



Revised Variation Notice

Variations to the Port Loading Protocols and Standard Terms

1 This Notice

Viterra Operations Ltd (“**Viterra**”) proposes to vary the Port Loading Protocols (“**Protocols**”) and Port Terminal Services Agreement for Standard Port Terminal Services (“**Standard Terms**”) as set out in Section 3 of this Notice.

This Notice is issued under and in accordance with each of the following provisions:

- (a) Clause 9.6(f)(ii) of Viterra’s Access Undertaking to the ACCC (“**Revised Variation Notice**”); and
- (b) Clause 28.3 of the Standard Terms (“Variations”), whether or not already executed by Clients in respect of the 2012/2013 Season.

2 Background

On 17 February 2012, Viterra issued:

- (a) an Auction Variation Notice under clause 9.5(b) of the Access Undertaking; and
- (b) a Variation Notice under clause 9.3(b) of the Access Undertaking and clause 16.1 of the Protocols.

On 11 April 2012, the ACCC issued an Auction Objection Notice under clause 9.6(a) of the Access Undertaking. As a result, and in accordance with clause 9.6(f)(ii) of the Access Undertaking, Viterra is required to issue this Revised Variation Notice.

The ACCC did not object to the variations to the Protocols made by Viterra under clause 9.3(b) of the Access Undertaking, being certain operational changes not directly related to the introduction of the Auction System. As set out in Viterra’s email to all clients dated 13 April 2012, Viterra has deferred the introduction of those operational changes so they will take effect at the same time that the auction system is introduced (see Section 4 of this Notice). Those changes are not further addressed in this Notice.

3 The variations

This Notice constitutes written notice of Viterra’s proposal to vary:

- (a) the Protocols by deleting all of the current provisions in the Protocols and replacing them with the new provisions set out in Attachment 1 (including the new Auction Rules); and
- (b) the Standard Terms in accordance with the marked-up changes set out in Attachment 2.

For completeness, Attachment 3 sets out a copy of the Auction Participation Deed and Tradeslot Registered Bidder Agreement that clients will need to execute prior to participating in any auction.

4 When the variations will take effect

In accordance with clause 9.6(f)(iii) of the Access Undertaking, the ACCC has a specified period to consider this Revised Variation Notice.

If, as a result of its consideration, the ACCC withdraws its current Auction Objection Notice, Viterra will issue a notice providing at least 10 Business Days' notice of the variations set out in this Revised Variation Notice taking effect.

While the precise dates depend on the date that the ACCC withdraws its Auction Objection Notice, Viterra currently anticipates that the variations will take effect on or around **Wednesday 24 October 2012.**

5 Auction Review Committee – trade representative

The new Protocols contemplate the appointment of one “trade” representative to the Auction Review Committee (see clause 11 of the Auction Rules set out in Attachment 1 of this Notice). Viterra proposes that the trade representative will be Mr Neil Matthews from Hyder Consulting.

Mr Matthews has significant experience in supply chain operations, being a former General Manager at Freight Rail Corporation (NSW) responsible for bulk and non-bulk operations. Mr Matthews is currently a participant on the Auction Review Committee in Western Australia.

Please provide any comments on the proposed appointment of Mr Matthews as the trade representative by **Friday, 14 September 2012.** Comments can be provided to Adam Chilcott (contact details below).

6 Further questions

If you have any questions about how these variations apply to your agreements with, and the services you acquire from, Viterra, please contact Adam Chilcott, General Manager Commercial & Compliance, on (08) 8238 5217.

Viterra Operations Ltd
24 August 2012

Attachment 1

The new Port Loading Protocols



Port Loading Protocols Document Map

1	How to make a booking for port-loading capacity	
	- through the Auction System	See sections 2.2 and 2.3
	- through First-In-First-Served System (i.e. if Capacity is available post-Auction)	See section 2.4
2	Updates to shipping stem and allocation of load dates	See sections 3.1 and 3.3
3	Split Bookings	See section 3.2
4	Changes in Slots and load dates	See section 4
5	Determination of Terminal Services Priority	See section 5
6	Failure to meet Table A requirements	See section 6
7	Moving a Booking	See section 7
8	Surrendering a Booking	See section 8
9	Transferring a Booking	See section 9
10	The requirement to demonstrate stock entitlement	See section 10
11	Export Standard requirements	See section 11
12	Disputes	See section 12
13	Publication of information on Viterra Website	See section 13
14	Varying the Port Loading Protocols	See section 14
15	Use of information	See section 15
16	Dictionary of terms used in these Protocols	See section 17
17	Auction Rules	See schedule 1
18	Calculation of Auction Premium Rebate	See schedule 2
19	Arrangements for transitioning to the new auction system	See section 16 and schedule 3



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.
- (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 17 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.

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(h) 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.

- (c) 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) 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(h) 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) Any Booking Form for Unallocated Capacity that is submitted within 5 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 submitting any other Booking Form;
 - (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.
- (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(h), 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(h)(iii) (i.e. except within the 5 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.
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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(h), 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 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 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 port surveys 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;
 - (vi) cargo for the named vessel is available and in a shipping position;
 - (vii) the Client has provided Viterro 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), Viterro Operations reserves the right to re-prioritise and load vessels outside the order of arrival where it is practically achievable and Viterro 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 Viterro 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 Viterro 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 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

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).

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 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, 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 is not exceeded.

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(g), 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.
- (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) 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, Viterra 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, Viterra 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), Viterra 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), Viterra 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 Viterra 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 Viterra 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 Viterra 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 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
 - (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’ Executive Manager Grain Division and the Client within two Business Days of receipt of the Escalation Notice. Where Viterra Operations’ 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’ 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’ 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’ 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’ 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

- (a) Viterra Operations may vary these Protocols at any time in accordance with clauses 9.3 to 9.6 of the Access Undertaking.
- (b) 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 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).

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.

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.

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

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 Viterro 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 Viterro Operations’ Port Terminals as published by Viterro 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 has the meaning given in the Access Undertaking.

Storage & Handling Agreement means the agreement of that name published by Viterro 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

Year means the period from 1 October to 30 September.

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 ¹	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 commencing	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

¹ 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.

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.

	Timeline	Vessel	Contract /Load Details	Shipping Period	Export Licence (if applicable)	Stock Entitlement
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:
 - Viterra Operations is not obliged to accept any requested variation and acceptance will depend on whether the requested change would be likely to compromise Viterra 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 Viterra 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 17 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 Vitera Operations;
 - (ii) one representative from the Auction Provider; and
 - (iii) one “trade” representative. Vitera 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 Vitera Operations will be the chairperson.
- (e) **(voting)** Each member of the Auction Review Committee will be entitled to one vote, except the representative of Vitera 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) Vitterra 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**, in respect of that Year equals:

$$\sum_{a=1}^1 \sum_{p=1}^5 \sum_{t=1}^8 \text{Rebate per Tonne}_{p,t} \times \text{Capacity bought at auction and then executed}_{c,a,p,t} \\ + \sum_{a=2}^3 \sum_{p=1}^5 \sum_{t=9}^{24} \text{Rebate per Tonne}_{p,t} \times \text{Capacity bought at auction and then executed}_{c,a,p,t}$$

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:

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.

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

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, *Rebate pool_p*, *Rebate Factor_{p,t}*, and *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, *Auction Premiums_p*, equal:

$$\sum_{c=1}^K \sum_{a=1}^1 \sum_{t=1}^8 Auction\ Premium_{a,p,t} \times Capacity\ bought\ at\ auction_{c,a,p,t}$$

$$+ \sum_{c=1}^K \sum_{a=2}^3 \sum_{t=9}^{24} Auction\ Premium_{a,p,t} \times Capacity\ bought\ at\ auction_{c,a,p,t}$$

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*, 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***, 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*, 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 Vitterra 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 Vitterra Operations is unable to provide Port Terminal Services in respect of Capacity acquired at an Auction for any reason (except where Vitterra 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) Vitterra 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

Attachment 2

Marked up variations to the Standard Terms

Port Terminal Services Agreement for Standard Port Terminal Services

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Details

Date

2011

Parties

Name	Viterra Operations Limited
ABN	88 007 556 256
Short form name	Company
Address	Grain House 124 –130 South Terrace, Adelaide, SA 5000

Name	[REDACTED]
ABN	[REDACTED]
Short form name	Client
Address	[REDACTED]

Background

A The Company is:

- (i) the operator of the Port Terminal Facilities; and
- (ii) the provider of Port Terminal Services.

B The ACCC accepted an Access Undertaking in relation to the provision of the Port Terminal Services by the Company on 28 September~~[REDACTED]~~ 2011.

C Pursuant to the Access Undertaking:

- (i) access to Port Terminal Services is required to be provided to Accredited Wheat Exporters (or persons who are otherwise entitled to, and apply to the Company to, export Bulk Wheat by means of the Port Terminal Facilities); and
- (ii) that access is required to be offered on standard terms and conditions (**Standard Terms**).

D Capacity at the Port Terminal Facilities will primarily be allocated by Auction in accordance with the Port Loading Protocols (including the Auction Rules).

DE This Agreement is the Standard Terms.

EF The Client wishes to be provided by the Company with Port Terminal Services on the Standard Terms, and the Parties have accordingly entered into this Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Agreement:

ACCC means the Australian Competition and Consumer Commission.

Access Undertaking means the undertaking provided by Viterra Operations Ltd to the ACCC pursuant to the WEMA and Part IIIA of the CCA [and accepted by the ACCC on 28 September 2011. The Access Undertaking dated \[REDACTED\] 2011 is](#) and available on the ACCC website at www.accc.gov.au.

Accidental Loss or Damage means loss or damage to the Client's Bulk Wheat caused or occasioned by events not reasonably within the control of the Company.

Accredited Wheat Exporter has the meaning given to that term in the Access Undertaking.

Agreement means this agreement and all schedules, annexures and attachments.

Approved Third Party Store means a grain storage and handling facility owned by a person other than the Company or a Viterra Group Company, which has been approved by the Company for the purposes of this Agreement. Further information in relation to Approved Third Party Stores is available on the Company's website.

AQIS means Australian Quarantine Inspection Service.

Associated Entity has the meaning given to that term by the Corporations Act.

Auction means the sale by auction of Capacity.

Auction Premium Rebate means the rebate calculated in accordance with the Port Loading Protocols.

Auction Rules means the rules of that name set out in Schedule 1 of the Port Loading Protocols.

Binned Grade means the Grade of Bulk Wheat stored in a Cell.

Bulk Wheat has the meaning given to that term in the Access Undertaking.

Business Day means a day that is not a Saturday, Sunday or gazetted public holiday in South Australia.

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

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

Cell means a single unit of storage of Bulk Wheat.

