordance with these Protocols.

2.2 Allocation of Capacity by Auction

- (a) For the Harvest Shipping Period, there will be one Auction. Clients will be able to apply for Capacity which has not been allocated at that Auction on a first-in-first-served basis in accordance with these Protocols.

- (b) For the Non-Harvest Shipping Period, there will be two Auctions. Capacity which has not been allocated at the first Auction will be re-offered at the second Auction. Clients will be able to apply for Capacity which has not been allocated by the end of the second Auction on a first-in-first-served basis in accordance with these Protocols.
- (c) If after completion of the first Auction in respect of the Non-Harvest Shipping Period there is no Unallocated Capacity:
 - (i) a second Auction will not be held in respect of that Non-Harvest Shipping Period; and
 - (ii) all references to the second Auction in respect of the Non-Harvest Shipping Period in these Protocols will be taken to be a reference to the first Auction in respect of the Non-Harvest Shipping Period.
- (d) Capacity within Slots will be divided into, and allocated in, Lots.
- (e) Viterra Operations endeavours to maximise Port Terminal throughput and to increase Capacity. If:
 - (i) after the Auction for the Harvest Shipping Period; or
 - (ii) after the second Auction for the Non-Harvest Shipping Period,

Additional Capacity becomes available for any reason in respect of the Harvest Shipping Period or Non-Harvest Shipping Period (as the case may be), Viterra Operations will make that Additional Capacity available on a first-in-first-served basis in accordance with clause 2.4 of these Protocols, unless:

- (iii) the cumulative amount of Additional Capacity that has become available in respect of that Year exceeds 200,000 metric tonnes; and
- (iv) the relevant parcel of Additional Capacity that has become available exceeds 50,000 metric tonnes; and
- (v) there are 60 or more days between the date the relevant parcel of Additional Capacity becomes available and the first day of the Slot to which the parcel of Additional Capacity relates,

in which case such Additional Capacity must be offered at an Auction.

- (f) Where Capacity is acquired at an Auction less than 60 days prior to the start of the relevant Slot, the Client must comply with the requirements set out in Table A in respect of that Booking within 2 Business Days of being notified their allocation.

2.3 Auction Timetable and Rules

- (a) The date and time of each Auction and the Capacity on offer at that Auction will be published by Viterra Operations on the Viterra Website at least 10 Business Days prior to the commencement of the Auction.
- (b) Viterra Operations will publish the indicative date and time for each Auction to be held in a Year by the 1st of July immediately preceding the start of that Year.

~~(e)~~ Subject to clause 16, Viterra Operations anticipates that:

~~(i)~~ the Auction in respect of the Harvest Shipping Period will be held at around the start of the August immediately preceding the relevant Harvest Shipping Period; and

~~(ii)~~ the first Auction in respect of the relevant Non-Harvest Shipping Period will be held at around the start of the November immediately preceding the start of the relevant Non-Harvest Shipping Period and the second Auction (if any) in respect of the Non-Harvest Shipping Period will be held approximately four weeks later.

~~(d)~~(c) Each Auction will be held in accordance with the Auction Rules and the Auction Timetable.

2.4 Allocation of Capacity - First-in-first-served

Publication of information by Viterra Operations

- (a) Viterra Operations will publish on the Viterra Website details of any Capacity that:
- (i) in respect of the Harvest Shipping Period, remains available after the Harvest Shipping Period Auction;
 - (ii) in respect of the Non-Harvest Shipping Period, remains available after the second Non-Harvest Shipping Period Auction;
 - (iii) remains available after any additional Auction under clause 2.2(e),
- not more than 5 Business Days after all results of the relevant Auction are published on the Shipping Stem as finalised (i.e. none remain listed as “pending”).
- (b) Viterra Operations will publish on the Viterra Website:
- (i) subject to clause 2.4(c), details of any Capacity which becomes available following a surrender of a Booking under clause 8, a movement of a Booking under clause 7 or under clause 6(a); and
 - (ii) details of any Additional Capacity that becomes available,
- within 2 Business Days of the Capacity becoming available.
- (c) Viterra Operations may decide not to publish and offer all or part of any Capacity to Clients that becomes available following a surrender of a Booking under clause 8, a movement of a Booking under clause 7 or under clause 6(a). In determining whether or not to make that Capacity available, Viterra Operations may have regard to a range of operational considerations including, practical constraints at the relevant Port Terminal, current wait time for vessels, the length of the vessel queue and the timing of vessel arrivals within the relevant Slot and Grace Period.

Capacity available for Booking on a first-in-first-served basis

- (d) Subject to clauses 2.2(e), 2.4(c), 2.4(g) and 2.4(i), the available Capacity referred to in clauses 2.4(a) and 2.4(b) (together the “**Unallocated Capacity**”) will become available for booking on a first-in-first-served basis 2 Business Days (or such other

longer time period notified by Viterra Operations) after its availability is published on the Viterra Website.

The booking process - First-in-first-served

- (e) If a Client wishes to acquire Unallocated Capacity, the Client must submit a Booking Form to Viterra Operations.
- (f) In a Booking Form, a Client may specify the minimum amount of Capacity that it wishes to acquire under that Booking Form if the total amount of Capacity applied for in the Booking Form is not available.

~~(g) — Each Client will have only one log on to the online booking system which enables Clients to submit Booking Forms.~~

First-in-first-served bookings immediately following an Auction

~~(h)~~(g) Any Booking Form for Unallocated Capacity that is submitted within ~~5~~2 Business Days of that Unallocated Capacity becoming available for booking on a first-in-first-served basis following an Auction in accordance with clause 2.4(d) will be invalid (and will be disregarded by Viterra Operations) if:

- (i) the Booking Form is submitted within 30 minutes of the Client or any Associated Entity of the Client submitting any other Booking Form in relation to that Unallocated Capacity (except in circumstances where Viterra Operations considers, acting reasonably, that the Associated Entity operates a commercially separate export function from that undertaken by the Client);
- (ii) the Capacity applied for in the Booking Form exceeds 60,000 tonnes; or
- (iii) subject to clause 2.4(i), the amount of Unallocated Capacity applied for in the Booking Form exceeds the amount of Capacity that remains available for allocation on a first-in-first-served basis in respect of the relevant Slot.

(h) If Viterra Operations considers, acting reasonably, that:

- (i) a Booking Form for Unallocated Capacity it receives from a Client within 2 Business Days of that capacity becoming available for booking on a first-in-first-served basis following an Auction is not genuinely required for use by that Client; and
- (ii) the Client has been engaged by another person to submit the Booking Form on that person's behalf for the purpose of circumventing the restrictions in clause 2.4(g) above,

Viterra Operations may (either before or after accepting the Booking Form) reject the Booking Form or cancel the Client's Booking (or the Transferee's Booking if the Client has already transferred the Booking in accordance with clause 9) as the case requires. Any disputes will be resolved in accordance with clause 12.

- (i) If:
 - (i) in accordance with clause 2.4(f), a Client has specified in the Booking Form a minimum amount of Capacity that it wishes to acquire if the total amount of Capacity applied for in the Booking Form in respect of the relevant Slot is not available; and

- (ii) the total amount of Capacity applied for in the Booking Form in respect of the relevant Slot is not available to be allocated to the Client,

the Client will be allocated the amount of Unallocated Capacity in respect of the relevant Slot that is available, provided that such amount is equal to or exceeds the minimum amount specified by the Client in accordance with clause 2.4(f).

Allocation of Capacity

- (j) Subject to the availability of Unallocated Capacity (and subject to clauses 2.4(g), 2.4(k) and 2.4(m)), Viterra Operations will allocate Unallocated Capacity to Clients on a first-in-first-served basis within 5 Business Days of receiving the Booking Form.
- (k) If there are less than 60 days prior to the first day of the relevant Slot, the Client must comply with the requirements of Table A that should have been satisfied by that date in conjunction with the Booking Form. If Viterra Operations rejects a Booking Form it will provide reasons for its decision.
- (l) Except in the circumstances set out in clause ~~2.4(g)(iii)~~ ~~2.4(h)(iii)~~ (i.e. except within the ~~25~~ Business Days of Unallocated Capacity being available for booking on a first-in-first-served basis following an Auction), where Viterra Operations rejects a Booking Form due to operational factors, Viterra Operations will seek to commence discussions with the Client in relation to potential alternative arrangements, for example:
 - (i) an alternative Slot within the same Period;
 - (ii) acceptance of non-standard service levels and associated costs; and/or
 - (iii) alternative port arrangements, stock swaps or load grades.
- (m) Viterra Operations cannot guarantee acceptance of a Booking Form within 5 Business Days in circumstances where Viterra Operations and the Client have entered into discussions and/or negotiations in relation to the relevant Booking. Where this occurs, the proposed Booking will remain on the Shipping Stem in a “pending” status until the relevant issues are resolved.
- (n) In circumstances where Viterra Operations accepts a Booking Form, Viterra Operations will notify the Client of its acceptance and such notice will include details of the Capacity allocated to the Client and the sum payable by the Client to Viterra Operations in accordance with the Services Agreement.

3 Slot Bookings

3.1 Update of Shipping Stem

- (a) Within one Business Day of:
 - (i) the Auction Results Validation Date, Viterra Operations will place the Client’s Booking (acquired at the Auction) on the Shipping Stem;
 - (ii) receipt by Viterra Operations of a Booking Form in respect of Unallocated Capacity, Viterra Operations will place the Client’s Booking on the Shipping Stem in “pending” status. “Pending” status does not mean that the Booking

has been accepted. Viterra Operations will update the Shipping Stem once the booking has been accepted or rejected.

- (b) In addition to the requirements set out in clause 2.4(g), the following conditions must be satisfied before a Booking Form submitted in respect of Unallocated Capacity will be accepted by Viterra Operations:
 - (i) compliance by the Client with the requirements set out in Table A (to the extent they are required at the time of booking); and
 - (ii) Viterra Operations must have sufficient intake, grain storage and shipping capacity to honour the Booking, taking into account the status of, and prior Bookings or pending Bookings on, the Shipping Stem.
- (c) Bookings accepted by Viterra Operations are personal to the Client and are only transferable in accordance with clause 9 of these Protocols.

3.2 Split Bookings

- (a) A Client may divide a Booking (i.e. the Client's primary Booking not including any tolerance levels) into more than one Booking at least 30 days prior to the first day of the relevant Slot, provided that:
 - (i) each of those Bookings is within the same Booking Slot at the same Port Terminal;
 - (ii) the total tonnage of all of the "split" Bookings does not exceed the tonnage specified for the original Booking; and
 - (iii) the Client pays any fees payable and set out in the relevant Pricing Document in connection with the "split" of the Booking.
- (b) Viterra Operations will issue separate reference numbers for each of the "split" Bookings. The Client must contact Viterra Operations and update all applicable Booking Forms, including Booking Forms for the original Booking and the "split" Booking.
- (c) Tonnages may also be transferred between Bookings in the same Slots (at the same Port Terminal) with the prior written agreement of Viterra Operations.
- (d) For the purposes of this clause, the date of Booking of the Slot for "split" Bookings is the same as the date of Booking of the original "non-split" Slot.
- (e) With the consent of Viterra Operations, a Client may divide a Booking into more than one Booking less than 30 days prior to the first day of the relevant Slot.