Client's Bulk Wheat means that quantity of Bulk Wheat held by the Company on behalf of the Client within a Port Terminal Facility, as adjusted for Shrinkage and other matters allowed or required under this Agreement.

Commencement Date has the meaning given to that term in clause 2.1.

Common Stock has the meaning given to that term in clause 6.2.

Company Facility means any facility owned or operated by the Company or any Viterra Group Company for the receipt and storage of grain, and may include a Port Terminal Facility.

Confidential Information means information exchanged between the Company and the Client in relation to the business of those persons that:

- (a) is by its nature confidential;
- (b) is specified to be confidential by the person who supplied it; or
- (c) is known, or ought to be known, by a person using or supplying it to be confidential or commercially valuable;

but excludes information that:

- (d) is comprised solely of the name, address and contact details of a person; or
- (e) was in the public domain at the time when it was supplied; or
- (f) subsequently becomes available other than through a breach of confidence or breach of this provision; or
- (g) was in lawful possession of the party prior to being provided by the party; or
- (h) must be disclosed under the Continuous Disclosure Rules (as defined under the WEMA) or in order to comply with other legal requirements; or
- (i) ceases to be confidential in nature by any other lawful means.

Corporations Act means the *Corporations Act 2001* (Cth).

Credit Support has the meaning given in the Access Undertaking.

Damaged Bulk Wheat means Bulk Wheat that has been damaged in an unusual incident or event to such an extent that it can no longer be classified by any Receipt (Classification) Standards and is only of salvage value or suitable for disposal.

Dispute means a bona fide dispute between the Client and the Company arising under this Agreement.

Dust means Bulk Wheat dust attributable to the Client's Bulk Wheat extracted from dust collection plants in the Company's Facilities, but excluding Damaged Bulk Wheat. Dust is not included as part of Shrinkage.

Expiry Date has the meaning given to that term in clause 2.1.

Export Standard Receipts means receipts by the Company at a Port Terminal of wheat:

- (a) owned by the Client and transported to the Port Terminal by the Client or its agents or contractors (other than the Company);
- (b) purchased by the Client at a Port Terminal from a grower who has delivered the wheat to the Port Terminal; or
- (c) purchased by the Client by in-store transfer from a trader who has ownership of the wheat at the Port Terminal.

Force Majeure Event has the meaning given to that term in clause 15.1.

Grade means a grade of grain of a given Service Year specified in the Receipt (Classification) Standards and Outturn standards of that same Service Year, or any other grade agreed by the Parties.

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.

Grower means any person involved in the growing of wheat, the contact details for whom have been registered by the Client or the Company or a national grower register.

GST has the meaning given in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended or any replacement or other relevant legislation or regulations.

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such Acts.

Indirect or Consequential Loss means indirect, consequential or remote loss or any loss in the nature of compensation for loss of production, loss of profit, loss of opportunity, loss of markets, loss of use of money, goods or other property or loss of goodwill or business reputation, including any losses that the Client may suffer in the event that the ability to resell Bulk Wheat is adversely affected.

Insolvency Event means, in relation to a Party:

- (a) a receiver, receiver and manager, administrator, trustee or similar official is appointed over the whole or a substantial part of the assets or undertaking of the Party and is not removed within 30 days;
- (b) the Party suspends payment of its debts generally;
- (c) the Party is insolvent within the meaning of the Corporations Act;
- (d) the Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application (other than a vexatious application) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the Party or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the Party otherwise than for the purpose of an amalgamation or reconstruction which has the prior written consent of the other Party and, in the case of an application, the application is not withdrawn or dismissed within 60 days; or
- (f) an administrator is appointed under Division 2 of Part 5.3A of the Corporations Act and, except in the case of an appointment by the Party or its directors, is not withdrawn or removed within 14 days.

In-Store Transfer means the transfer of ownership of Bulk Wheat held at a Port Terminal Facility from the Client to another person, or vice versa, as recorded in the Company's stock systems.

Other Client means a person that is provided with a storage service at a Port Terminal Facility (other than the Client or a Grower). For avoidance of doubt, the Company or a Related Body Corporate of the Company may be an Other Client.

Outturn means to cause Bulk Wheat to physically leave the custody of the Company at a Port Terminal Facility, and is taken to occur when the Bulk Wheat exits the delivery spout into a shipping vessel at which point physical custody of the Bulk Wheat passes from the Company to the Client or a third party authorised by the Client.

Outturn Entitlement has the meaning given to that term in clause 7.2.

Party means, depending on the context, the Company or the Client.

Port Loading Protocols means the 'Port Loading Protocols' as defined in the Access Undertaking, as amended from time to time in accordance with the procedures prescribed by the Access Undertaking, and, ~~includes any document that replaces the Port Loading Protocols to introduce an auction, booking and nomination system in accordance with the Access Undertaking~~ for the avoidance of doubt, includes the Auction Rules.

Port Schedules has the meaning given to that term in the Access Undertaking.

Port Terminal means, depending on the context, the Company's 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 to that term in the Access Undertaking and, in relation to a Port Terminal, means those of the Wheat Receiving Services, Wheat Storage Services and Wheat Ship Loading Services that the Company provides by using one or more of the Port Terminal Facilities at that Port Terminal.

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

Purchase Options means the various alternative products offered or to be offered to Growers by the Client for the purchase of Bulk Wheat as submitted to and displayed by the Company, subject to and in accordance with such procedures and requirements as the Company may, in its sole discretion, produce and publish from time to time.

Receival (Classification) Standards means standards that either:

- (a) accord with the industry benchmarks established for Bulk Wheat and are published by the Company prior to the receival of that Bulk Wheat into a Company Facility, or
- (b) are otherwise agreed with the Client.

Reference Prices means the schedule of prices and price structure for access to each Standard Port Terminal Service for each Service Year published on the Company's website and as varied from time to time in accordance with the Access Undertaking. In this Agreement, "Reference Prices" includes the Explanatory Notes to the Reference Prices as varied from time to time in accordance with the Access Undertaking.

Related Bodies Corporate has the meaning given to that term in the Corporations Act.

Season means the period in which most of the Bulk Wheat is harvested and delivered to Company Facilities, typically commencing in November in one year and going through to the February of the following year.

Segregation means the physical separation of the storage of Bulk Wheat by type, Grade, variety or such other distinguishing quality as may be determined by the Company.

Service Year means each period from 1 October to the following 30 September during the Term.

Shipping Stem has the meaning given to that term in the Access Undertaking.

Shrinkage means loss in the normal storage and handling process, including loss of mass through changes in moisture content, loss in handling, and Waste. Shrinkage does not include Bulk Wheat lost as Dust.

Standard Port Terminal Services are Port Terminal Services provided under this Agreement in respect of Bulk Wheat.

Standard Terms has the meaning given in Recital C of this Agreement

~~**Tax Invoice** has the meaning given in the GST Legislation.~~

~~**Taxable Supply** has the meaning given in the GST Legislation.~~

Term commences on the Commencement Date and ends on the Expiry Date (unless terminated earlier in accordance with clause 17).

Unregulated Services has the meaning given to that term in clause 3 of this Agreement.

Up-Country Receival Facility has the meaning given to that term in clause 3.

Viterra Group Companies means Viterra Australia Pty Ltd, and each of its subsidiaries.

Washout Price has the meaning given in clause 7.13(c).

Waste means Bulk Wheat that, as a result of the normal handling process, has been downgraded to Bulk Wheat of no commercial value (for example, mouldy Bulk Wheat or Bulk Wheat mixed with dirt and stones).

WEMA means the *Wheat Export Marketing Act 2008 (Cth)*.

Wheat Receival Services means the receival of Bulk Wheat for export from Australia at a Port Terminal by using one or more of the Port Terminal Facilities at that Port Terminal, and involves:

- (a) sampling, testing and classification on delivery;
- (b) weighing on delivery;
- (c) tipping and inward elevation;
- (d) Segregation;
- (e) placing into storage; and
- (f) recording of relevant information.

Wheat Ship Loading Services means the Outturn of Bulk Wheat to a shipping vessel at a Port Terminal for export from Australia by using one or more of the Port Terminal Facilities at that Port Terminal and involves:

- (a) monitoring quality against the Outturn standard;
- (b) blending;
- (c) weighing;
- (d) outward elevation to the ship loader; and
- (e) recording of relevant information.

Wheat Storage Services means the storage of Bulk Wheat for export from Australia at a Port Terminal by using one or more of the Port Terminal Facilities at that Port Terminal and involves:

- (a) storage;
- (b) standard grain protection and maintenance;
- (c) dis-infestation; and
- (d) recording of relevant information.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause is a reference to a clause of this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (h) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to *dollars* and \$ is to Australian currency.
- (m) Mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.
- (n) A reference to time is a reference to the local time in Adelaide, South Australia (unless otherwise stated).
- (o) Where any matter or thing is required to be attended to or done on a day which is not a Business Day, it will be attended to or done on the next Business Day.
- (p) Measurements of physical quantities are in Australian legal units of measurement within the meaning of the *National Measurement Act 1960 (Cth)*.

- (q) Nothing in this Agreement is to be interpreted against a Party solely on the ground that the Party put forward this Agreement or a relevant part of it.

1.3 Discretions and Approvals

- (a) Whenever the Client is required to form an opinion, give approval, exercise a discretion or perform any act under this Agreement, it must be done reasonably in the circumstances and based on reasonable grounds, and not capriciously, or arbitrarily refused or unduly delayed.
- (b) In making any decision pursuant to this Agreement, the Company will have regard to the efficient running of the relevant Port Terminal Facility and the balancing of the interests of all users of that Port Terminal Facility.

2. Term and application of Agreement

2.1 Commencement, duration and application

- (a) This Agreement:
- (i) commences on 1 October 2011 [*or other date within the term of the Access Undertaking*] (**Commencement Date**);
 - (ii) unless terminated earlier under clause 17, but subject to clause 2.2, ends on the following 30 September (**Expiry Date**); and
 - (iii) applies to all Port Terminal Services provided, or deemed to have been provided, by the Company under this Agreement.
- (b) If the Client:
- (i) is provided with any Port Terminal Services on or after the Commencement Date; but
 - (ii) has not executed this Agreement,

the Company will provide the Port Terminal Services on the terms and conditions set out in the Standard Terms. Once concluded between the Parties, this Agreement will be effective from the later of the Commencement Date and the date on which the Client submitted its Access Application in accordance with the Access Undertaking.

2.2 Continued provision of Standard Port Terminal Services

- (a) Unless agreed otherwise by the Company, this Agreement will expire on the 30 September immediately following the Commencement Date. On the expiry of this Agreement, the Company will, in accordance with the Access Undertaking, offer to enter into a new agreement with the Client in respect of the provision of Standard Port Terminal Services provided that the Client meets the Prudential Requirements (as defined in the Access Undertaking).

Any such new agreement issued by the Company after the Expiry Date will also apply to Bulk Wheat of a prior Service Year remaining within the Company's Port Terminal Facilities.

- (b) For the avoidance of doubt, if Bulk Wheat delivered to the Port Terminal Facilities prior to the Commencement Date is held in the Company's storage facilities at the relevant Port Terminal as at the Commencement Date, the terms and conditions in this Agreement (including the current Reference Prices after the Commencement Date) and the Port Loading Protocols as varied from time to time will apply to that previously delivered Bulk Wheat.

- (c) This Agreement supersedes any previous agreement between the Company and the Client for the provision of Port Terminal Services.

3. Acknowledgement of limited application

Despite anything to the contrary contained in, or which in the absence of this clause 3 may be implied into, this Agreement:

- (a) this Agreement applies only to the provision of Standard Port Terminal Services in respect of Bulk Wheat and to the extent regulated by the Access Undertaking;
- (b) where Bulk Wheat is received by the Company at a Company Facility that is not a Port Terminal Facility (**Up-Country Receival Facility**), the services provided by the Company in respect of that Bulk Wheat before it reaches the Port Terminal Facility will not be governed by this Agreement;
- (c) if, for any Service Year, the Client engages the Company to provide receival, transport, storage or outturn services that are not Standard Port Terminal Services (whether because those services are not provided at a Port Terminal Facility, or because they are provided at a Port Terminal Facility but in respect of grain that is not Bulk Wheat or otherwise) (**Unregulated Services**), then the Unregulated Services will be provided either:
 - (i) under any separate agreement that the Company and the Client make for the provision of the Unregulated Services; or
 - (ii) otherwise, under the standard terms and conditions that are published by the Company for the provision of Unregulated Services for that Service Year.

4. Port Terminal Services

4.1 Primary obligation of the Company

The Company will provide such of the Standard Port Terminal Services at those of the Port Terminals as the Client may require, on and subject to:

- (a) the terms and conditions of this Agreement; and
- (b) the Port Loading Protocols which form part of this Agreement.

4.2 Availability

Subject to clause 4.3, the Company's obligation to provide a particular Port Terminal Service at a Port Terminal at a point in time is subject to the availability of the Port Terminal Facility required for that Port Terminal Service at that time.

4.3 Capacity management undertakings

The Client acknowledges that there may be capacity constraints in relation to the provision of Port Terminal Services at particular times and that, in managing demand for and in making operational decisions in the course of providing Port Terminal Services, the Company will comply with the capacity management arrangements set out in clause 9 of the Access Undertaking and in the Port Loading Protocols.

5. Wheat Receival Services

5.1 Application of clause

This clause 5 applies in relation to the provision of Wheat Receival Services.

5.2 Receival standards and classification

All wheat that is to be received at a Port Terminal and stored for export by the Company for the Client must comply with the Receival (Classification) Standards. If such wheat has characteristics for which a receival standard is neither published nor agreed, the Company may refuse to receive that wheat. The Company will make current Commodity Classification Manual available to the Client via www.ezigrain.com.au.

5.3 Acceptance of Bulk Wheat from third parties on behalf of the Client

- (a) Before accepting Bulk Wheat at a Port Terminal Facility from a third party for sale to the Client and subsequent storage at the Port Terminal Facility on the Client's behalf, the Company will assess and classify the Bulk Wheat and require the person who has tendered the Bulk Wheat to sign a receival docket setting out, amongst other things, the origin, weight, variety, quality, payment grade and the Purchase Option selected by the person.
- (b) The Company is entitled to treat Bulk Wheat to which clause 5.3(a) applies as the property of the person who tendered it and has no obligation to the Client in respect of it until the person who has tendered the Bulk Wheat has signed or otherwise signified acceptance of the receival docket.

5.4 Nomination

- (a) The Client must ensure that, whenever Bulk Wheat is delivered by a third party on behalf of the Client, the third party nominates the Client as the owner of the Bulk Wheat and acknowledges that all the third party's right, title and interest to and in the Bulk Wheat is transferred to the Client. The nomination and acknowledgement must be made in writing at the time of the delivery and, once made, it binds the Client and the third party.
- (b) Thereafter, on production of the original of the weighnotes upon which is entered the name of the Client, the Company will enter the name of the Client in its records as owner of the Bulk Wheat without any enquiry as to the title of the Client and will hold the Bulk Wheat for the Client subject to the terms of this Agreement.

5.5 Weighing

- (a) For receival from road transport at a Port Terminal Facility, the Client authorises the Company to use Company weighbridges to determine the receival tonnage.
- (b) For receival from rail transport at a Port Terminal Facility, the Client authorises the Company to use the Company's or the rail service provider's weighbridges (if available), to determine the receival tonnage.
- (c) The Company will use the receival weights of site to site movements on all stock records of the Client.
- (d) The Client is bound by the determinations made under clauses 5.5(a) and 5.5(b), and the records of those determinations, in the absence of manifest error.

5.6 Contaminants

- (a) The Client must ensure that all of its suppliers are advised that Bulk Wheat known or suspected to contain chemical contaminants or residues or both must not be delivered to any Port Terminal Facility.
- (b) If any load of Bulk Wheat is found to be contaminated, the Client will not be permitted to deliver to the Port Terminal Facility until the Client has provided the Company with evidence in the form of independent expert verification that there is no further risk of contamination arising from deliveries by the Client to the Port Terminal Facility. This may involve further sample inspections by an independent expert of grain produced or

owned by the Client, or an inspection of the vehicles or wagons used by the Client to deliver grain to the Port Terminal Facility. The independent expert must certify to the Company that the contaminant is manageable and removed prior to the Company accepting new deliveries.

- (c) Where Bulk Wheat of any person other than the Client is affected by a contaminant or residue but is nevertheless delivered to a Port Terminal Facility (**Contaminated Delivery**), the Company will not be liable to the Client or to any other person for any loss (including Indirect or Consequential loss), cost, damage or expense suffered or incurred directly or indirectly as a result of that Contaminated Delivery.

5.7 No capacity

Subject to its obligations under clause 4.3, the Company may decline to receive Bulk Wheat for storage on behalf of the Client at a Port Terminal Facility if:

- (a) the export storage capacity allocated to a particular Binned Grade at that Port Terminal Facility is already full; and
- (b) the Client is unable to make additional space available for that Binned Grade by either movement of the Bulk Wheat to another Company Facility or by Outturn of the Bulk Wheat.

5.8 Reservation of Cell

- (a) The Client may at any time request the Company to reserve a Cell for use by the Client.
- (b) The Company has no obligation to accede to a request by the Client to reserve a Cell for the Client. However, if the Company agrees to reserve a Cell, that agreement may be subject to:
 - (i) the Client agreeing to pay, and paying, the Cell reservation fee specified by the Company; and
 - (ii) any time limits on the Cell reservation specified by the Company.
- (c) If the Company agrees to reserve a Cell (and the Client pays the Cell reservation fee), the Company will not, during the reservation period, move the quantity of Bulk Wheat owned by the Client from the relevant Cell without the Client's consent.

5.9 Required Services

In acquiring Wheat Receiving Services, the Client must acquire such Port Terminal storage and handling services as the Company, acting reasonably, requires in order to protect the integrity of wheat to be Common Stocked with the Client's wheat and/or to reduce the risk to the Company of quality, safety, health, environmental or hygiene claims, provided that the costs of such services and their applicability are identified in the Reference Prices.

6. Wheat Storage Services

6.1 Application of clause

This clause 6 applies in relation to the provision of Wheat Storage Services.

6.2 Common stock

Unless specifically agreed otherwise, the Company reserves the right to mix (**Common Stock**) the whole or any part of the Client's Bulk Wheat with wheat of the same specification stored on behalf of any Other Clients or other users in a Port Terminal Facility.

6.3 Title

Where the Client's Bulk Wheat is Common Stocked, title to the Common Stocked wheat is held jointly by the Client and the Other Clients and other users whose wheat forms part of the Common Stocked wheat at the applicable Port Terminal Facility.

6.4 Client's interest

- (a) For the purposes of clause 6.3, at any time the Client's interest in the Common Stocked wheat will be equal to that proportion which the quantity of the Client's Bulk Wheat at the time bears to the quantity of that Common Stocked wheat at that time.
- (b) Subject to clause 9.3, the Client does not have the right to nominate any particular parcel or Cell of wheat that is Common Stocked, as being owned by the Client.

6.5 Right to move Bulk Wheat

- (a) The Company reserves the right to either move or swap Bulk Wheat either within a Port Terminal Facility or to another Company Facility if:
 - (i) sufficient evidence exists to indicate the quality of the Bulk Wheat or Port Terminal Facility may be adversely affected if the Bulk Wheat remains in any particular location;
 - (ii) the Port Terminal Facility fills (or is expected to fill during the Service Year or Season);
 - (iii) the Company determines (in the Company's reasonable opinion) that it is operationally efficient to move the Bulk Wheat; or
 - (iv) the Client has not provided the Company with evidence of an intention to ship or otherwise outturn the Bulk Wheat from the Port Terminal Facility.
- (b) Any movements described in clause 6.5(a) will be at the expense of the Client. The Company will use the then current freight rates published by the Company.

7. Wheat Ship Loading Services

7.1 Application of clause

This clause 7 applies in relation to the provision of Wheat Ship Loading Services.

7.2 Shrinkage, Dust & Outturn Entitlement

- (a) The Client acknowledges and agrees that Bulk Wheat will always suffer Shrinkage and loss from Dust.
- (b) The Company is entitled to deduct from the Client's Bulk Wheat a percentage of wheat on account of Shrinkage and Dust. The net quantity of the Client's Bulk wheat remaining after such deductions is called the Client's Outturn Entitlement ("**Outturn Entitlement**").
- (c) The quantum and method of calculation of the deductions for Shrinkage and Dust is specified in the Reference Prices.
- (d) The Company will own and be at liberty to sell or otherwise deal in the quantity of wheat deducted from the Client's Bulk Wheat for Shrinkage and Dust at any time following receipt of the wheat at a Port Terminal.

7.3 Outturn standards

- (a) Subject to this clause 7.3, Bulk Wheat will be Outturned to the standards prescribed by the Receival (Classification) Standards and in accordance with the Outturn tolerances set out in the Booking Form.

- (b) Without limiting clause 18, the Client indemnifies the Company against all costs, losses, damages and expenses the Company or the Client incurs or sustains as a direct or indirect result of the Company Outturning Bulk Wheat at a standard equal to or exceeding the applicable outturn standard, but which fails to meet any export standards imposed by AQIS or standards imposed by an importing country.
- (c) If, at the request of the Client, the Company undertakes any classification testing at the time of Outturn which is over and above that normally conducted by the Company to ensure Outturned Bulk Wheat meets the minimum standard for the Binned Grade stored, the Company may charge the Client for that classification testing.