3.3 Allocation of Estimated Load Date

- (a) As soon as reasonably practicable after the Client names its vessel and its ETA (and, in any event, within 2 Business Days), Viterra Operations will assess its operational requirements and notify the Client of the vessel's estimated load date ("**Estimated Load Date**").
- (b) The Client acknowledges and agrees that the Estimated Load Date is an estimate of the vessel's load date and that this load date may be subject to change (see clause 4).

4 Changes in Slots and Estimated Load Dates by Viterra Operations

- (a) Viterra Operations will endeavour to ensure that the Client's Booked Slot and Estimated Load Date will be held for the Client. However, Viterra Operations may make changes to the Booked Slot and/or Estimated Load Date for the following reasons:
- (i) if the cargo is not in an export ready and shippable position by the relevant Estimated Load Date;
 - (ii) if a force majeure event occurs;
 - (iii) if there is a change of Terminal Services Priority in accordance with these Protocols (see clauses 5- 6);
 - (iv) if a vessel fails to pass required marine and/or ~~Australian Quarantine and Inspection Service~~ [DAFF](#) port surveys;
 - (v) if poor or dangerous weather reasonably requires the scheduled Booked Slot or Estimated Load Date to be delayed in the interests of safety;
 - (vi) if there is a change to the ETAs of the Client's vessel or others in the vessel queue (see clause 6);
 - (vii) if necessary to reflect the impact of any changes to Flinders Ports SA Port rules for Grain Berth Loading Priorities at the relevant port;
 - (viii) if the Client has failed to comply with the requirements detailed in these Protocols (including the requirements set out in Table A) or its Services Agreement;
 - (ix) if non-Grain vessels are being loaded at common berths under the Flinders Ports SA Port rules and this will impact on the Booked Slot or Estimated Load Date;
 - (x) if it is necessary for occupational, health & safety reasons including for example, fumigation;
 - (xi) if it is necessary to clean berths or facilities between the departure and arrival of vessels; or
 - (xii) if any other event or circumstance arises as a result of circumstances beyond Viterra Operations' reasonable control including, for example, unavailability of tugs or ~~Australian Quarantine and Inspection Service~~ [DAFF](#) labour.
- (b) In the event of a change in the Client's Booked Slot or Estimated Load Date, Viterra Operations will provide notification to the Client via the Shipping Stem on Viterra Operations' website. The Shipping Stem is updated each Business Day and is available to all Clients.

5 Guiding Principles for determining Terminal Services Priority

5.1 Interpretation

For the purposes of this clause 5, in determining the order of arrival of vessels at a Port, where two or more vessels arrive at the same time and there is uncertainty as to which vessel is the first arrived, the vessel that drops its anchor in the anchorage (as defined by the Flinders Ports SA Port Rules) first will be considered to be the first arrived vessel.

5.2 Priority - loading

The following principles will be followed by Viterra Operations in determining the priority of terminal services at port for the loading of vessels:

- (a) Viterra Operations will schedule vessels to load in order of arrival to the relevant Port, subject to the Client meeting the following conditions:
 - (i) the Client has a Booking;
 - (ii) the Client has provided details of the vessel name and all other details required under these Protocols;
 - (iii) the Client complies with, and is not in default of any obligation under its Services Agreement or these Protocols (including the requirements set out in Table A);
 - (iv) the Client's vessel has passed marine and ~~Australian Quarantine and Inspection Service~~ DAFF port surveys ([with copies provided to Viterra Operations](#)) and is ready to load;
 - (v) where the grain berth is congested, the Client has performed an official marine survey at anchorage (for the purpose of being issued with a certificate of fitness to load grain in accordance with applicable legislation) where possible, [and has provided a copy of the survey to Viterra Operations](#);
 - (vi) cargo for the named vessel is available and in a shipping position;
 - (vii) the Client has provided Viterra Operations with 14 days' notice prior to the vessel ETA;
 - (viii) the vessel arrival time is within the Client's 14-16 day Booking Slot;
 - (ix) the Client has not made any changes to load grades and/or quality and/or tonnage requirements within the 14 days prior to the vessel ETA;
 - (x) subject to clause 5.2(a)(xi), the vessel ETA has not been varied by more than one day from the date specified at 14 days prior to the ETA; and
 - (xi) in the case of a vessel substitution, the vessel ETA has not been varied by more than one day from the original vessel ETA.
- (b) If a Client does not meet the conditions set out in clause 5.2(a), Viterra Operations reserves the right to re-prioritise and load vessels outside the order of arrival where it is practically achievable and Viterra Operations considers on reasonable grounds (and on an objective and ascertainable basis) that the overall speed and efficiency of the Port Terminal will be enhanced or delays to named vessels will be minimised.

5.3 Priority - services other than loading

- (a) Where Viterra Operations is required to determine the priority of terminal services at port other than the loading of vessels (see clause 5.3(b) below), it will do so based on the *estimated* order of vessel arrival, subject to the Client meeting the following conditions:
- (i) the Client has been allocated with Capacity;
 - (ii) the Client has provided details of the vessel name and all other details required under these Protocols;
 - (iii) the Client complies with, and is not in default of any obligation under its Services Agreement or these Protocols (including the requirements set out in Table A);
 - (iv) the Client has provided Viterra Operations with 14 days' notice prior to the vessel ETA;
 - (v) the current vessel ETA is within its 14-16 day Booking Slot;
 - (vi) subject to clause 5.3(a)(vii), the vessel ETA has not been varied by more than one day from the ETA advised in relation to that vessel 14 days prior to the original ETA;
 - (vii) in the case of a vessel substitution, the vessel ETA has not been varied by more than one day from the original vessel ETA; and
 - (viii) the Client has not made any changes to load grades and/or quality and/or tonnage requirements within the 14 days prior to the vessel ETA.
- (b) For the purposes of clause 5.3(a), the provision of "terminal services at port other than loading of vessels" includes, but is not limited to:
- (i) inward elevation capacity;
 - (ii) labour;
 - (iii) storage capacity; and
 - (iv) allocation of bin space between multiple vessels.
- (c) If Clients do not meet the conditions set out in clause 5.3(a), Viterra Operations reserves the right to re-prioritise Terminal Services at port other than the loading of vessels in a different order to the *estimated* order of vessel arrival where it is practically achievable and Viterra Operations considers on reasonable grounds (and on an objective and ascertainable basis) that the overall speed and efficiency of the Port Terminal will be enhanced or delays to named vessels will be minimised.

5.4 Priority - loading and other services

- (a) In determining whether (and how) to re-prioritise vessels if the conditions in clause 5.2 or 5.3 are not satisfied, Viterra Operations may consider the following matters (some or all of which may be relevant depending on operational arrangements at the specific Port Terminal) and other relevant considerations:

- (i) whether the stock at the Port Terminal can be utilised on alternative vessels that have arrived or are now due to arrive first, or will be now load-ready first;
 - (ii) the length of the anticipated delays;
 - (iii) the practicality of re-positioning terminal stock and the impact any such re-positioning would have on other Port Terminal users;
 - (iv) the ability for Viterra Operations or Clients to amend accumulation plans;
 - (v) the ability for the Client to supply transport;
 - (vi) the associated costs and impact on efficiency of the overall supply chain;
 - (vii) the extent to which the overall speed and efficiency of the Port Terminal will be enhanced on an objective and ascertainable basis;
 - (viii) whether it will it reduce the overall wait time over all named vessels; and
 - (ix) any other considerations which Viterra Operations considers relevant in the circumstances.
- (b) Where the Client occupies the berth at a Port Terminal and has stock available but will not work the vessel on a 24 hour / 7 day basis, and another client has stock available and is willing to work the vessel on a 24 hour / 7 day basis, the Client must either work the vessel on a 24 hour / 7 day basis or vacate the berth for the other client.

5.5 Grace Period

- (a) Viterra Operations will not cancel a Client's Booking where the Client's named vessel arrives outside of the last day of the declared Booking Slot, provided that:
- (i) the vessel arrival is no more than 10 days outside the last day of the declared Booking Slot ("**Grace Period**");
 - (ii) there is available operational capacity at the Port Terminal; and
 - (iii) the required stock can be made available.
- (b) Vessels arriving within the Grace Period (or outside the Grace Period but in accordance with clause 5.7(a) and subject to the Client complying with clause 5.2(a)) will be re-prioritised to the next loading time that is practically available, subject to:
- (i) Viterra Operations' reasonable ability (and Viterra Operations taking reasonable steps) to accommodate the change; and
 - (ii) Viterra Operations' reasonable ability (and Viterra Operations taking reasonable steps) to re-prioritise the vessel in a manner that limits the practical impact on other Bookings and taking into account Viterra Operations' operational requirements. This may require that the vessel is loaded at the end of the queue of named vessels. However, in order to make storage capacity available, it may conversely require that the vessel is loaded earlier.
- (c) In determining the next loading time that is practically available (and will reflect the most efficient outcome), Viterra Operations may have regard to the following matters

(some or all of which may be relevant depending on operational arrangements at the specific Port Terminal) and other relevant circumstances:

- (i) the objective of minimising any impact on all other Bookings;
 - (ii) the ability to re-allocate stock;
 - (iii) the objective of minimising the total wait time of all named vessels and Bookings;
 - (iv) the practical implications (in particular, where stock is already accumulated and cannot be allocated to other vessels);
 - (v) if stock is or can be made available at port;
 - (vi) the ability for the Client or Viterra Operations to increase Port Terminal throughput;
 - (vii) the overall speed and efficiency of the Port Terminal; and
 - (viii) any other considerations that Viterra Operations considers relevant in the circumstances.
- (d) Subject to clause 5.7(a), where a Client's vessel fails to arrive within the Slot or Grace Period, the Booking will be cancelled and removed from the Shipping Stem.

5.6 Tolerance

(a) Viterra Operations will permit a +/-10% tolerance in respect of the execution of Capacity acquired by Clients (whether at Auction or under the first-in-first-served system in accordance with these Protocols).

~~(a)~~(b) Viterra Operations may, in its discretion and on a case-by-case basis, allow a vessel to load up to 1,000 tonnes in excess of the Capacity (plus tolerance) booked for that vessel. For the avoidance of doubt, this clause 5.6(b) does not entitle Clients to any additional tolerance in respect of the execution of Capacity. It is a discretion that Viterra Operations may exercise if it is necessary or desirable to facilitate the efficient or safe loading and departure of a vessel and/or the efficient operation of a Port Terminal.

5.7 Two-port loading

- (a) Where:
- (i) the Client is loading a vessel at more than one of Viterra Operations' Port Terminals;
 - (ii) the vessel arrives within its original Booking Slot or Grace Period at the first Port Terminal;
 - (iii) the vessel is subsequently delayed at the first Port Terminal; and
 - (iv) as a result of this delay, the Client's vessel arrives outside of its Booking Slot (and Grace Period) at the second Port Terminal,

this will not be considered a new Booking at the second Port Terminal. At the second Port Terminal, priority will be determined in accordance with clauses 5.2 or 5.3.

- (b) Terminal Services Priority may be impacted by the berthing requirements of the Flinders Ports SA Port Rules for Grain Berth Loading Priorities in force from time to time for each Port. Viterra Operations may vary Terminal Services Priority to the extent necessary to address these external requirements.

(c) Where the Client is loading a vessel at more than one of Viterra Operation's Port Terminals, the Client may, with the consent of Viterra Operations:

(i) ~~redistribute~~ the tonnages in respect of those two Bookings across the two Port Terminals within a +/- 10% tolerance provided that the aggregate tonnages across the two Bookings (including tolerance under clause 5.6(a)) is not exceeded; or

(+)(ii) allocate the total tolerance that is applicable to the two Bookings in accordance with clause 5.6(a) to one of those Bookings.

5.8 Marine surveys

In circumstances where there is vessel congestion or potential vessel congestion at a Port Terminal, Viterra Operations may require Clients to:

- (a) engage a qualified marine surveyor to undertake an official marine survey at anchorage (for the purpose of being issued with a certificate of fitness to load grain in accordance with applicable legislation) on arrival of the relevant vessel at the Port Terminal (or, if possible, at an alternate Australian port whilst in transit); and
- (b) provide a copy of the marine surveyor's report to Viterra Operations.

6 Failure to Meet Table A Requirements

- (a) Subject to clause 6(c), where Viterra Operations identifies that a Client has not met the timeframes set out in Table A, or has failed to pay any storage or handling charges due and payable to Viterra Operations when they are due (and which are not the subject of a genuine dispute), Viterra Operations will notify the Client in writing within one Business Day of identifying the failure. If the Client does not ensure compliance within the time specified in the notice issued by Viterra Operations, Viterra Operations may withdraw the Booking from the Shipping Stem.
- (b) In determining the time to be specified in the notice for the Client to ensure compliance, Viterra Operations will:
 - (i) have regard to the nature of the default. Minor or "technical" issues which are unlikely to have any discernible impact on the efficient operation of the Port Terminal may attract greater flexibility. Conversely, failure to comply with requirements which have the potential to affect other Clients and failure to comply with commercial terms will attract a shorter period for rectification;
 - (ii) treat like defaults in a like manner. That is, Viterra Operations will use its best endeavours to treat all Clients equally and apply any flexibility equally;
 - (iii) use its best endeavours to balance the desirability of providing flexibility to Clients with the need to minimise the impact that such flexibility may have on

other Clients or Bookings and the efficient operation of the Shipping Stem;
and

- (iv) act reasonably and in good faith.
- (c) Where a Client fails to name a vessel within the Booking Slot or Grace Period, the Booking will be removed from the Shipping Stem and the Capacity associated with that Booking will be forfeited (refer to clause 5.5(a) for an explanation of the “Grace Period”).

7 Movement of Bookings

Note: If a Client moves a Booking in respect of Capacity that it has acquired at Auction, this may affect the amount of the Auction Premium Rebate to which the Client is or may be entitled. See Schedule 2 of these Protocols.

- (a) In respect of any Capacity allocated to a Client, that Client may, subject to clause 7(h), no later than 45 days prior to the first day of the relevant Booking Slot, submit a request in writing to Viterra Operations to:
 - (i) move that Booking to a different Slot at the same Port Terminal as the relevant Booking; or
 - (ii) move that Booking to a Slot at a different Port Terminal to the relevant Booking,in each case where the new Slot occurs within the same Year (i.e. the period 1 October to 30 September) as the original Slot.
- (b) Viterra Operations will respond to any request made under clause 7(a) within 3 Business Days of receiving the request and will either:
 - (i) subject to clause 7(e), accept the Client’s request if there is sufficient Unallocated Capacity available at the relevant Port Terminal to accommodate the Client’s request, having regard to operational considerations and prior Bookings and pending Booking by other Clients; or
 - (ii) not accept the Client’s request if there is insufficient Unallocated Capacity available at the relevant Port Terminal to accommodate the Client’s request, having regard to operational considerations and prior Bookings and pending Booking by other Clients.
- (c) If Viterra Operations is unable to accept the Client’s request in accordance with clause 7(b)(ii), Viterra Operations will, subject to clause 7(e), offer to enter into good faith discussions with the Client to determine whether moving the Booking to a different Slot or Port Terminal may be possible (again, having regard to operational considerations and prior Bookings and pending Booking by other Clients). Viterra Operations will also advise the Client whether or not this may involve additional costs. Unless and until the Booking is moved in accordance with clause 7(d) or pursuant to negotiations in accordance with this clause 7(c), the Booking will remain unchanged on the Shipping Stem.

- (d) If Viterra Operations accepts the Client's request in accordance with clause 7(b)(i):
- (i) Viterra Operations will amend the Shipping Stem on the next Business Day;
 - (ii) the Booking will be deemed to be varied as of the date of Viterra Operations' written acceptance; and
 - (iii) it will not be considered a new Booking and no additional booking fee will be payable.

This clause 7 does not affect the operation of clause 3.1(c).

- (e) Viterra Operations will not accept any request or agree to move a Booking to a Slot at a Port Terminal where:

- (i) that Slot has not been previously offered through an Auction; ~~or~~

(ii) that Slot is in a Non-Harvest Shipping Period and the second Auction in respect of that Non-Harvest Shipping Period has not yet occurred; or

(iii) the Capacity at the Slot to which the Client has requested the Booking be moved has not yet become available for booking on a first-in-first served basis in accordance with clause 2.4(d). For the avoidance of doubt, clause 2.4(g) does not apply to the movement of any Booking.

- (f) Viterra Operations may at any time initiate discussions with a Client with a view to agreeing with the Client that the Client will move a Booking to another Slot or Port Terminal.

~~(g)~~ Notwithstanding any other provision of these Protocols, Viterra Operations may at any time, with the Client's consent, move a Booking for a Slot at Outer Harbor to a Slot in respect of the same half month period at Inner Harbour (or vice versa), if it facilitates the efficiency of operations at either or both of Outer Harbor and Inner Harbour and Viterra Operations takes reasonable steps to minimise the impact on other Clients at those Port Terminals.

- ~~(g)~~ (h) Upon receipt of a written request, Viterra Operations may agree to move a Booking to a different Slot less than 45 days prior to the first day of the original Booking Slot.

8 Conditional refund of booking fee or Auction Fee for early surrender of Capacity

8.1 Surrender of Capacity

- (a) If, by notice in writing to Viterra Operations:
- (i) a Client cancels a Booking; and
 - (ii) that notice is given no later than 30 days prior to the commencement of the relevant Slot,
- then,
- (iii) Viterra Operations will amend the Shipping Stem on the next Business Day with a note that the Booking has been cancelled; and

(iv) if, in the 14 day period following receipt of the cancellation notice in accordance with this clause 8.1, Viterro Operations does not receive any new Booking by a Client that is for:

- (A) a quantity of Grain that is (in whole or in part) the subject of the cancelled Booking;
- (B) export from the same Port Terminal to which the cancelled Booking relates; and
- (C) shipment in the Slot to which the cancelled Booking relates,

then, subject to clause 8.2(b), the Client that made the cancellation under clause 8 will not be entitled to any refund of the booking fee or Auction Fee (as applicable) in whole or in part.

8.2 Refund of booking fee

(a) If, in the 14 day period following receipt of the cancellation notice in accordance with clause 8.1(a), a new Booking is made by a Client for:

- (i) a quantity of Grain that is (in whole or in part) the subject of the cancelled Booking;
- (ii) export from the same Port Terminal to which the cancelled Booking relates; and
- (iii) shipment in the Slot to which the cancelled Booking relates,

and that booking is accepted in accordance with these Protocols, Viterro Operations will refund to the Client that cancelled the Booking (in accordance with this clause 8) up to 50% of the booking fee or Auction Fee paid by the Client on a *pro rata* basis. For example, where all Capacity the subject of the cancelled Booking is the subject of a new Booking, the Client will be reimbursed 50% of the booking fee / Auction Fee paid by the Client but where only 50% of the Capacity the subject of the cancelled Booking is the subject of a new Booking, the Client will be reimbursed only 25% of the booking fee / Auction Fee paid by the Client. For the avoidance of doubt, a booking fee will be payable in respect of the new Booking.

(b) If, in accordance with clause 2.4(c), Viterro Operations decides not to publish and offer to Clients all or part of the Capacity that becomes available following a surrender of a Booking in accordance with clause 8.1(a), Viterro Operations will refund to the Client that cancelled the Booking an amount up to 50% of the booking fee or Auction Fee paid by the Client (as applicable) on a *pro rata* basis. For example, if Viterro Operations decides not to re-offer any of the Capacity surrendered by the Client, the Client will be reimbursed 50% of the booking fee / Auction Fee that it has paid in respect of that Capacity. If Viterro Operations decides not to re-offer 40% of the Capacity surrendered by the Client, then unless the 60% that is re-offered to Clients is the subject of a new Booking in accordance with clause 8.2(a), the Client will be reimbursed only 20% of the booking fee / Auction Fee that it has paid (representing 50% of the booking fee / Auction Fee paid in respect of the Capacity that was not re-offered to Clients by Viterro Operations).

(c) For the avoidance of doubt:

- (i) any amount paid by a Client in excess of the Auction Fee in respect of Capacity acquired through an Auction, will not be refunded under clause 8.2;
- (ii) any new Bookings under clause 8.2 will be allocated in accordance with clause 2.4; and
- (iii) if more than one Booking is cancelled in respect of the same Slot, any new Bookings under clause 8.2 will be applied against the cancelled Bookings in order of their cancellation.

9 Transferring Bookings

- (a) A Client (“**Transferor**”) may transfer a Booking if the following conditions are satisfied:
 - (i) the transfer complies with the requirements of this clause 9;
 - (ii) subject to clause 9(d)(vi), the Transferor and the person to whom the transfer is made (“**Transferee**”) provide a signed notice to Viterra Operations in the form set out in Attachment 1 (“**Transfer Notice**”) executed by both the Transferor and Transferee by no later than:
 - (A) 60 days prior to the first date of the Slot for the relevant Booking where the original Booking and new booking are different in respect of the requirements set out in Table A; or
 - (B) 30 days prior to the first day of the Slot for the relevant Booking where the original Booking and the new booking are identical in respect of the requirements set out in Table A;
 - (iii) both the Transferor and Transferee have currently in force a Services Agreement with Viterra Operations in relation to the usage of the relevant Port Terminal and neither the Transferee nor Transferor is subject to a notice by Viterra Operations that it is in breach of that agreement;
 - (iv) within 7 days of the date on which the Transfer Notice is provided to Viterra Operations, the Transferee provides to Viterra Operations the fee payable in respect of the transfer and a completed Booking Form in respect of the transferred Booking;
 - (v) the quantity of Grain to be exported by the Transferee is not more than the amount of Grain specified in the Transferor’s original Booking;
 - (vi) the Transferor has met the requirements set out in Table A (to the extent relevant) as at the date of the Transfer Notice;
 - (vii) the Transferor has paid any booking fee, Auction Fee or Auction premiums payable ~~all fees and charges which are at that time due and payable~~ to Viterra Operations in connection with the Grain the subject of the Transfer Notice, ~~including fees and premiums payable in connection with any Auction~~ and any other fees or charges which are at that time due or payable to Viterra Operations in connection with that Grain; and
 - (viii) where the Booking relates to a Slot in a Non-Harvest Shipping Period, the second Auction in respect of that Non-Harvest Shipping Period has occurred.