7.4 Weighing

- (a) The Client authorises the Company to use batch weighers at the Port Terminal Facility to determine the Outturned tonnage of Bulk Wheat.
- (b) The Client is bound by the determinations made under clause 7.4(a), and the records of those determinations, in the absence of manifest error.

7.5 AQIS sampling

Bulk Wheat will be made available for inspection by AQIS-approved inspectors at the Client's cost prior to Outturning Bulk Wheat onto a nominated shipping vessel.

7.6 Delays

Factors outside the control of the Company (such as variation in vessel arrival times, failure of vessel to pass quarantine, stability and ship worthiness inspections, vessel congestion, variation in cargo requirements, lack of performance of freight providers) mean the Company cannot guarantee all of the Bulk Wheat will be available for loading when the vessel berths and is ready to commence loading. The Company will make reasonable efforts to ensure the Bulk Wheat is available to load without delay and will advise the Client of any potential delays.

7.7 Cleanliness

- (a) The Client is responsible for ensuring that all of its nominated vessels arrive at a Port Terminal Facility in a clean, empty and well maintained state free from any contaminants or residue.
- (b) The Company has no obligation to inspect any vessel for cleanliness, but if it does inspect, then the Company, acting reasonably at all times, is entitled to reject the vessel as unfit for the transportation of Bulk Wheat and to refuse to load the vessel.
- (c) The Company is not liable for any loss, cost, damage or expense (including Indirect or Consequential Loss) caused as a result of a rejection of the vessel (whether by the Company, AQIS or a marine surveyor).
- (d) The Client agrees to pay the Company for any costs incurred by the Company as a result of the rejection of a vessel by the Company, AQIS or a marine surveyor.
- (e) Vessels are not permitted to be cleaned at any Port Terminal Facility without the Company's prior written consent. If a vessel fails inspection, the Company may instruct a vessel to be removed from the berth if it is preventing another vessel from loading at the same berth.

7.8 Port Loading Protocols

- (a) The Port Loading Protocols apply to all nominated (or requested) Outturns of Bulk Wheat, and contain other information in relation to shipping services and requirements in relation to bookings and shipping nominations.

(b) The Client agrees to comply with the Port Loading Protocols.

~~(b)~~(c) The Port Loading Protocols are available at www.viterra.com.au and may be varied from time to time in accordance with the Access Undertaking.

(d) The Client and the Company acknowledge that in the case of any inconsistency between the terms of this agreement and the Port Loading Protocols, the Port Loading Protocols shall apply to the extent of the inconsistency.

7.9 Non-shipment

If Bulk Wheat is not shipped from a Port Terminal Facility as detailed in an accepted nomination (or request) for Outturn due to no fault on the part of the Company, the Client must pay:

- (a) all costs incurred by the Company to reposition Bulk Wheat within the Port Terminal Facility or to remove the Bulk Wheat from the Port Terminal Facility; and
- (b) all vessel variation or cancellation fees and all shipping re-positioning fees.

7.10 Transfers of title

- (a) The Client may elect, by prior written (or electronic) notice to the Company, to effect an In-Store Transfer of all or part of its Outturn Entitlement.
- (b) Subject to clause 7.10(c) the transferee under an In-Store Transfer of an Outturn Entitlement will be entitled to an Outturn without any further reduction for Shrinkage.
- (c) If an In-Store Transfer involves Bulk Wheat being pre-weighed as part of the transfer terms and conditions, an additional Shrinkage amount must be agreed between the parties involved prior to the Company processing the In-Store Transfer. That additional Shrinkage amount will be transferred to the Company's ownership.
- (d) For removal of doubt, the transferor under an In-Store Transfer will remain responsible for payment of all fees and charges in respect of Port Terminal Services provided up until the effective date of transfer.
- (e) The Company may require In-Store Transfers to take place at an individual weighnote level, thus allowing calculations of the value of the Bulk Wheat to be ascertained between the transferor and transferee.
- (f) The Company may refuse to process an In-Store Transfer if the In-Store Transfer results in the transferor's Outturn Entitlement going into a negative position at any particular Company Facility.
- (g) For the purposes of accepting or rejecting an In-Store Transfer, the Company is entitled to rely on orders/instructions:
 - (i) issued by e-mail transmitted from the Client's domain address and purporting to have been sent by an officer of the Client (or such named officers as the Client may from time to time advise the Company in writing); or
 - (ii) executed via the ezigrain™ web site as accessed through entry of the Client's security setting.
- (h) If the Company has acted in accordance with the protocols set out above in this clause 7.10, the Client releases and holds the Company harmless against any claim that a communication was not issued by the Client either at all or without authority and indemnifies the Company against any losses, costs and damages arising therefrom.

7.11 Security interests

- (a) If the Company receives notice from a person claiming to hold a security interest over the Client's wheat, then provided that the person provides reasonable evidence to substantiate the existence of that security interest, the Company is not required to Outturn that wheat until:
 - (i) the person holding the security interest has consented to that Outturn; or
 - (ii) the Company receives a court order requiring it to Outturn that affected wheat.
- (b) The Company reserves the right to charge the Client all reasonable costs which it incurs associated with tracking and maintaining records related to security interests held (or claimed) over wheat.
- (c) The Client will indemnify the Company against all costs, losses, damages and expenses (including without limitation legal costs) the Company incurs or sustains as a result of a claim made against the Company by any person holding a security interest over wheat held by the Company on behalf of the Client relating to that wheat.

7.12 Non-grain commodities

- (a) The Client acknowledges and accepts that the Company may load non-grain commodities at its Port Terminals using the same ship loading facilities as it uses to provide Wheat Ship Loading Services for Bulk Wheat.
- (b) The Company will use reasonable endeavours to ensure that contamination of Bulk Wheat does not occur.

7.13 Reconciliation and adjustment

- (a) This clause 7.13 applies if, after the Outturn of all Bulk Wheat of a Season from all Company Facilities, there is a difference between the Client's Outturn Entitlement and the tonnage actually Outturned to the Client.
- (b) For all Bulk Wheat, unless otherwise agreed, a Season average price will be calculated based on weighted Season average cash prices posted by the Client and all Other Clients over harvest at all Company Facilities. If cash prices are not posted at particular Company Facilities, or are posted with such irregularity that they do not represent the market price (in the opinion of the Company in its sole discretion), then the Company will use the weighted average (major grade and average freight) estimated silo return (ESR) of three pool providers for the Season of delivery as its financial washout value.
- (c) If the actual tonnage Outturned to the Client exceeds the Client's Outturn Entitlement, the Client must pay the Company for the excess at the average price calculated under clause 7.13(b) (**Washout Price**).
- (d) If the actual tonnage Outturned to the Client is less than the Client's Outturn Entitlement, the Company may, at its discretion, either replace the physical Bulk Wheat shortfall in the Client's Outturn Entitlement, or pay the Client for the deficiency in the Outturn Entitlement at the Washout Price.

8. Charges and payment

8.1 Charges

The charges of the Company ~~for~~ [in connection with](#) the provision of Port Terminal Services will be as set out, or as determined in the manner described, in the Reference Prices.

8.2 Invoicing

The Company will invoice the Client for Port Terminal Services at the times specified in the Reference Prices.

8.3 Payment

The Client must pay the Company the full amount of an invoice within the earlier of:

(a) such period as specified in the Reference Prices; and

(b) such period as specified in the Port Loading Protocols.

8.4 No obligation to extend credit

If in the provision of Port Terminal Services the Company will be exposed to a risk that the Client does not pay for any of those services when due and payable (“**credit risk**”) the Company is not obliged to provide those services unless and until the Company, acting reasonably, is satisfied either by requesting Credit Support or by independent credit checks or otherwise that the Client is credit-worthy in respect of the credit risk.

8.5 No set off

The Client is not entitled to withhold payment of any disputed amount the subject of an invoice issued by the Company, or to set off against the amount of an invoice any other claim that it has against the Company.

8.6 Transfer of liability

If the Client purchases Bulk Wheat which is already warehoused or is or has been stored, handled or treated by the Company, and there are unbilled and/or unpaid fees and charges in respect of the Bulk Wheat for any period or for anything done prior to the purchase, then the Client is liable for these fees and charges and must pay them to the Company, unless otherwise agreed with the Company.

8.7 Auction Premium Rebate

The Company will pay the Auction Premium Rebate (if any) to the Client in accordance with the Port Loading Protocols.

8.8 ~~8.7~~ GST

(a) In this clause 8.8:

(i) a term which has a defined meaning in the GST Act has the same meaning when used in this clause; and

(ii) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

(b) All fees and charges in the Agreement unless otherwise stated are expressed exclusive of GST.

~~(a)(c)~~ If GST is payable-liable to be remitted by the Company in respect of any Taxable Supply taxable supply made to the Client under this Agreement, the Client must pay any such GST (in addition to any other amounts payable, or any other consideration to be provided, under or in connection with this Agreement) (“Additional Amount”) at the same time as the consideration, or the first part of the consideration, as the case may be, for the taxable supply is to be provided.

~~(b)(d)~~ The Company will provide the Client with a tax invoice that complies with the GST Legislation.

~~All fees and charges payable under this Agreement are expressed exclusive of GST.~~

- (e) If an adjustment event occurs in relation to a taxable supply referred to in this clause 8.8, and the Additional Amount differs from the amount of GST for which the Company is liable to remit:

 - (i) the Additional Amount must be adjusted to reflect the adjustment event;
 - (ii) the Company or the Client (as the case may be) must make any payments necessary to reflect the adjustment; and
 - (iii) the Company will issue an adjustment note that complies with the GST Legislation.
- (f) Where the Client is required to indemnify the Company, or is required to pay or reimburse the costs of the Company, the Client agrees to pay the relevant amount less any input tax credits to which the Company (or to which the representative member of the GST group of which the Company is a member) is entitled.
- (g) If an amount payable under this agreement is to be calculated by reference to:

 - (i) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
 - (ii) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

8.89 Default in payment

If the Client fails to make payment of an invoice in accordance with this clause 8, then:

- (a) all existing invoices will become immediately due and payable; and
- (b) the Company may, in its absolute discretion, suspend the provision of any or all Port Terminal Services until such time as all outstanding invoices have been paid.

8.910 Interest on late payments

If default is made by the Client in the due payment of any monies payable under this Agreement, then although no demand for payment may have been made, the amount in respect of which such default is made or so much thereof as may from time to time remain unpaid, will bear simple interest at the rate of interest being 3% higher than the Commonwealth Bank's Corporate Overdraft Reference Rate from time to time, calculated on a daily basis from the due date to the date of actual payment in full.