- (b) Subject to the Transferee and Transferor complying with this clause 9, Viterra Operations will accept any transfer within 3 Business Days (“**Transfer Acceptance Date**”).
- (c) Viterra Operations will amend the Shipping Stem on the next Business Day after the Transfer Acceptance Date.
- (d) For the avoidance of doubt:
 - (i) the Transferee will not be required to pay a new booking fee to Viterra Operations in respect of the transferred Booking;
 - (ii) any entitlement to receive an Auction Premium Rebate in respect of the transferred Booking will be transferred to the Transferee;
 - (iii) any purported transfer of a Booking that does not comply with this clause 9 shall be of no effect;
 - (iv) the transfer of a Booking in accordance with this clause 9 does not affect the operation of clause 7 in respect of that Booking;
 - (v) no transfer shall be effective until approved by Viterra Operations; and
 - (vi) upon receipt of a Transfer Notice less than:
 - (A) in the case of clause 9(a)(ii)(A), 60 days prior to the first day of the Slot for the relevant Booking, Viterra Operations may, subject to the Transferor and Transferee’s compliance with this clause 9, agree to transfer the Booking the subject of the Transfer Notice; and
 - (B) in the case of clause 9(a)(ii)(B), 30 days prior to the first day of the Slot for the relevant Booking, Viterra Operations may, subject to the Transferor and Transferee’s compliance with this clause 9, agree to transfer the Booking the subject of the Transfer Notice.

10 Demonstrating Stock Entitlement

10.1 Stock entitlement

A Client is required by Table A to demonstrate at various points of time its entitlement to stock. Stock entitlement may be demonstrated by the Client providing:

- (a) details of commodity held by the Client at Viterra Operations sites that meets the Client’s Booking;
- (b) details of commodity held at Third Party Sites (refer clause 10.2) that meets the Client’s Booking;
- (c) adequate evidence of forward purchases and sales commitments going to meeting the Client’s Booking; and
- (d) any other form of evidence of entitlement which shows that the Client will have sufficient stock to load the Client’s vessel at the estimated load dates indicated by the vessel’s priority on the Shipping Stem.

10.2 Stock at Third Party Sites

In order to qualify for stock entitlement for the purposes of satisfying the requirements of Table A, commodities held at a Third Party Site will only be taken into account if:

- (a) either:
 - (i) the Third Party Site has been approved by Viterra Operations (such approval to be provided in accordance with the published approval criteria and not to be unreasonably withheld having regard to appropriate industry standards (e.g. hygiene and quality)); or
 - (ii) alternative arrangements have been agreed with Viterra Operations;
- (b) the Third Party Site is adequately serviced by road or rail;
- (c) the Client provides the most recent treatment history of the commodity;
- (d) unless otherwise agreed by Viterra Operations, the Client provides a valid fumigation certificate (as outlined in the Services Agreements or in a form otherwise approved by Viterra Operations) for the stock to be exported through a Viterra Operations Port Terminal; and
- (e) upon request by Viterra Operations, the Third Party Site operator confirms in writing within two Business Days of Viterra Operations' request, the Client's entitlement and that the Client's stock is available for outturn to meet the Client's Slot.

11 Export Standard Requirements

- (a) In the event that the Client selects Export Standard for the accumulation of the commodity the subject of a Booking, the Client must provide to Viterra Operations:
 - (i) by no later than 18 days prior to the opening of the first day of the Slot, a Site Assembly Plan that is complete for the purposes of the delivery of stock; and
 - (ii) by no later than 14 days prior to the vessel ETA, a Transport Plan that is complete for the purposes of the delivery of stock.
- (b) If the Client fails to provide a Site Assembly Plan and/or a Transport Plan as required under clause 11(a), Viterra Operations may re-prioritise the Client's vessel on the Shipping Stem.

12 Dispute Resolution

In the event that the Client disputes Viterra Operations' adherence to these Protocols (including, without limitation the acceptance or rejection of a Booking, or the order of provision or re-prioritisation of terminal services but excluding any dispute relating to an Auction), the following procedures will apply:

- (a) the Client must notify Viterra Operations in writing of the dispute, the reasons for the dispute and the resolution which the Client requests ("**Dispute Notice**");
- (b) where the dispute relates to the rejection of a Booking Form submitted in respect of Unallocated Capacity, the Dispute Notice must be received by Viterra Operations by

5pm on the Business Day immediately following receipt of the notice from Viterra Operations that it does not intend to accept the Booking;

- (c) Viterra Operations must use its best endeavours to respond to the Client within one Business Day following receipt of the Dispute Notice (“**Viterra Operations Response**”). Viterra Operations Response must notify the Client whether Viterra Operations will change its decision and, if not, it must provide an explanation or basis for Viterra Operations’ decision;
- (d) if the Client is not satisfied by Viterra Operations Response, or if Viterra Operations fails to respond to the Dispute Notice within one Business Day of its receipt, the Client may serve written notice to Viterra Operations within one Business Day of receipt of Viterra Operations Response, or within one Business Day of when Viterra Operations Response was due (“**Escalation Notice**”);
- (e) upon receipt of the Escalation Notice, Viterra Operations must use all reasonable endeavours to arrange a meeting between Viterra Operations’ [General Manager Storage and Handling](#) ~~Executive Manager Grain Division~~ and the Client within two Business Days of receipt of the Escalation Notice. Where Viterra Operations’ [General Manager Storage and Handling](#) ~~Executive Manager Grain Division~~ is unavailable for such a meeting within the timeframe specified, Viterra Operations will make available a suitable alternative authorised representative (“**Alternate**”) to meet with the Client within two Business Days of receipt of the Escalation Notice. To facilitate the expeditious resolution of disputes, the meeting can take place either face to face or by telephone;
- (f) at the meeting, Viterra Operations’ [General Manager Storage and Handling](#) ~~Executive Manager Grain Division~~ (or Alternate) and the Client will discuss the subject of the Dispute Notice and Viterra Operations Response and use all reasonable endeavours to reach an agreed outcome. Where such agreed outcome cannot be achieved, given the need for clarity, efficiency and certainty in this dispute resolution process, Viterra Operations’ [General Manager Storage and Handling](#) ~~Executive Manager Grain Division~~ (or Alternate) will make a final decision in relation to the Dispute Notice and notify that decision and the reasons for that decision in writing to the Client within one Business Day of the meeting (“**Decision Notice**”);
- (g) in reaching the final decision set out in the Decision Notice, Viterra Operations’ [General Manager Storage and Handling](#) ~~Executive Manager Grain Division~~ (or Alternate), acting on behalf of Viterra Operations, must take into account the circumstances of the dispute and details set out in the Dispute Notice and, acting reasonably and in good faith, reach a decision that is consistent with the wording, or if that is unclear, the intent of these Protocols (and, in the case of Bulk Wheat, the Access Undertaking). Viterra Operations’ [General Manager Storage and Handling](#) ~~Executive Manager Grain Division~~ (or Alternate) may also have regard to the objectives of:
 - (i) maximising the efficient operation of the Port Terminal;
 - (ii) maximising export throughput at the Port Terminal;
 - (iii) ensuring the non-discriminatory treatment of Clients; and
 - [\(iv\)](#) ensuring consistency of decisions.

13 Viterra Website

Where Viterra Operations has an obligation under these Protocols to publish information on the Viterra Website, Viterra Operations will publish that information in a prominent position in the same location as the Shipping Stem.

14 Varying these Protocols

Viterra Operations may vary these Protocols at any time:

- (a) while the Access Undertaking remains in force, in accordance with clauses 9.3 to 9.64 of the Access Undertaking; and
- (b) after the expiry of the Access Undertaking, in accordance with:
 - (i) any requirements set out in the Code; and
 - (ii) to the extent not inconsistent with clause 14(b)(i), the process set out in clauses 9.3(b) to (g) of the Access Undertaking, but excluding:
 - (A) the final sentence in clause 9.3(c)(iv) of the Access Undertaking;
 - (B) clause 9.3(e)(ii) of the Access Undertaking; and
 - ~~(A)(C) clause 9.3(f)(ii) of the Access Undertaking.~~

~~Within 3 months following completion of the Harvest Shipping Period ending in 2013, Viterra Operations will conduct a review and seek feedback from its Clients in relation to the operation of the Auction system with a view to determining whether any changes to the Auction system are necessary or desirable. Viterra Operations will communicate with Clients in relation to that review and the outcome of the review.~~

15 Use of Information

The Client acknowledges and agrees that:

- (a) Viterra Operations may publish information about the Client, including the identity of the Client, details of any application for Capacity, any Capacity allocated to the Client and the amount paid for such Capacity; and
- (b) the Auction Provider will, to the extent and only to the extent required to facilitate Viterra Operations' compliance with the Access Undertaking and these Protocols, disclose information about the Client and its participation in the Auction to Viterra Operations and that Viterra Operations may publish this information.

~~16 Transitional Provisions~~

~~The transitional provisions set out in Schedule 3 will apply to facilitate the introduction of the Auction System in 2012.~~

~~17~~16 Definitions

ACCC means the Australian Competition and Consumer Commission.

Access Agreement has the meaning given in the Access Undertaking.

Access Undertaking means the Port Terminal Services Access Undertaking provided to the ACCC by Viterra Operations pursuant to section 24 of the *Wheat Export and Marketing Act* 2008 (Cth) and Part IIIA of the *Competition and Consumer Act* 2010 (Cth) and accepted by the ACCC in September 2011 as varied from time to time.

Additional Capacity means new Capacity which becomes available for any reason after an Auction in respect of the relevant Period. For the avoidance of doubt, “Additional Capacity” does not include Capacity which has been offered at Auction.

Associated Entity has the meaning given in the *Corporations Act 2001 (Cth).*

Auction means the sale by auction of Capacity.

Auction Fee has the meaning given in clause 5.1(a) of the Auction Rules.

Auction Period means the period between the start time of an Auction published in the Auction Timetable and the time that Auction ends.

Auction Premium means the total of all amounts paid or payable by a Client in respect of an Auction above the Auction Fee.

Auction Premium Rebate means the amount payable to an individual Client calculated in accordance with the formula set out in Schedule 2 of these Protocols.

Auction Provider means Tradeslot Pty Ltd (ACN 092 784 846) or any other person appointed by Viterra Operations from time to time as the provider of the Online Auction System.

Auction Provider Bidder Agreement means the agreement between the Client and the Auction Provider in connection with the use of the Online Auction System by the Client.

Auction Results Validation Date means the date that all Auction results are finalised by Viterra Operations.

Auction Review Committee means the committee described in clause 11 of the Auction Rules.

Auction Rules means the rules set out in Schedule 1 of these Protocols.

Auction System Website means the auction system website at www.shippingcapacity.com or such other website as published by Viterra Operations on the Viterra Website from time to time.

Auction Timetable means the auction timetable published on Viterra Operations’ Website.

Booking means:

- (a) an allocation of Capacity acquired at Auction or made under the first-in-first-served system, in each case in accordance with these Protocols; and
- (b) which has been accepted on, and remains on, the Shipping Stem.

Booking Form means the electronic form of that name published by Viterra Operations from time to time for booking applications through its online booking system.

Bulk Wheat means wheat for export from Australia other than wheat that is exported in a bag or container that is capable of holding not more than 50 tonnes of wheat.

Business Days means a day that is not a Saturday, Sunday or Public Holiday in Adelaide, South Australia.

Capacity means the capacity that is made available by Viterra Operations to exporters to enable the export of Bulk Wheat, barley and other Grain commodities through a Port Terminal Facility, measured in tonnes.

CCA means the Competition and Consumer Act 2010 (Cth).

Client means:

- (a) in relation to Bulk Wheat, a person that uses, or wishes to use, the services provided by means of the Port Terminal Facilities, whether under an Access Agreement or in accordance with the Standard Terms; and
- (b) in relation to other Grains, a person that exports, or wishes to export, Grain through the Port Terminals in accordance with a Storage & Handling Agreement entered, or to be entered, into between Viterra Operations and that person.

Code means a code of conduct that applies to Viterra Operations:

- (a) in respect of which the Minister has published a notice in the Gazette under section 12(1) of the WEMA; and
- (b) which has been declared by regulations under section 51AE of the CCA to be a mandatory industry code.

Company means Viterra Operations Ltd (ABN 88 007 556 256).

DAFF means the Commonwealth Department of Agriculture, Fisheries and Forestry.

Estimated Load Date means has the meaning given in clause 3.3.

ETA means estimated time of arrival.

Export Standard means Viterra Operations' standard export offering under which Clients have the option to arrange their own transport of commodity to port and site accumulation.

Grace Period has the meaning given in clause 5.5(a).

Grain means the seed of any crop or pasture species of any genus or grade and (for the removal of doubt) includes Pulses but excludes minerals and processed or value added products such as malt.

Grievance means a grievance or complaint in relation to the conduct of an Auction.

Harvest Shipping Period means 1 October to 31 January.

Lot means the Capacity within a Slot at a Port that is offered to Clients at Auction in accordance with the Port Loading Protocols.

Major User means a Client which, as at the date of the proposed variation to these Protocols, has exported an average of 50,000 tonnes of commodity in each of the preceding two seasons.

Naming a vessel means providing the name of the vessel together with all the other information required by Table A to be given at that same time. "Named" has a corresponding meaning.

Non-Harvest Shipping Period means the period 1 February to 30 September.

Non-Technical Grievance means a Grievance that is not a Technical Grievance.

Online Auction System means the online system provided by the Auction Provider for the conduct of Auctions.

Period means either the Harvest Shipping Period or the Non-Harvest Shipping Period.

Port Terminal means, depending upon the context, one or all of Viterra Operations' seaboard terminals at:

- (a) Port Adelaide, Inner Harbour, Berth 27, South Australia
- (b) Port Adelaide, Outer Harbor, Berth 8, South Australia
- (c) Port Giles, South Australia
- (d) Wallaroo, South Australia
- (e) Port Lincoln, South Australia; or
- (f) Thevenard, South Australia.

Port Terminal Facility has the meaning given to that term in the Access Undertaking and, in respect of a Port Terminal, means those facilities listed and described in the applicable Port Schedule in the Access Undertaking as being the 'Port Terminal Facilities' for that Port Terminal.

Port Terminal Services has the meaning given in the Access Undertaking.

Premium Increment means the amount by that name published in the Pricing Document.

Pricing, Procedures and Protocols Manual has the meaning given in the Storage & Handling Agreement.

Pricing Document means:

- (a) in relation to Bulk Wheat, the Reference Prices; and
- (b) in relation to other Grains, the Pricing Procedures and Protocols Manual.

Protocols means these Port Loading Protocols.

Pulses means chickpeas, lupins, field peas, faba beans, lentils, vetch, broad beans and all other Grain legumes.

Rebate Pool has the meaning given in Schedule 2 of these Protocols.

Reference Prices has the meaning given in the Access Agreement or Standard Terms.

Services means “Services” and/or “Port Terminal Services” provided under a Services Agreement as the case requires.

Services Agreement means:

- (a) in relation to Bulk Wheat, either an Access Agreement or the Standard Terms; and
- (b) in relation to other Grains, a Storage & Handling Agreement entered, or to be entered, into between Viterra Operations and the relevant Client.

Shipping Parcel means a portion of a single Booking that may be differentiated from other portions of the same Booking based on commodity type, grade or other characteristics.

Shipping Stem means the stem of ships named by Clients for loading at Viterra Operations’ Port Terminals as published by Viterra Operations.

Site Assembly Plan means a plan for assembling stock from one or more storage sites for a ship’s cargo and which includes details of tonnages and grades at each site.

Slot means a half month period of between 14 and 16 days within which a Client may book Capacity at a Port Terminal Facility for the shipment of Grain.

Standard Terms [means the standard non-price terms and conditions set out in Schedule 3](#) ~~to has the meaning given in~~ the Access Undertaking.

Storage & Handling Agreement means the agreement of that name published by Viterra Operations from time to time.

Table A means the Table A attached to these Protocols.

TBN in relation to a vessel means a vessel that is yet to be named.

Technical Grievance has the meaning given in clause 10.1 of the Auction Rules.

Terminal Services Priority means priority over other vessels for the terminal services at a Port Terminal as determined in accordance with these Protocols.

Third Party Site means a bulk commodity storage site operated by a person other than Viterra Operations.

Trading Division means a business unit or division of Viterra Operations or its related bodies corporate which has the responsibility for the trading and marketing of Bulk Wheat and other commodities.

Transferee has the meaning given in clause 9(a)(ii).

Transferor has the meaning given in clause 9(a).

Transport Plan means a plan for the movement to a Port Terminal of stocks to be assembled for a ship’s cargo which includes details of transport mode and tonnages by grade and date.

Unallocated Capacity has the meaning given in clause 2.4(d).

Viterra Operations means Viterra Operations Ltd (ABN 88 007 556 256) and includes associated entities, related bodies corporate and where applicable, their successors and permitted assigns.

Viterra Website means the website www.viterra.com.au

WEMA means the *Wheat Export Marketing Act 2008 (Cth)* as amended from time to time.

Year means the period from 1 October to 30 September.

17 Interpretation

In these Protocols, unless the context otherwise requires:

- (a) singular words will also have their plural meaning and vice versa;
- (b) a reference to a person includes companies and associations;
- (c) a reference to a consent of a party means the prior written consent of that party;
- (d) headings are for convenient reference only and do not affect the interpretation of these Protocols;
- (e) a reference to a clause, Part or a Schedule is a reference to a clause, Part or Schedule of these Protocols;
- (f) a reference to a party includes its successors and permitted assigns;
- (g) notices that are required to be given in writing to Viterra Operations may, if so agreed by Viterra Operations, be provided in electronic form;
- (h) a reference to any Act includes all statutes, regulations, codes, by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations, amendments, re-enactments or replacements from time to time of that Act and a reference to “law” includes a reference to any Act and the common law;
- (i) the words “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (j) a reference to \$ and dollars is to Australian currency;
- (k) a reference to time is a reference to the local time in Adelaide, South Australia (unless otherwise stated); and
- (l) nothing in these Protocols is to be interpreted against a party solely on the ground that the party put forward these Protocols or a relevant part of them.

Table A: Operational requirements

	Timeline	Vessel	Contract /Load Details	Shipping Period	Export Licence (if applicable)	Stock Entitlement
1	Greater than 60 days prior to Slot commencing	TBN	For each Shipping Parcel, Clients must advise: <ul style="list-style-type: none"> • load Port; and • tonnage. 	14-16 day Slot ⁴	Information not required at this point	Information not required at this point
2	No later than 60 days prior to the opening of the Slot	TBN	In addition to the obligations in section 1 of this Table, Clients must advise: <ul style="list-style-type: none"> • commodity (by Shipping Parcel); • grade (by Shipping Parcel); • tonnage (by Shipping Parcel (min/max)); • destination (if known); • contact insecticide treatment allowance; • fumigation requirements; and • phytosanitary requirements. 	As per section 1 of this table	As per section 1 of this table	As per section 1 of this table
3	No later than 30 days prior to the first day of the Slot	TBN	As per section 2 of this table	14-16 day Slot for existing Bookings with 30 day windows ²	As per section 1 of this table	As per section 1 of this table

⁴ ~~Transitional Arrangement: If the Booking relates to a Slot which will occur prior to the Slots offered at the first Auction in 2012, this information will not be required at this point in time.~~

	Timeline	Vessel	Contract /Load Details	Shipping Period	Export Licence (if applicable)	Stock Entitlement
	commencing					
4	No later than 18 days prior to the opening of the first day of the booked Slot	TBN	In addition to the obligations in section 2 of this Table, Clients must advise: <ul style="list-style-type: none"> required quality specifications (by Shipping Parcel); and blend details by grade, Season, tonnage and Shipping Parcel. 	As per section 2 of this Table	Viterra Operations may request the Client to provide evidence of any required export licence	Clients must provide: <ul style="list-style-type: none"> details of stock entitlement (i.e. demonstrate ability to meet vessel load requirements); and a Site Assembly Plan.
5	On naming of vessel (Refer to clause 6(b))	Clients must advise details of the named vessel and the vessel's last three cargoes	In addition to the requirements in section 4 of this Table, Clients must advise destination (if not already provided) and request any, or all, of the following as required: <ul style="list-style-type: none"> blending operations on loading; pre shipment and shipping samples; and fumigation certificate. 	ETA	As per section 4 of this table	As per section 4 of this table A Transport Plan (Third Party Sites and Export Standard cargoes only) must be provided 14 days prior to vessel ETA.

Notes to Table A:

- (1) In the event that the Client requests a Booking Slot later than that required in accordance with Table A, the Client must satisfy all of its cumulative obligations owing and required under Table A for Viterra Operations to accept the Booking.
- (2) Changes, alterations and modifications to Table A information (other than the matters set out in clause 7 of these Protocols) provided by a Client in support of the Booking can be requested in writing by the Client. Viterra Operations will respond to the request change within 5 Business Days of receipt. The Booking will be deemed to be varied as of the date of Viterra Operations' written acceptance of the change and, subject to the other provisions of these Protocols, will not be deemed a new Booking. Please note:

² ~~Transitional Arrangement: If the Booking relates to a Slot which will occur prior to the Slots offered at the first Auction in 2012, Clients will be required to specify a 14-16 day Slot at this point in time.~~

- Viterro Operations is not obliged to accept any requested variation and acceptance will depend on whether the requested change would be likely to compromise Viterro Operations' operational efficiencies taking into account operational constraints (such as grain under fumigation), or unreasonably impact on other Clients. *Charges may be applicable to cover the additional cost (if any) of accommodating requests.*
- If a Client does not comply with Table A requirements (as may be varied from time to time by Viterro Operations' acceptance of information changes), this will be addressed in accordance with clause 6(a) of the Protocols. The booking fee is not refundable in these circumstances.