8.1011 Security

- (a) The Client will, if required by the Company, provide Credit Support in respect of its obligations under this Agreement.
- (b) Any Credit Support required by the Company must be established:

 - (i) prior to the Company receiving Bulk Wheat from the Client; and
 - (ii) within 7 days after it has been requested by the Company.
- (c) If the Client defaults, the Company may call up, draw on, use, appropriate and apply the whole or part of the Credit Support as may be necessary in the opinion of the Company to compensate the Company for loss or damage suffered by the Company by reason of the Client's default, and:

- (i) any use or appropriation of the Credit Support by the Company does not operate to waive the default and does not affect the Company's other rights; and
 - (ii) if the Credit Support or any part of it is used or appropriated by the Company, the Client must within 7 days from receipt of a request by the Company pay to or deposit with the Company new or additional Credit Support in a form and for an amount as specified by the Company.
- (d) On termination of this Agreement and if the Client has complied with this Agreement, the Credit Support less any sums drawn on, used or appropriated by the Company and not reinstated by way of further security, must be refunded, returned or cancelled.

8.1112

Additional Costs

- (a) Without limiting the circumstances in which the Company may vary the Reference Prices, the Company may vary the Reference Prices which apply under this Agreement at any time by providing 30 days notice in writing to the Client if:
- (i) there is a change to any Commonwealth, State or local laws; or
 - (ii) any new laws come into effect (including, without limitation, in relation to any potential carbon tax, Carbon Pollution Reduction Scheme or any similar emissions trading scheme),

after the date of this Agreement which results in a direct or indirect increase in the Company's costs in providing the Port Terminal Services under this Agreement. The Company will be entitled to increase the Reference Prices payable by the Client for Port Terminal Services provided under this Agreement to recover the full amount of the increased direct or indirect costs referable to the provision of the Port Terminal Services to the Client at the relevant Port Terminal.

- (b) If the Company increases the Reference Prices in accordance with clause 8.1112(a), the Company will (if requested) provide the Client with information to demonstrate the increase in costs at the relevant Port Terminal.

9. Title to Wheat

9.1 Bailment

Unless specifically agreed otherwise, the Company acts as a bailee of the Client's Bulk Wheat and does not have any title or ownership in that Bulk Wheat.

9.2 Company's right

Subject to clause 9.3, where the Client's Bulk Wheat is Common Stocked, the Company may nominate and identify any particular quantity of Bulk Wheat within a site comprising the Common Stocked Bulk Wheat as being the Client's Bulk Wheat for the purposes of this Agreement, including, for the purposes of Outturn at the direction of the Client, sale by the Company in exercise of its lien over the Bulk Wheat, allocation of Accidental Loss or Damage between the Client and Other Clients, and the payment of compensation for Accidental Loss or Damage.

9.3 Insolvency

- (a) Where the Company suffers an Insolvency Event the Client will be entitled, upon reasonable notice and subject to the provisions of this Agreement relating to Common Stock, to re-take possession of the Client's Bulk Wheat from the site at which the Client's Bulk Wheat is located.

- (b) Nothing in this clause 9.3 will be taken as limiting the Client's rights to the Outturn of the Client's Bulk Wheat in accordance with this Agreement.

10. Lien

10.1 Company's lien

The Company will have a first and paramount lien on the Client's Bulk Wheat for all monies due and payable (on any account whatsoever) by the Client to the Company under this Agreement or otherwise, or to any other Viterra Group Company.

10.2 Common stock

Where the Client's Bulk Wheat is Common Stocked with other wheat, the Company may nominate and identify any particular quantity of wheat comprising the Common Stocked wheat as being the Client's Bulk Wheat for the purposes of enforcing its lien.

10.3 Retention of possession

Subject to any requirement of law, the Company will be entitled, for the purpose of enforcing such lien, to retain possession of the whole or any part of the Client's Bulk Wheat until all amounts due and payable are paid, or to sell all or any of the Client's Bulk Wheat in such manner as it thinks fit (after giving the Client at least 7 days prior notice) whereupon the proceeds of such sale will be applied in or towards the satisfaction of the moneys due to the Company and the costs of effecting the sale, and the balance (if any) will be paid by the Company to the Client. Where the Company sells all or any of the Client's Bulk Wheat for the purpose of enforcing its lien, the Client irrevocably appoints the Company as its agent and attorney.

10.4 Enforcement against others

In enforcing a lien in respect of any Other Client's Bulk Wheat, the Company will ensure that its actions do not affect the right of the Client to receive the Outturn Entitlement under this Agreement.

11. Compliance with operational protocols

11.1 Obligation of Client

- (a) The Client must comply at all times with all policies, procedures and induction requirements published by the Company from time to time in respect of the operation, management and control of its facilities, including those in relation to:
- (i) health, safety and environment;
 - (ii) site rules;
 - (iii) labour ordering conditions for shipping;
 - (iv) operating conditions for the Company's rail facilities; and
 - (v) access and operating conditions for road movements at Company facilities,
- and must comply with all reasonable directions of the Company.
- (b) Whilst on a Company site, the Client (and its agents) must comply with all directions given by the Company's representative, and not create or bring on site any hazard or contamination.

11.2 Publication

For the purpose of clause 11.1, the Company may publish a policy, procedure or induction requirement, or any direction, by placing it on its website.

12. Information

12.1 Company's information

- (a) The Company will keep at its principal place of business proper complete and up to date records, books of account and documents relating to transactions in the Client's Bulk Wheat, and such books of account records and documents will be available for inspection by officers of the Client at any reasonable time upon request in writing. Nothing in this clause 12.1(a) will be taken as requiring the Company to disclose the identity, transactions or ownership interests of Other Clients.
- (b) All information provided to the Client will be treated as conclusive evidence of the correctness of the details set out in that information unless:
 - (i) the Client notifies the Company in writing within 14 days of receipt of that information that there exists a bona fide dispute concerning the correctness of that information; or
 - (ii) it is demonstrated at any time that there is a clear and manifest error in that information.

A notice served by the Client under paragraph (i) above, must set out in detail the reasons why the Client believes the information is incorrect and the basis for holding that belief.

12.2 Client's information

- (a) The Client must provide the Company with all information that the Company reasonably requires for the Company to properly record the receipt of Bulk Wheat from, or to the account of, the Client, including information relating to:
 - (i) origin, quality, quantity, weight, type and variety; and
 - (ii) anticipated time and place of delivery.
- (b) If required by the Company, the Client must provide the information in writing and in the form (if any) required by the Company.

13. Company's Liability

13.1 Acknowledgement

The Client acknowledges that the only warranties provided by the Company under or in respect of this Agreement are those expressly set out in this Agreement. To the maximum extent permitted by law, all other conditions implied by custom, general law or statute are excluded.

13.2 Non-excludable warranties

To the maximum extent permitted by law, the Company's liability for breach of implied warranties or conditions not permitted at law to be excluded, will be limited to the cost of re-supplying the relevant service again.

13.3 Limitations on Company's liability

The Company's obligation to Outturn the Client's Bulk Wheat is modified by the following provisions of this clause:

- (a) the Company is only liable for damage, destruction or contamination by the Company of the Client's Bulk Wheat if that damage, destruction or contamination is caused by the gross negligence or wilful default of the Company or its employees, contractors or agents;
- (b) the liability of the Company to the Client for any such damage, destruction or contamination of Bulk Wheat, if caused by gross negligence or wilful default will not

exceed the sum of \$250,000 (two hundred and fifty thousand dollars) per event or per series of related events;

- (c) the Company is not liable for Accidental Loss or Damage to the Client's Bulk Wheat.
- (d) notwithstanding any other provision of this Agreement, but subject to any extraneous agreement in writing between the Parties to the contrary, the Company will not be liable for any of the following:
 - (i) claims for Indirect or Consequential Loss;
 - (ii) defects that:
 - (A) are required to be examined by the responsible authority under the provisions of the *Export Control Act 1982 (Cth)*; or
 - (B) the Client has taken responsibility for testing prior to shipment, and are not discovered until after the departure of the ship;
 - (iii) quality or quantity claims in respect of a shipment arising upon outturn at a vessel's destination, if the claims are inconsistent with the records of quantity and quality at the load port and there is no conclusive evidence that such load port records are incorrect or unreliable;
 - (iv) failure by the Company to detect toxic residues, other chemical residues, genetically modified Bulk Wheat or any other contamination, the tests for detection of which are not in general use by the Company or have been advised by the Company to be unreliable relative to the required tolerances;
 - (v) except to the extent caused or contributed to by the gross negligence or wilful default of the Company or its employees, contractors or agents:
 - (A) quality claims arising in respect of Bulk Wheat transferred into the Company's storage system from another storage system; or
 - (B) downgrading claims in respect of Bulk Wheat blended by the Company at the request of the Client, provided the quality meets the outturn standards of the lowest value grade represented in the blend.

13.4 Multiple caps on liability

If the Company is liable to the Client in relation to an event or a series of related events in respect of which the Company's liability is capped:

- (a) under this Agreement; and
- (b) under one or more other agreements made between the Company and the Client,

then the Company's liability in aggregate under all of the agreements described in paragraphs (a) and (b) above (**Capped Agreements**) is capped at the greatest amount at which liability is capped under any one of the Capped Agreements.

13.5 Mitigation

The Company may, in its discretion, mitigate or satisfy any liability it may have to the Client in respect of downgraded Bulk Wheat (ie Bulk Wheat that does meet the Outturn standard required under this Agreement) by whatever means the Company considers appropriate, including:

- (a) blending (at the Company's expense) a sufficient quantity of other wheat so as to upgrade the Client's Bulk Wheat to meet the Outturn standard; and/or

- (b) substituting (at the Company's expense) other wheat of the same quality and quantity; and/or
- (c) retaining the downgraded Bulk Wheat and providing for the claim as part of the Outturn adjustment under clause 7.13.

14. Insurance and Risk

14.1 Risk

Consistent with clause 9.1, the risk of Accidental Loss or Damage to the Client's Bulk Wheat will, at all times, be borne by the Client.

14.2 Maintenance of insurance

The Client must during the Term maintain an insurance policy covering the common insurable risks of Accidental Loss or Damage to Bulk Wheat at a Port Terminal.

15. Force Majeure

15.1 Definition

For the purpose of this Agreement, a '**Force Majeure Event**' affecting a Party means anything outside that Party's reasonable control including the following events or circumstances (provided they are beyond the Party's reasonable control):

- (a) accident, fire, adverse weather conditions, flood, tidal conditions, earthquake, explosion, or like natural disasters, blockages of ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic, or declarations of a state of emergency;
- (b) strikes, stopworks, lockouts, boycotts or any other form of industrial dispute or labour shortage;
- (c) breakdown, accidental or malicious damage or destruction of any of the Company's Port Terminal Facilities or other Company Facilities;
- (d) failure, disruption or delay in transportation;
- (e) executive or administrative order or act of either general or particular application of any Government or any official purporting to act under the authority of that Government, prohibitions or restrictions by domestic or foreign laws, regulations or policies, quarantine or custom restrictions or prohibitions on export; and
- (f) acts or omissions of any third party (including without limitation Governments, Government agencies, subcontractors or customers).

15.2 Suspension of Obligations

If a Party is wholly or partially precluded from complying in the normal manner required by this Agreement with its obligations under this Agreement by a Force Majeure Event (in this clause 15 called the **Affected Party**), then the Affected Party's obligations to perform in accordance with the terms of this Agreement will be suspended for the duration of the Force Majeure Event. (As per clause 15.6, the payment of money is not an obligation that can be suspended by a Force Majeure Event under this Agreement.)

15.3 Notice

As soon as possible after the Force Majeure Event arises, the Affected Party must notify the other Party of:

- (a) the nature of the Force Majeure Event;
- (b) the cause of the Force Majeure Event;
- (c) which obligations the Affected Party believes it is wholly or partially precluded from complying with as a result of the Force Majeure Event (in this clause 15 called the **Affected Obligations**);
- (d) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations;
- (e) the expected duration of the delay arising as a result of the Force Majeure Event;
- (f) the steps that are being taken to minimise the impact of the Force Majeure Event; and
- (g) the steps which would be taken (subject to the Parties reaching an agreement as to the payment of any additional costs involved) to minimise the impact of the Force Majeure Event.

15.4 Minimisation of Impact

Upon receiving a notice under clause 15.3 the Parties will meet to discuss and agree:

- (a) what action can be taken to minimise the effect of the Force Majeure Event on the performance by the Affected Party of the Affected Obligation;
- (b) whether the Affected Party is able to work around the Force Majeure Event either to prevent the delay in the performance of the Affected Obligations or to minimise the impact of that delay; and
- (c) what modifications or additions to the terms of this Agreement or any other agreements between the Parties (including without limitation any modifications or additions relating to the appointment of any additional costs) are required to give effect to any proposal to minimise the effect of the Force Majeure Event.

15.5 Obligation to Mitigate

The Affected Party must:

- (a) keep the other Party fully informed of its plans to minimise the effect of the Force Majeure Event; and
- (b) subject to reaching agreement concerning any modifications or additions required to give effect to any proposal to minimise the effect of the Force Majeure Event:
 - (i) comply with all reasonable requests made by the other Party relating to the prevention or minimisation of the impact of the Force Majeure Event; and
 - (ii) use all reasonable endeavours to resolve, and minimise the impact of, the Force Majeure Event.

15.6 Payments

An obligation to pay money is never excused by a Force Majeure Event.

15.7 Labour Disputes

The requirement to use all reasonable endeavours to resolve or minimise the impact of the Force Majeure Event will not require either Party to settle any strike, lockout, boycott or other dispute or claim, or any demand by a third party, on the terms contrary to the wishes of that Party.

16. Dispute Resolution

16.1 Disputes

- (a) Subject to clause 16.1(b), aAny Dispute under this Agreement will, unless otherwise expressly agreed to the contrary by both parties, be resolved in accordance with this clause 16 and either party may give to the other party to the Dispute notice in writing ("**Dispute Notice**") specifying the Dispute and requiring it to be dealt with in the manner set out in this clause 16. The Company and Client must act in good faith to seek to resolve any Dispute in accordance with this clause 16.
- (b) This clause 16 does not apply to any dispute under the Port Loading Protocols. Any dispute arising under the Port Loading Protocols is to be dealt with in accordance with the provisions of the Port Loading Protocols.

16.2 Negotiation

Within 5 Business Days of a party giving the other a Dispute Notice, senior representatives from each party will meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

16.3 Mediation

- (a) If the Dispute is not resolved in accordance with clause 16.2 within 5 Business Days of the date the Dispute Notice is received by the recipient, then:
- (i) if the parties agree, they will attempt to resolve the Dispute by mediation pursuant to this clause 16.3; or
 - (ii) if the parties do not wish to resolve the Dispute by mediation, either party may by notice in writing to the other (and without limiting clause 16.4(a)) refer the Dispute to be determined by arbitration under clause 16.4.
- (b) If the parties agree to attempt to resolve the Dispute by mediation, the Dispute will be referred to the chief executive officer of the Client and the Executive Manager Grain Division of the Company (or their respective delegates) who will attempt to resolve the Dispute, including by informal mediation.
- (c) If the Dispute is not resolved within 5 Business Days after being referred to the persons specified in clause 16.3(b) (or such longer period as is agreed between those persons or their delegates), the Dispute will be referred to formal mediation in South Australia.
- (d) A Dispute referred to mediation in accordance with clause 16.3(c) will be mediated by a single mediator appointed by agreement of the parties or, if they fail to agree within 3 Business Days, a mediator appointed by the President of the South Australian Chapter of the Institute of Arbitrators and Mediators of Australia ("**IAMA**") acting on the request of either party.
- (e) Unless the parties agree otherwise:
- (i) the mediation, by either a mediator appointed by the parties or a mediator appointed by the President of the South Australian Chapter of IAMA, will be conducted under the IAMA Mediation Rules (whether or not the mediator is a legal practitioner);
 - (ii) the parties may appoint a person, including a legally qualified person to represent it or assist it in the mediation;
 - (iii) each party will bear their own costs relating to the preparation for and attendance at the mediation;
 - (iv) the costs of the mediator will be borne equally by the parties; and

- (v) the Company and the Client will use reasonable endeavours to ensure that the mediation is completed within 28 Business Days from the date the mediator is appointed, or such longer period as agreed between the parties.

16.4 Referral to arbitration

- (a) Notwithstanding any other provision of this Agreement, a party may, by notice in writing to the other (“**Arbitration Notice**”), refer a Dispute to arbitration in accordance with this clause 16.4 at any time following the issue of a Dispute Notice. The Arbitration Notice must specify:
 - (i) the nature of the Dispute;
 - (ii) the matters in respect of which the party is seeking arbitration; and
 - (iii) the contact details of the person issuing the Dispute Notice.
- (b) If the Dispute referred to in the Arbitration Notice is already the subject of mediation in accordance with clause 16.3, that mediation will cease immediately.
- (c) Any arbitration will be conducted in accordance with clause 16.6.

16.5 Appointment of arbitrator

- (a) The parties must use their best endeavours to agree on an arbitrator within 7 Business Days of the recipient receiving an Arbitration Notice.
- (b) If the parties fail to agree an arbitrator within 7 Business Days of the expiry of the 5 Business Days referred to in clause 16.5(a), or such longer period as may be agreed by the parties, then either party may request the President of IAMA to appoint an arbitrator. The Company will notify the ACCC of the identity of the arbitrator within 2 Business Days of the parties agreeing on the arbitrator or the President of IAMA appointing the arbitrator (as the case requires).

16.6 Arbitration

- (a) Any arbitration will be conducted in Adelaide in accordance with the following procedures:
 - (i) the arbitrator will not be required to proceed with the arbitration unless and until the party that issued the Arbitration Notice has agreed to pay the arbitrator’s and other costs as determined in accordance with clause 16.6(d) and provided any indemnity as required in accordance with clause 16.6(e);
 - (ii) unless the parties to the Dispute agree otherwise, the arbitration will be conducted in private;
 - (iii) a party may appoint a person, including a legally qualified person, to represent it or assist in the arbitration;
 - (iv) the arbitrator must observe the rules of natural justice, but is not bound by technicalities, legal forms or rules of evidence;
 - (v) the arbitrator must act as speedily as a proper consideration of the Dispute allows, having regard to the need to carefully and quickly enquire into and investigate the Dispute and all matters affecting the merits, and fair settlement, of the Dispute;
 - (vi) the arbitrator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to a Dispute, and may require that the cases be presented within those periods;

- (vii) the arbitrator may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument;
 - (viii) the arbitrator will hand down a final determination in writing which includes its reasons for making the determination and findings on material questions of law and fact, including references to evidence on which the findings of fact were based;
 - (ix) unless the parties to the Dispute agree otherwise, any determination by the arbitrator will be confidential; and
 - (x) in deciding a Dispute, the arbitrator must not, without the consent of all parties, make a determination which relates to matters which were not specified in the Arbitration Notice.
- (b) The arbitrator may at any time terminate an arbitration (without making an award) if it thinks that:
 - (i) the notification of the Dispute is vexatious; or
 - (ii) the subject matter of the Dispute is trivial, misconceived or lacking in substance.
 - (c) A determination or direction of the arbitrator will be final and binding, subject to any rights of review by a court of law, and will have effect on and from the date specified by the arbitrator.
 - (d) The arbitrator's costs and the costs of the parties to the arbitration will be borne by the parties in such proportions as the arbitrator determines. Each party may make submissions to the arbitrator on the issue of costs at any time prior to the arbitrator's costs determination.
 - (e) The arbitrator may require the parties to indemnify it from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this clause 16.6, such indemnity excluding circumstances where the conduct of the arbitrator constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
 - (f) The Company will send a copy of any determination made by the arbitrator to the ACCC within 2 Business Days of the determination being made.
 - (g) Subject to this clause 16.6, the *Commercial Arbitration and Industrial Referral Agreements Act 1986 (SA)* will apply to any arbitration undertaken in accordance with this clause 16.6.

16.7 Status quo

During any Dispute resolution process, the pre-dispute status quo will continue. Accordingly:

- (a) each Party will comply with its obligations, and may exercise its rights under this Agreement; and
- (b) the fact that a Party ceases to do anything in Dispute will not be taken to be an admission by that Party that it had breached, or had been in breach of, this Agreement.

17. Termination

17.1 Right to terminate

This Agreement may be terminated by either Party giving to the other at least 3 months prior written notice (“**Notice**”).

17.2 Effect

- (a) Where a Notice is given by the Client, the Notice will not take effect unless and until the Client has:
 - (i) Outturned all Bulk Wheat stored by the Company on behalf of the Client under this Agreement; and
 - (ii) paid all moneys payable by the Client to the Company under this Agreement.
- (b) Where a Notice is given by the Company and, as at that date the Notice is to take effect, the Client has not Outturned all Bulk Wheat stored by the Company on behalf of the Client under this Agreement, then the Company will be entitled to exercise the rights conferred on it by clause 10 of this Agreement.
- (c) Any termination of this Agreement by the Company in accordance with clause 17.1 does not affect the Company's obligation to negotiate the terms of access to Port Terminal Services in accordance with the Access Undertaking.

17.3 By Company

- (a) The Company may terminate this Agreement immediately upon giving written notice in that regard to the Client if an Insolvency Event occurs in respect of the Client.
- (b) If the Client commits a serious or persistent breach or breaches of any terms of this Agreement, provided the Company presents the Client with a written notice specifying the breach or breaches and requires the Client to remedy it within a period of not less than 30 days, then if the Client does not remedy the breach or breaches within the time period stipulated in this clause, the Company may terminate this Agreement at any time by notice in writing to the Client.