If the Client's requested change is not accepted by Viterro Operations, the Client must indicate within 5 Business Days of receipt of notice of non-acceptance of the change to either leave the Booking unchanged, cancel the Booking or request a new Booking (if possible under these Protocols). If the Client fails to make this election the Booking will be deemed to be unchanged. The booking fee is not refundable in these circumstances.

- (3) Viterro Operations has no obligation to commence accumulation for a Booking until advised by the Client on the Booking Form of a named vessel and a single ETA and the Client is compliant with Table A requirements.

Viterra - Port Loading Protocols

Schedule 1: Auction Rules

1 Introduction

- (a) Terms used in these Auction Rules are defined in clause 16 of the Port Loading Protocols (“**Protocols**”) of which they form part.
- (b) To qualify to participate in an Auction, a Client must execute an Auction Participation Deed and Auction Provider Bidder Agreement. A Client that has qualified for participation in an Auction by executing an Auction Participation Deed and an Auction Provider Bidder Agreement is a “**Bidder**”.

2 Registration and access to the Online Auction System

- (a) Each Bidder will be set up by the Auction Provider as a user of the Online Auction System and provided with an account user name and password. Bidders can log on to the Online Auction System through www.shippingcapacity.com using their login details.
- (b) Bidders are required to register their intention to participate in an Auction before the first round of that Auction. Registrations open 2 Business Days before the first round of an Auction.
- (c) Auction Provider provides a telephone-based help desk service during the Auction. The Auction Provider help desk number is +61 3 9016 9419.

3 Auction Timetable

- (a) Viterra Operations will publish:
 - (i) the date and time of an Auction; and
 - (ii) the Lots to be auctioned,in each case on the Viterra Website at least 10 Business Days prior to the start of the relevant Auction.
- (b) Viterra Operations may alter the Auction Timetable at any time prior to the commencement of an Auction by publishing a notice on the Viterra Website.

4 Auction Principles

- (a) (**online**) All bids in an Auction are submitted electronically via the Online Auction System.

- (b) **(simultaneous)** All Lots the subject of an Auction are open for bidding simultaneously. Bidding on all Lots commences at the start time set out in the Auction Timetable. Bidding ends when demand for Capacity is equal to or less than the Capacity supplied in each Lot.
- (c) **(multi-round)** Lots are offered for bidding over a series of rounds.
- (d) **(ascending format)** Bidders bid Capacity (i.e. the tonnes they are willing to purchase) and not price (i.e. the price is set for each round). During each round, each Bidder is invited to bid for the Capacity they are willing to purchase at the stated price. For so long as demand for Capacity in a Lot exceeds the Capacity supplied in that Lot, the price per tonne is increased in respect of that Lot for the subsequent round, except at the end of the first round.
- (e) **(capped bids)** Bidders may change their bids between rounds, but:
 - (i) the aggregate total of their bids (in tonnes) must not exceed the aggregate Capacity they bid across all Lots in the previous round; and
 - (ii) Bidders are only permitted to reduce the aggregate Capacity they bid across all Lots by a maximum of 110,000 tonnes per round.

5 Overview of how the Auction works

5.1 Round one

- (a) Bidding for each Lot commences at a uniform price per tonne, being the amount set out in, or calculated in accordance with, the relevant Pricing Document (“**Auction Fee**”).
- (b) During round one, Bidders bid how much Capacity they are willing to purchase in respect of a Lot at the stated Auction Fee.
- (c) Bidders may alter their bid at any time whilst round one is open.
- (d) If at the end of round one, Capacity demanded by Bidders in respect of any Lot is greater than the Capacity supplied in that Lot, the Auction continues to another round in respect of all Lots. Otherwise:
 - (i) the Auction ends; and
 - (ii) the per tonne price payable across all Lots is the Auction Fee; and
 - (iii) the Bidder must pay the Auction Fee and all other charges payable for the Services as set out in the relevant Pricing Document.

5.2 Round two

- (a) For round two, the price per tonne offered at the start of the round is the Auction Fee.

- (b) During round two, Bidders bid how much Capacity they are willing to purchase in respect of a Lot at the stated Auction Fee.
- (c) Subject to clause 4(e), Bidders may alter their bid at any time whilst round two is open.
- (d) If at the end of round two, Capacity demanded by Bidders in respect of any Lot is greater than the Capacity supplied in that Lot, the Auction continues to another round in respect of all Lots. Otherwise:
 - (i) the Auction ends; and
 - (ii) the per tonne price payable across all Lots is the Auction Fee; and
 - (iii) the Bidder must pay the Auction Fee and all other charges payable for the Services as set out in the relevant Pricing Document.

5.3 Round three and successive rounds

- (a) For round three and each successive round, the price per tonne offered at the start of the round is:
 - (i) for any Lot where Capacity demanded by Bidders exceeded Capacity supplied in that Lot at the end of the previous round, the price offered during the previous round plus the Premium Increment; and
 - (ii) for any Lot where Capacity demanded by Bidders was equal to or less than Capacity supplied in that Lot at the end of the previous round, the price offered during the previous round.
- (b) During each round, Bidders bid how much Capacity they are willing to purchase in respect of a Lot at the stated price.
- (c) Subject to clause 4(e), Bidders may alter their bid at any time whilst a round is open.
- (d) If at the end of a round, Capacity demanded by Bidders in respect of any Lot is greater than the Capacity supplied in that Lot, the Auction continues to another round in respect of all Lots. Otherwise:
 - (i) the Auction ends; and
 - (ii) the per tonne price payable in respect of a Lot is the price offered at the start of that round for that Lot; and
 - (iii) the Bidder must pay the Auction Fee together with any Auction Premiums and all other charges payable for the Services as set out in the relevant Pricing Document.

6 Bidding activity

6.1 Rounds

- (a) **(bidding time)** The time remaining in each round will be displayed on the Online Auction System during each round. In each round, the round timer counts backwards towards zero. When zero is reached, bidding is stopped and the Online Auction System processes all bids. During this processing period, the system will display the time remaining until the live bidding process resumes (ie the next round).
- (b) **(round processing)** At the end of each round there will be a round processing period. During this period the Online Auction System will calculate the aggregate demand for each Lot by adding together the Capacity demanded by all valid bids.
- (c) **(round length)** The length of each Auction round will be advised prior to the start of an Auction on the Viterra Website.
- (d) **(Auction length)** The Auction does not have a scheduled end time.
- (e) **(start and end of bidding)** Bidding on all Lots commences at the timetabled Auction start time and ends when bidding on all Lots ends. Bidding ends in respect of all Lots once demand for Capacity is equal to or less than the supplied Capacity in every Lot.

6.2 Bids

- (a) **(bid submission)** Bids on Lots can be submitted during an Auction round.
- (b) **(withdrawal of bids)** Bids submitted in a previous round during the Auction cannot be withdrawn by the Bidder under any circumstances. The last valid bid placed in the previous round is binding on the Bidder.
- (c) **(invalid bids)** A bid will be rejected:
 - (i) where the bid is for more than 100% of the Capacity offered in a given Lot;
 - (ii) where the bid is for less than 1,000 metric tonnes; or
 - (iii) where aggregate Capacity requested by a Bidder across all Lots exceeds the aggregate Capacity requested by that Bidder in the previous round. Bidders may change the way that they allocate their maximum aggregate Capacity between Lots but the aggregate of their bids must not exceed the maximum aggregate Capacity they bid across all Lots in the previous round.
- (d) **(reduction in size of bids)** If, at the end of a round, the aggregate Capacity bid by a Bidder across all Lots involves a reduction of more than 110,000 tonnes from the aggregate Capacity bid in the previous round, each of those reductions in bids will be disregarded (i.e. the Bidder will be taken to have bid for the same amount of Capacity as in the previous round).

6.3 Other

- (a) **(official time)** The clock on the Auction system website is the official time clock for all activities associated with the Auction. Adelaide time will be displayed.
- (b) **(transparency)** The aggregate demand for each Lot during the previous round will be displayed on the Online Auction System. Past round data will also be able to be viewed and downloaded from the bid history section of the Online Action System.
- (c) **(pricing)** All Auction and bid prices are prices per tonne, expressed in Australian dollars and expressed exclusive of GST.

7 Excess Capacity/Capacity not sold

- (a) If at the end of the first Non-Harvest Shipping Period Auction, Capacity demanded by Bidders in any Lot is less than Capacity supplied in that Lot, the excess supply (the volume that has not been acquired) will be offered at a subsequent Auction in respect of the Non-Harvest Shipping Period.
- (b) If at the end of:
 - (i) a Harvest Shipping Period Auction;
 - (ii) the second Non-Harvest Shipping Period Auction; or
 - (iii) any additional Auction under clause 2.2(e) of the Protocols,Capacity demanded in any Lot is less than Capacity supplied in that Lot, the excess supply (the volume that has not been acquired) will be offered on a first-in-first-served basis.

8 Auction disruption

- (a) If the Online Auction System fails or is disrupted:
 - (i) **(pre-Auction)** Prior to the start of an Auction, the Auction will be re-scheduled and Bidders will be notified; or
 - (ii) **(during Auction)** After the Auction commences, the status of competition for all Lots reverts to that existing at the end of the round immediately prior to the disruption. The Auction will recommence as soon as the problem is rectified or as otherwise scheduled by Viterra Operations.
- (b) The Auction Provider help desk is not authorised and does not have the technical ability to submit bids on behalf of Bidders. Bidders are responsible for their own individual systems and connections to the Online Auction System.

9 After the Auction

- (a) **(advice of allocation)** Auction winners will be advised within 3 Business Days of the Auction Results Validation Date.
- (b) **(invoice)** Within 3 Business Days of the Auction Results Validation Date, an invoice will be issued to the winning Bidders setting out the Capacity awarded in respect of the relevant Lots and the corresponding fees and charges payable. Payment must be made within 5 Business Days of the date of invoice. If payment is not made by the due date for payment:
 - (i) Viterra Operations may, by written notice, suspend the provision of all Services to the Bidder under any Services Agreement;
 - (ii) the Bidder will not be entitled to participate in any future Auction until such time as payment has been made in full; and
 - (iii) the actions set out in clauses 9(b)(i) and 9(b)(ii) are without prejudice to any other action or right Viterra Operations may have against the Bidder.
- (c) **(results publication)** Viterra Operations will publish details of the final prices and Capacity sold within each Lot within 3 Business Days of the Auction Results Validation Date.
- (d) **(Grievances)** If a Grievance is submitted, winning Bidders will be notified that their Lot award is provisional until the Grievance is determined by the Auction Review Committee. Confirmation of Lot award to winning Bidders will be made after determination of the Grievance by the Auction Review Committee.