17.4 No prejudice

Termination of this Agreement under this clause 17 is without prejudice to the rights of either Party that have accrued prior to the date of termination.

18. Indemnity

18.1 By Client

The Client will indemnify the Company and keep the Company indemnified from and against all actions, claims, demands, proceedings, losses, costs and expenses suffered or incurred by the Company arising directly or indirectly out of or in relation to:

- (a) any breach, non-observance or non-performance by the Client of any of its obligations under this Agreement;
- (b) any claim by a third party relating to the Bulk Wheat;
- (c) any claim by a third party relating to the operation of the Purchase Options or the involvement of the Company in relation to the Purchase Options, including claims arising out of the failure of the Client to provide information or the inaccuracy of information supplied by the Client in relation to the Purchase Options; or
- (d) any claim in relation to the admixture of Bulk Wheat with small quantities of any other commodity loaded by the Company at any one of its Port Terminals in circumstances where the Client has acknowledged that the Company will load non-grain commodities at its Port Terminals. The Client acknowledges that, in these circumstances, the potential admixture of Bulk Wheat with small quantities of other commodities is a risk inherent in using Port Terminals which are also used to load non-grain commodities.

18.2 Application

Clause 18.1 will not apply where and to the extent that explicit written service guarantees have been given by the Company to the Client, or the losses or damages arose as a direct result of any negligence on the part of the Company or any wilful or deliberate failure by the Company to comply with its obligations under this Agreement.

19. Notices

19.1 How to Give a Notice

A notice, consent or other communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the Party giving it;
- (b) addressed to the Party to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that Party's address;
 - (ii) sent by fax to that Party's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) by e-mail addressed to the person for the time being occupying the position with the receiving Party specified in clause 19.3.

19.2 When a Notice is Given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by mail, on the third Business Day after posting;
- (b) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day, on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day, on the next Business Day; and
- (c) if it is sent by e-mail, on the day of receipt by the recipient and, if the recipient is absent from his or her usual place of work for more than one day after the date of transmission, the day that the recipient returns to work.

19.3 Address for Notices

A Party's address and fax number are those set out below, or as amended at any time by notice given in accordance with this clause 19:

Company

Address: Grain House 124 –130 South Terrace, Adelaide, SA 5000

Postal: GPO Box 1169, Adelaide, SA 5001

Fax Number: (08) 8212 1723

Attention: Urgent: General Manager Commercial and Compliance

Client

Address: _____
Postal: _____
Fax Number: _____
Attention: _____

20. Confidentiality

20.1 Treatment of Confidential Information

- (a) subject to clause 20.1(b), if a Party provides Confidential Information to another Party either:
- (i) during the course of negotiations in relation to this Agreement; or
 - (ii) for the purpose of resolving any Dispute,
- the recipient of that Confidential Information will treat that Confidential Information as confidential, the property of the provider of that information, and will use that information solely for the purpose of negotiating this Agreement or resolving any Dispute in accordance with this Agreement.
- (b) A Party is permitted to disclose Confidential Information:
- (i) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the Confidential Information to any third party;
 - (ii) to any mediator or arbitrator appointed in accordance with clause 16 of this Agreement for the purposes of that mediation or arbitration;
 - (iii) to the ACCC to the extent necessary for a party to comply with any written request by the ACCC (subject to the ACCC's standard confidentiality protocols and procedures); or
 - (iv) if and to the extent required by law, provided that it first consults with the party that provided the Confidential Information in relation to the manner and timing of that disclosure.

20.2 Dispute resolution

- (a) If Confidential Information is provided to a mediator or arbitrator for the purpose of assisting in the resolution of any Dispute in accordance with clause 16, the mediator or arbitrator must (and the terms of appointment of the mediator or arbitrator must require them to) take all reasonable steps to protect the confidentiality of information that any party to the Dispute has identified as confidential or commercially sensitive.
- (b) For the purpose of clause 20.2, any arbitrator appointed in accordance with clause 16 may require the parties to a Dispute to comply with rules and orders aimed at protecting the confidentiality of information provided by the parties, including:
- (i) requiring each party and their advisers to give confidentiality undertakings to each other party; and
 - (ii) limiting access to Confidential Information to specified individuals subject to confidentiality undertakings provided by those individuals.

- (c) Any arbitrator appointed in accordance with clause 16 may make confidential and non-confidential versions of its determination and limit access to the confidential versions to specific individuals.

21. No endorsement

21.1 Prohibition

The Client must not, without the prior written consent of the Company:

- (a) make any reference, comment or statement either written or oral, that could be construed as an endorsement by the Company of the Client or of the Client's products or services; or
- (b) refer to the Company or the services provided by the Company to the Client in any publication, promotional or advertising material.

21.2 Acknowledgements

The Client acknowledges that:

- (a) the Company will treat the obligation of the Client under clause 21.1 as a serious undertaking; and
- (b) it is aware that any breach of this serious undertaking may result in the Company suffering damage.

22. No assignment

The Client may not assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement without the prior written consent of the Company which, if given, may be given on such conditions as the Company considers to be appropriate.

23. Waiver

23.1 No impact

The failure by either Party at any time to exercise or enforce any of its powers, remedies or rights under this Agreement will not constitute a waiver of those powers, remedies or rights or affect that Party's rights to exercise or enforce those powers, remedies or rights at any time.

23.2 Further exercise

Any single or partial exercise of any power, remedy or right does not preclude any other or further exercise or partial exercise of any other power, remedy or right under this Agreement.

24. No Partnership

24.1 Relationship

This Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the Parties.

24.2 No liability

No Party is liable for an act or omission of another Party, except to the extent set out in this Agreement.

25. Governing Law and Jurisdiction

25.1 Governing law

This Agreement and the rights and liabilities of the Parties under this Agreement will be governed by the law of South Australia.

25.2 Jurisdiction

The courts of South Australia will possess territorial jurisdiction to hear and determine any cause of action arising under this Agreement.

26. Sub-Contracting

The Company may in its sole and absolute discretion:

- (a) sub-contract the provision of the whole or any part of the Port Terminal Services; or
- (b) otherwise engage any person to undertake the provision of any part of the Port Terminal Services on the Company's behalf,

without notice to the Client.

27. Severance

Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

28. Entire agreement, etc

28.1 Entire agreement

This Agreement constitutes the entire Agreement between the Parties.

28.2 No representations, etc

Each Party warrants and covenants to the other that there are no written or oral statements, representations, undertakings, covenants or agreements between the Parties, express or implied, except as provided for in this Agreement.

28.3 Variations

~~(a) Subject to clause 28.3(b),~~ This Agreement may only be amended or varied by agreement in writing signed by both Parties expressly amending this Agreement and unless the context otherwise requires, a reference to this Agreement will include a reference to this Agreement as amended or varied from time to time.

~~(b) The Company may vary this Agreement at any time in accordance with clauses 5.6(e) and 5.6(g) of the Access Undertaking to make changes associated with implementing, maintaining and giving effect to an auction, nomination and booking system for the allocation of Port Terminal Capacity, and to implement charges and a charging mechanism to apply in relation to the auction system.~~

28.4 Guidelines, etc

Notwithstanding that the Company may from time to time produce operational guidelines to assist clients, nothing in those guidelines will be deemed to impliedly or expressly amend anything in this Agreement and if there is any inconsistency between any guidelines and a term of this Agreement, the terms of this Agreement will prevail.

Signing page

EXECUTED as an agreement.

Signed for and on behalf of
Viterra Operations Limited by its authorised
representative in the presence of:

Witness ←

Authorised Representative ←

Name of witness (print)

Name of authorised representative (print)

Executed by [**Client**] ABN [**xx xxx xxx xxx**]
pursuant to section 127 of the *Corporations Act*
2001

Signature of director ←

Signature of director/company secretary
(Please delete as applicable) ←

Name of director (print)

Name of director/company secretary (print)

Attachment 3

The Auction Participation Deed and Tradeslot Registered Bidder Agreement

Auction Participation Deed

Dated

Viterra Operations Ltd (ABN 88 007 556 256) ("Company")
[insert Client name] (ABN [insert]) ("Client")

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General terms	2
<hr/>	
1	Definitions and Interpretation
1.1	Definitions
1.2	Interpretation
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2	Term
2.1	Term
2.2	Termination events
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3	Terms of Auction Participation
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4	Limitation of liability and indemnity
4.1	Limitation of liability
4.2	Indemnity
4.3	Exclusion and indemnity for benefit of the Company's officers and employees
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5	Notices
5.1	Form
5.2	Delivery
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6	General
6.1	Assignment
6.2	Severability
6.3	Entire agreement
6.4	No representations or warranties
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Signing page	12

Auction Participation Deed

Details

Parties	Company and Client	
Company	Name	Viterra Operations Ltd
	ABN	88 007 556 256
	Address	Grain House, 124-130 South Terrace, Adelaide, SA 5000
	Telephone	(08) 8238 5217
	Fax	(08) 8212 1723
	Attention	General Manager, Commercial and Compliance
Client	Name	
	ABN/ACN/ARBN	
	Address	
	Telephone	
	Fax	
	Attention	
Recitals	A	The Company is: (i) the operator of the Port Terminal Facilities; and (ii) the provider of services involving the handling of Grain.
	B	The Company's primary method of allocating Capacity at the Port Terminal Facilities is through the use of an auction system.
	C	This deed sets out the terms on which the Client and the Company agree that the Client may participate in an Auction.
Governing law	South Australia	
Date of deed	See Signing page	

Auction Participation Deed

General terms

1 Definitions and Interpretation

1.1 Definitions

In this deed:

ACCC means the Australian Competition and Consumer Commission.

Access Undertaking means the undertaking provided by the Company to the ACCC pursuant to the WEMA and Part IIIA of the CCA and accepted by the ACCC on 28 September 2011. The Access Undertaking is available on the ACCC's website at www.accc.gov.au.

Auction means the sale by auction of Capacity.

Auction Provider means Tradeslot Pty Ltd (ACN 092 784 846) or such other person nominated by the Company from time to time.

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 Rules means the rules of that name set out in Schedule 1 of the Port Loading Protocols. The current version of the Port Loading Protocols can be found on the Company's website www.viterra.com.au.

Bulk Wheat has the meaning given in the Access Undertaking.

Business Day means a day other than a Saturday, Sunday or public holiday in Adelaide, South Australia.

Capacity means the capacity that is made available by the Company 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).

Commencement Date means the date of the Business Day immediately before the day on which the Client first participates in an Auction.

Expiry Date means 30 September 2014.

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.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this deed); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this deed reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Loss means any claim, damage, loss, liability, cost or expense (including legal costs).