10 Grievance procedures

10.1 Notification of Grievances

- (a) A Bidder who wishes to lodge a Grievance related to the technical operation of the Online Auction System (“**Technical Grievance**”) must notify the Auction Provider help desk during the Auction.
- (b) If a Bidder intends to lodge a Grievance which is not a Technical Grievance, it must notify the Auction Provider helpdesk during the Auction Period of its intention to do so. Any Non-Technical Grievance lodged after the Auction has ended that had not been previously notified will not be considered.

10.2 Grievance procedure

- (a) If a Bidder indicated their intent to lodge a Non-Technical Grievance during the Auction Period with the Auction Provider helpdesk, details of the Grievance and any supporting documentation must be lodged by 5.00 pm on the first Business Day following the end of bidding in the relevant Auction. Bidders are to submit these Grievances to the Auction Provider Auction manager either electronically or by facsimile as follows:

- (i) Electronically at: Auctionmanager@tradeslot.com
- (ii) By facsimile at: (03) 9621 1811
- (b) All Grievances will be determined by the Auction Review Committee.
- (c) Viterra Operations, the Auction Provider and each aggrieved Bidder have the right to maintain as confidential the details of all Grievance applications, the Grievance procedure and the determination of the Grievance.
- (d) Each Bidder authorises and consents to the use of any personal information provided in connection with these Auction Rules for the purposes set out herein, subject only to the Privacy Act 1988 (Cth) and any other applicable legislation. Without limiting the foregoing, such information may be used by the Auction Review Committee as reasonably necessary to determine any Grievance.

11 Auction review committee

- (a) **(role)** The Auction Review Committee is responsible for overseeing the Auction process. Its primary role is to ensure that the Auction Rules have been complied with.
- (b) **(structure)** The Auction Review Committee will consist of:
 - (i) two representatives from Viterra Operations;
 - (ii) one representative from the Auction Provider; and
 - (iii) one “trade” representative. Viterra Operations will propose a representative to the Major Users. Unless a majority of the Major Users, by number, reject the proposed representative, the proposed representative will be appointed to the Auction Review Committee.
- (c) **(meetings)** The Auction Review Committee will meet as required. All representatives (or an alternate) must be present either in person or by telephone.
- (d) **(chairperson)** One of the representatives appointed by Viterra Operations will be the chairperson.
- (e) **(voting)** Each member of the Auction Review Committee will be entitled to one vote, except the representative of Viterra Operations that is not the chairperson.
- (f) **(powers)** The powers of the Auction Review Committee will include but are not limited to:
 - (i) entering a trading halt to the Auction process;
 - (ii) suspension of Auction trades during the Auction and the repeat of an Auction round or rounds;
 - (iii) the suspension and/or cancellation of Bidder registration;

- (iv) validating the Auction; and
- (v) recommending improvements to the Auction process.
- (g) **(decisions)** The Auction Review Committee will make available its decisions and the background to its decisions to a party that lodged a Grievance. The decisions of the Auction Review Committee will be made publicly available where that information is not market sensitive, confidential or in breach of relevant regulations. Where necessary the decisions will also be communicated to the ACCC with supporting rationale and information.

12 Auction Premium Rebate

12.1 Auction Premium Rebate

- (a) The Auction Premium Rebate payable to an individual Client (if any) will be calculated in accordance with the formula set out in Schedule 2 of these Protocols.
- (b) Viterra Operations will pay the Auction Premium Rebate (if any) to the Client within 30 Business Days of the end of the relevant Year.

Viterra - Port Loading Protocols

Schedule 2: Auction Premium Rebate

1 Rebate Calculation

In respect of a Year there are:

- (a) Clients, $c = 1$ to K ;
- (b) Port Terminals, $p = 1$ to 5 ;³
- (c) 14-16 day Slots at each Port Terminal, $t = 1$ to 24 ;
- (d) Auctions, $a = 1$ to 3 ; and
- (e) Auction Rounds, $r = 1$ to N in each Auction, where N is the Round at which an individual Auction ends.

Slots in respect of the Harvest Shipping Period, which covers all Port Terminals⁴ from $t = 1$ to 8 , are sold in the first Auction. Slots in respect of the Non-Harvest Shipping Period, which covers all Port Terminals from $t = 9$ to 24 , are sold in both the second and third Auctions (so long as they are still available in the third Auction).

The Auction Premium Rebate

At the end of the Year, the Auction Premium Rebate payable to each Client, $c = 1$ to K , Client Rebate_c, ~~Client Rebate_c~~, in respect of that Year equals:

³ Inner Harbour and Outer Harbor are treated as one Port Terminal for the purposes of calculating the Rebate per Tonne. The other Ports Terminals are Port Giles, Port Lincoln, Thevenard and Wallaroo.

⁴ Inner Harbour and Outer Harbor will be separately auctioned. However, they will be treated as one Port Terminal for the purposes of calculating the Rebate per Tonne.

$$\sum_{a=1}^1 \sum_{p=1}^5 \sum_{t=1}^8 \text{Rebate per Tonne}_{p,t} \times \text{Capacity bought at auction and then executed}_{c,a,p,t}$$

$$+ \sum_{a=2}^3 \sum_{p=1}^5 \sum_{t=9}^{24} \text{Rebate per Tonne}_{p,t} \times \text{Capacity bought at auction and then executed}_{c,a,p,t}$$

The Rebate per Tonne for a Slot equals *the Rebate Pool across all Slots for that Port Terminal* multiplied by the *Rebate Factor for that Slot and Port Terminal* divided by *the Weighted Volume of Capacity bought at Auction (and then shipped) for all Slots at that Port Terminal*. That is, the Rebate per Tonne for a particular Slot at a Port Terminal, $\text{Rebate per Tonne}_{p,t}$, equals:

$$\text{Rebate Pool}_p \times \text{Rebate Factor}_{p,t} \div \text{Weighted Volume}_p$$

Clients receive the Rebate per Tonne so long as they actually ship through the Slots they acquired at Auction. When the Weighted Volume equals zero, the Rebate per Tonne is zero for all Slots. In addition, if the Rebate per Tonne for all Slots is zero, the Rebate Pool will be distributed equally across all tonnes acquired at Auction in respect of the relevant Port Terminal (and which are actually shipped), and will be rebated to Clients on that basis.

Booking Adjustments

If a Client moves a Booking to another Port Terminal in accordance with clause 7 of the Protocols, it loses its Rebate per Tonne entitlement (if any) in respect of that Booking (i.e. it has the same effect as if the Client did not ship through the relevant Slot acquired at Auction).

However, if Viterra requests a Client to move a Booking for operational reasons, and the Client accepts and actually ships through the new Slot, it still earns a Rebate per Tonne determined by its original Booking (i.e. it continues to participate in the rebate pool and Auction Premium Rebate calculation as if it had not agreed to move its Booking).

If a Client moves a Booking to another Slot at the same Port Terminal, it retains its Rebate per Tonne entitlement (i.e. it continues to participate in the rebate pool and Auction Premium Rebate calculation as if it had not moved its Booking).

If Viterra Operations is unable to provide Port Terminal Services in respect of Capacity acquired at an Auction for any reason (except where Viterra Operations is unable to provide the Port Terminal Services as a result of an act or omission of the Client): (a) any Auction Premium paid by the Client in respect of the relevant Booking will be excluded from the Rebate Pool and any calculation of the Auction Premium Rebate for that Year; (b) Viterra Operations will refund to the Client an amount equal to the Auction Premium paid by the Client in respect of the relevant Booking; and (c) the Client will not be entitled to any Auction Premium Rebate in respect of the relevant Booking.

The components of the Rebate per Tonne formula, ~~$\frac{\text{Rebate pool}_p}{\text{Weighted Volume}_p}$~~ , ~~$\frac{\text{Rebate Factor}_{p,t}}{\text{Weighted Volume}_p}$~~ , and ~~$\frac{\text{Rebate Factor}_{p,t}}{\text{Weighted Volume}_p}$~~ , are defined below.

2 Rebate Pool Calculation

The rebate pool for a particular Port Terminal, ~~Rebate Pool_p~~ , equals:

$$\text{Auction Premiums}_p + \text{Interest}_p - \text{Auction Costs}_p - \text{Booking Adjustments}_p$$

so long as the above calculation gives a number greater than zero. Otherwise the ~~Rebate Pool_p~~ is zero.

2.1 Auction Premiums

The Auction Premiums across all Slots for a Port Terminal, ~~$\text{Auction Premiums}_p$~~ , equal:

$$\sum_{c=1}^K \sum_{a=1}^1 \sum_{t=1}^8 \text{Auction Premium}_{a,p,t} \times \text{Capacity bought at auction}_{c,a,p,t} + \sum_{c=1}^K \sum_{a=2}^3 \sum_{t=9}^{24} \text{Auction Premium}_{a,p,t} \times \text{Capacity bought at auction}_{c,a,p,t}$$

Note that the Auction Premium only includes the amount paid at Auction over and above the ‘‘Auction Fee’’. The Auction Fee does not form part of the rebate pool. The Port Loading Protocols define ‘‘Auction Premium’’ as excluding the Auction Fee. The rebate pool depends on tonnes of Capacity that Clients buy across the Auctions, rather than on what they actually ship.

2.2 Interest

The interest for a rebate pool for a Port Terminal, ~~Interest_p~~Interest_p, is the interest accruing to the separate account in which that Port Terminal's Auction Premiums are held between the time that Clients' Auction Premium payments are received into the rebate pool and the time that Clients' rebates are paid from the rebate pool.

2.3 Auction costs

The total Auction costs are spread across each of the five Port Terminals on a *pro rata* basis (based on tonnes executed through each Port Terminal, including both tonnes bought through Auction and tonnes bought through the first-in-first-served system). That is, the Auction costs allocated to a Port Terminal, ~~Auction Costs_p~~Auction Costs_p, equal:

$$\text{Total accrued auction costs} \times \frac{\sum_{c=1}^K \sum_{t=1}^{24} \text{Capacity executed}_{c,p,t}}{\sum_{c=1}^K \sum_{p=1}^5 \sum_{t=1}^{24} \text{Capacity executed}_{c,p,t}}$$

"Total accrued auction costs" is the aggregate of all costs incurred by Viterra (including costs incurred in past Years) in connection with the introduction and operation of the Auction System that Viterra has not yet recovered or indicated that it will recover through other charges to Clients.

The following rules apply if the Auction Costs in respect of any Port Terminal exceed available funds (that is, Auction Premiums plus Interest minus Booking Adjustments) in the Rebate Pool for that Port Terminal. First, as much of the Auction Costs at each Port Terminal are paid as possible without making the Rebate Pool negative at any Port Terminal. The residual unpaid Auction Costs are split across Port Terminals which have available funds (after deducting Auction Costs) on a *pro rata* basis using tonnes executed. Second, if some Port Terminals have insufficient funds to pay their share of the residual Auction Costs, Port Terminals pay as much of the residual Auction Costs as possible without making their Rebate Pool negative. Any Auction Costs that are still unpaid are split amongst remaining Port Terminals with available funds (after deducting Auction Costs and residual Auction Costs) on a *pro rata* basis using tonnes executed. These steps are repeated until all Auction Costs are paid.

2.4 Booking Adjustments

The Booking Adjustments for a Port Terminal, ~~Booking Adjustments_p~~Booking Adjustments_p, equal the sum of refunded Auction Premiums for Bookings at that Port Terminal (see sections 1 and 4 of this Schedule).

3 Rebate Factor Calculation

The *Rebate Factor for a particular Slot at a Port Terminal* depends on whether it is in the Harvest Shipping Period or Non-Harvest Shipping Period.

The Rebate Factor is defined with reference to the variable “Spare Capacity”. “Spare Capacity” for a Slot in a Round is zero if there is excess demand (i.e. total bids across all Clients for that Slot in the Round exceed that Slot’s Capacity). Otherwise, it is the Slot’s Capacity minus the total bids across all Clients for that Slot in that Round.

- (a) For the Harvest Shipping Period, $t = 1$ to 8, Rebate Factor_{p,t}, for a Slot at a Port Terminal equals:

$$\sum_{a=1}^1 \sum_{r=1}^N \left(\frac{\text{Spare Capacity}_{a,r,p,t}}{\text{Capacity}_{a,r,p,t}} \right)$$

- (b) For the Non-Harvest Shipping Period, $t = 9$ to 24, Rebate Factor_{p,t}, for a Slot at a Port Terminal equals:

$$\sum_{a=2}^3 \sum_{r=1}^N \left(\frac{\text{Spare Capacity}_{a,r,p,t}}{\text{Capacity}_{a,r,p,t}} \right)$$

4 Weighted Volume Calculation

The *Weighted Volume of Capacity bought at Auction (and then shipped) for all Slots at a Port Terminal*, Weighted Volume_p is:

$$\sum_{c=1}^K \sum_{a=1}^1 \sum_{t=1}^8 \text{Rebate Factor}_{p,t} \times \text{Capacity bought and then executed}_{c,a,p,t} + \sum_{c=1}^K \sum_{a=2}^3 \sum_{t=9}^{24} \text{Rebate Factor}_{p,t} \times \text{Capacity bought and then executed}_{c,a,p,t}$$

The Weighted Volume depends on the Capacity that Clients buy and then actually execute.

If a Client moves its Booking from one Port Terminal to another Port Terminal, its Capacity is not executed. However, if Viterra requests a Client to move its Booking to another Slot for operational reasons and the Client accepts and actually ships through that new Slot, its Capacity is executed. If a Client moves a Booking to another Slot at the same Port Terminal and actually ships through the new Slot, the Capacity is executed.

If Viterra Operations is unable to provide Port Terminal Services in respect of Capacity acquired at an Auction for any reason (except where Viterra Operations is unable to provide the Port Terminal Services as a result of an act or omission of the Client): (a) any Auction Premium paid by the Client in respect of the relevant Booking will be excluded from the Rebate Pool and any calculation of the Auction Premium Rebate for that Year; (b) Viterra Operations will refund to the Client an amount equal to the Auction Premium paid by the Client in respect of the relevant Booking; and (c) the Client will not be entitled to any Auction Premium Rebate in respect of the relevant Booking.

For the avoidance of doubt, Capacity will be considered to be “*executed*” if the Client’s vessel arrives at the Port Terminal during the booked Slot or the relevant Grace Period and the total amount of Capacity is actually loaded into the vessel.

Viterra - Port Loading Protocols

~~Schedule 3: Transitional Provisions~~

~~1 Transition to the Auction System~~

~~Notwithstanding any other provision of the Protocols, the following provisions will be incorporated into, and form part of, the Auction System introduced by Viterra Operations:~~

- ~~(a) The transition to the Auction System will take place in accordance with clause 9.6(n) to clause 9.6(p) of the Access Undertaking.~~
- ~~(b) If the ACCC withdraws its Auction Objection Notice in accordance with clause 9.6(f)(iii) of the Access Undertaking on or before 8 October 2012:
 - ~~(i) Viterra Operations will, on or before 22 October 2012, publish details of the date and time of the first and second Auctions and the Lots to be auctioned during those Auctions. Unless agreed otherwise by Viterra Operations and the ACCC, the date of the first Auction must be not less than 10 Business Days, and not more than 15 Business Days, after 22 October 2012. The date of the second Auction will be approximately 10 to 15 Business Days after the start of the first Auction;~~
 - ~~(ii) the first Auction will offer all Capacity at the Port Terminals for the period from 1 February 2013 until 30 September 2013 (“**Auction Period**”);~~
 - ~~(iii) in accordance with the Protocols, if there is any Capacity in respect of the Auction Period that is not allocated at the first Auction, that Capacity will be re-offered at the second Auction;~~
 - ~~(iv) once the second Auction has taken place, Viterra Operations will re-open the Shipping Stem in accordance with the dates set out in the Protocols for Booking of Unallocated Capacity on a first in first served basis (in accordance with clause 2.4 of the Protocols).~~~~
- ~~(c) If the ACCC withdraws its Auction Objection Notice in accordance with clause 9.6(f)(iii) of the Access Undertaking after 8 October 2012 but before the Final Date (which may occur if Viterra Operations and the ACCC agree to extend the relevant dates):
 - ~~(i) Viterra Operations will, within one Business Day after the Revised Proposal Decision Date, close the Shipping Stem (to the extent that it is then open in accordance with clause 9.6(o)(ii) of the Access Undertaking) in respect of all new bookings for the period 1 February 2013—30 September 2013;~~
 - ~~(ii) Viterra Operations will, on or before the date which is 12 Business Days after the Revised Proposal Decision Date (“**Publication Date**”), publish details of the date and time of the~~~~

~~first and second Auctions and the Lots to be auctioned. Unless otherwise agreed by Viterro Operations and the ACCC, the date of the first Auction must be not less than 10 Business Days, and not more than 15 Business Days, after the Publication Date. The date of the second Auction will be approximately 10 to 15 Business Days after the start of the first Auction. For the avoidance of doubt, the Auctions will not be held until the variations to these Protocols and the Services Agreement take effect;~~

~~(iii) the first Auction will offer all Capacity at the Port Terminals (which has not already been booked on a first in first served basis in accordance with clause 9.6(o)(ii)(A) of the Access Undertaking) for the period from the date that is the later of:~~

~~(A) 1 February 2013; and~~

~~(B) the date of commencement of the first Slot which occurs at least 60 days after the start date of the second Auction;~~

~~until 30 September 2013 (“Reduced Auction Period”);~~

~~(iv) in accordance with the Protocols, if there is any Capacity in respect of the Reduced Auction Period that is not allocated at the first Auction, that Capacity will be re-offered at the second Auction;~~

~~(v) after the Publication Date, Viterro Operations must provide no less than 2 Business Days notice that it is re-opening the Shipping Stem for Bookings on a first in first served basis, but only in respect of Bookings which would be executed prior to the commencement of the Reduced Auction Period;~~

~~(vi) once the second Auction has taken place, Viterro Operations will re-open to Shipping Stem in accordance with the dates set out in the Protocols for Booking of Unallocated Capacity on a first in first served basis (in accordance with clause 2.4 of the Protocols);~~

~~(vii) the requirements set out in paragraphs (c)(i) – (vi) above will not apply if, at the Revised Proposal Decision Date, there is no Capacity in respect of the Reduced Auction Period.~~

~~(d) The Auction Premium Rebate formula set out in Schedule 2 to these Protocols will apply to the Auction Period or Reduced Auction Period (as the case requires) with any necessary changes to reflect:~~

~~(i) the number of 14-16 day Slots at each Port Terminal that will occur during the relevant period (which may be less than 24); and~~

~~(ii) there may be 2 Auctions rather than 3, which cover Slots for all or part of the Non-Harvest Shipping Period only (i.e. it may be that a = 2 to 3 rather than a = 1 to 3).~~

~~(e) If Viterro Operations has not already complied with any obligation under clause 1(b) or (c) of this Schedule 3 by the specified date (and that date has passed), then it must do so within two Business Days of these Protocols taking effect in accordance with clause 9.6(j) of the Access Undertaking.~~

~~2 Transition to these Protocols~~

~~These Protocols will apply to the provision of any Port Terminal Services that are provided by Viterro Operations on or after the date on which these Protocols take effect. Any Port Terminal Services provided before the date on which these Protocols take effect will be provided in accordance with the Port Loading Protocols that then apply.~~

~~3 Auctions in respect of Capacity that is available from October 2014 onwards~~

~~Notwithstanding any other provision of the Protocols, (and consistent with clause 4.1 of the Access Undertaking) Viterro Operations will not be required to take any steps during the term of the Access Undertaking to implement or facilitate the holding of an Auction or Auctions in respect of Capacity that will be available for any period on or after 1 October 2014.~~

~~Terms used in this Schedule which are not defined in the Protocols have the meaning given to them in the Access Undertaking.~~

Viterra - Port Loading Protocols

Attachment 1: Transfer Notice under clause 9 of the Port Loading Protocols

Name of Transferor:

Name of Transferee:

Date of notice:

Original Booking date and SCNO/Auction reference number:

Date of Booking:

SCNO number/Auction reference number (if applicable) :

.....

Original Booking details:

Port Terminal:

Commodity type:

Total Tonnage:.....

Tolerance (Min/Max):.....

Treatment details:.....

Load Grades:.....

Shipment period:.....

(the “**Booking Details**”)

The Transferor wishes to transfer, and the Transferee wishes to accept the transfer of, the above Booking or part Booking (“**Booking**”) in accordance with clause 9 of the Port Loading Protocols.

The Transferor and Transferee acknowledge and agree that:

1. the Transferee is responsible to Viterra Operations Ltd (“**Viterra Operations**”) for all fees payable in respect of the Booking.
2. The Transferee’s Services Agreement and the Port Loading Protocols will apply to the execution of the Booking by the Transferee.
3. Viterra Operations is not responsible for, and has no liability in connection with, the arrangements between the Transferor and Transferee in respect of the transfer of the Booking.

4. This notice cannot be revoked once signed by the Transferor and Transferee and provided to Viterra Operations.
5. Words used in this notice have the same meaning as in the Port Loading Protocols.
6. Within 7 days of both parties signing this form, the Transferee must submit a replacement Booking Form to Viterra Operations.

Note: The replacement Booking form must include the same Booking Details as the original Booking (set out above) or, otherwise, include variations to the original Booking Details which have been agreed to, in writing, by Viterra Operations. For example, if the Load Grades of the replacement Booking differs from the Load Grades of the original Booking, the Transferee must inform Viterra Operations of this variation, and receive agreement from Viterra Operations to the proposed variation in writing.

The replacement Booking Form must be compliant with all requirements in Table A of the Port Loading Protocols.

SIGNED BY

.....
(Signature)

.....
(Signature)

.....
(Name)

.....
(Name)

On behalf of the Transferor

On behalf of the Transferee