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

Port Loading Protocols means the protocols of that name published by the Company from time to time and for the avoidance of doubt includes the Auction Rules. The current version of these can be found on the Company's website www.viterra.com.au.

Port Terminal means, depending on the context, the Company's 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 to that term in the Access Undertaking.

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

Rebate per Tonne has the meaning given to that term in Schedule 2 of the Port Loading Protocols.

S&H Services means services including receipt, storage, outturn, transport and other services in relation to Grain that is not Bulk Wheat.

Services means:

- (a) Port Terminal Services; or
- (b) S&H Services.

Services Agreement means the terms on which the Company agrees to provide and the Client agrees to purchase, Port Terminal Services or S&H Services, as applicable.

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 has the meaning given in the Access Undertaking.

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

Year has the meaning given in the Port Loading Protocols.

WEMA means the Wheat Export Marketing Act 2008 (Cth).

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause is a reference to a clause of this deed.
- (f) A reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced.

- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (h) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to dollars and \$ is to Australian currency.
- (m) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (n) A reference to time is a reference to the local time in Adelaide, South Australia (unless otherwise stated).
- (o) Where any matter or thing is required to be attended to or done on a day which is not a Business Day, it will be attended to or done on the next Business Day.
- (p) Measurements of physical quantities are in Australian legal units of measurement within the meaning of the *National Measurement Act 1960 (Cth)*.

2 Term

2.1 Term

This deed commences on the Commencement Date and continues, unless terminated earlier in accordance with clause 2.2, until the Expiry Date.

2.2 Termination events

This deed may be terminated by the Company immediately by written notice to the Client where:

- (a) the Client becomes Insolvent; or
- (b) the Client commits a breach of this deed; and
 - (i) the breach is material and not capable of being cured; or

- (ii) the breach is capable of being cured and the defaulting party fails to cure the breach within 5 Business Days of being notified in writing of the breach by the party giving the notice.

2.3 Notice

A notice given under clause 2.2 must specify the event or events in relation to which the notice is given.

3 Terms of Auction Participation

- (a) The Client agrees that if it elects to participate in an Auction, that it will be bound by and will comply with:
 - (i) the terms of this deed;
 - (ii) the Port Loading Protocols (including the Auction Rules);
 - (iii) the Auction Provider Bidder Agreement; and
 - (iv) the Services Agreement which applies to the Client at the time the Company provides the Client with the relevant Services.
- (b) If at the time the Client participates in an Auction or at the time any Services are provided by the Company the Client has not executed a Services Agreement, the Client acknowledges and agrees that:
 - (i) the Storage & Handling Agreement, where S&H Services are being provided; or
 - (ii) the Standard Terms, where Port Terminal Services are being provided,

will apply to any Services or Port Terminal Services, as applicable, provided by the Company, and the Client agrees to comply with those terms.

4 Limitation of liability and indemnity

4.1 Limitation of liability

- (a) Subject to clause 4.1(b) and clause 4.3 and to the maximum extent permissible by law, the Client and Company agree that the Company will not be liable to the Client or any other person for any Loss, including but not limited to any direct, indirect or consequential Loss, arising in any way out of, or in any way connected with, the participation by the Client in an Auction including, without limiting the foregoing, any Loss arising from:
 - (i) failure of the Online Auction System;
 - (ii) any system malfunctions, systems failure, error in programming or error in input data in relation to the Online Auction System; or

- (iii) any loss or delay in the receipt by the Company of any notification (whether electronic or otherwise) from the Client, except to the extent that such Loss arises as a result of:
 - (iv) a breach of this Deed by the Company;
 - (v) any negligent acts or omissions by the Company; or
 - (vi) any unlawful acts by the Company.
- (b) Notwithstanding any other provision of this deed, the Client agrees that the Company will not in any circumstance be liable to the Client:
 - (i) for any Loss which neither arises naturally from, nor is in the reasonable contemplation of, the Company or the Client as a consequence of an action by the Company; or
 - (ii) for any loss of profit, loss of business opportunity or reputation; or
 - (iii) for any Loss which arises as a result of any act or omission of the Auction Provider.

4.2 Online Auction System - Rebate per Tonne

- (a) The Client acknowledges and agrees that:
 - (i) during an Auction, the Company may display on the Online Auction System an indicative estimated snapshot of the Rebate per Tonne for the relevant Slot as at the end of the previous round (“**Indicative Current RpT**”);
 - (ii) the Indicative Current RpT is not an estimate of the Rebate per Tonne that may apply (and will be calculated) in accordance with the Port Loading Protocols, and provides only an indicative estimated snapshot of the Rebate per Tonne for the relevant Slot based on bidding activity as at the end of the previous round (if any);
 - (iii) the Indicative Current RpT may vary significantly from the actual Rebate per Tonne that is calculated in accordance with the Port Loading Protocols, as the Rebate per Tonne calculated in accordance with the Port Loading Protocols will depend on a range of factors, including subsequent bidding activity in respect of all Slots in any subsequent rounds and in any subsequent Auctions in respect of the relevant Year;
 - (iv) having regard to the matters set out in clauses 4.2(a)(ii) and (iii) it will not (and does not) rely on the Indicative Current RpT as providing any estimate of the likely actual Rebate per Tonne.
- (b) The Client acknowledges and agrees that, notwithstanding any other provision of this deed, or any other agreement, the Company will not be liable for any Loss (including but not limited to any direct, indirect or consequential Loss) arising in any way out of or in connection with:

- (i) the Company displaying an Indicative Current RpT on the Online Auction System;
 - (ii) any difference between the Indicative Current RpT displayed by the Company at any point in time and the Rebate per Tonne that is ultimately calculated in accordance with the Port Loading Protocols; and
 - (iii) error in the calculation of the Indicative Current RpT at any point in time.
- (c) The Client releases the Company from all claims, actions or proceedings arising, or which may in the future arise, in any way out of, or in connection with, any matter referred to in this clause 4.2
- (d) The Client agrees:
- (i) not to commence or maintain any claim, action or proceeding against the Company; and
 - (ii) to ensure that any person with whom it is associated in any way does not commence or maintain any claim, action or proceeding against the Company,
- in connection with any matter referred to in this clause 4.2
- (e) The Client agrees and acknowledges that the Company is entitled to enforce this clause 4.2 directly against the Client and may raise and plead this clause 4.2 as an absolute bar to any claim, action or proceedings commenced by the Client in relation to, or arising in any way out of or in connection with, any matter referred to in this clause 4.2.

4.3 Exclusion of liability

- (a) The Company excludes under clause 4.1(a), clause 4.1(b) and clause 4.2 all conditions and warranties implied by statute, general law or custom except any implied condition or warranty the exclusion or limitation of which would contravene any statute (including the Australian Consumer Law) or cause any part of clause 4.1(a), clause 4.1(b) or clause 4.2 to be void (“**Non-Excludable Condition**”).
- (b) The liability of the Company under any Non-Excludable Condition may be limited in the discretion of the Company respectively to:
- (i) in the case of services, the supply of the relevant services again or payment of the costs of having the relevant services supplied again; and
 - (ii) in the case of goods, the repair or replacement of those goods or the payment of the cost of having the goods repaired or replaced.

4.4 Indemnity

The Client indemnifies the Company against all Loss of the Company resulting directly or indirectly from:

- (a) any breach by the Client of the Auction Rules, the Port Loading Protocols, the Auction Provider Bidder Agreement or this deed;
- (b) any claim, action or proceeding commenced by the Client in relation to the matters set out in clause 4.2, including (without limitation) any Loss of the Company resulting directly or indirectly from a breach of clause 4.2(d); or
- (c) any act or omission of the Client in connection with the Auction.

4.5 Exclusion and indemnity for benefit of the Company's officers and employees

- (a) Where clauses 4.1 and 4.2 exclude or limit the liability of the Company, release the Company from liability or provide for an indemnity in favour of the Company, then to the extent permitted by law, that exclusion, limitation, release or indemnity (as applicable) extends to every officer, employee, agent, delegate, person acting for or on behalf of the Company or contractor of the Company.
- (b) The benefit of any limitation, exclusion, release or indemnity in favour of any person other than the Company under clauses 4.1 or 4.2 is held by the Company for the benefit of those other persons and the Company may enforce that benefit on their behalf.

5 Notices

5.1 Form

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by the sender (if an individual) or an authorised officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

5.2 Delivery

They must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details; or
- (c) sent by fax to the fax number set out or referred to in the Details.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

5.3 When effective

They take effect from the time they are taken to be received unless a later time is specified.

5.4 Receipt - post

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

5.5 Receipt - fax

If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

5.6 Receipt - general

Despite clauses 5.4 and 5.5, if they are received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

6 General

6.1 Assignment

The Client may not assign or otherwise deal with its rights under this deed or allow any interest in them to arise or be varied in each case, without the consent of the Company.

6.2 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

6.3 Entire agreement

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

6.4 No representations or warranties

Each party acknowledges that in entering into this deed it has not relied on any representations or warranties about its subject matter except as expressly provided by the written terms of this deed.

6.5 Variation and waiver

A provision of this deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

6.6 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

6.7 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document and the date on which the last counterpart is executed will be the date of the deed.

6.8 Governing law

This deed is governed by the law of the place set out in the Details.

6.9 Jurisdiction

- (a) Each party submits to the non-exclusive jurisdiction of the courts of the place set out in the Details and courts of appeal from them.
- (b) Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

EXECUTED as a deed

Auction Participation Deed

Signing page

DATED: _____

**SIGNED, SEALED AND
DELIVERED** by)
as attorney for **Viterra Operations Ltd**)
ABN 88 007 556 256 under power of)
attorney dated _____ in the)
presence of:)

.....)
Signature of witness)
.....)
Name of witness (block letters))

.....
By executing this deed the attorney
states that the attorney has received no
notice of revocation of the power of
attorney

EXECUTED by [**Insert Client name**
and ABN] in accordance with section)
127(1) of the Corporations Act 2001)
(Cwlth) by authority of its directors:¹)

.....)
Signature of director)
.....)
Name of director (block letters))

.....
Signature of director/company
secretary*
*delete whichever is not applicable
.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

¹ Note: as this agreement is executed by a deed, Client must sign under section 127 or POA.

Tradeslot Registered Bidder Agreement for Online Auctions

Date

Parties

- | | |
|----|---|
| 1. | Tradeslot Pty Ltd incorporated in Melbourne, Victoria
(ABN 69 092 784 846) (Tradeslot) |
| 2. | [_____ (ABN: _____)] (<i>You, Your</i>)
<div style="text-align: center; font-size: small;">Bidder Company Name</div> |

It is agreed as follows.

1. Background

The following Tradeslot Registered Bidder Agreement (**Agreement**) applies to You as a user of the Service.

1.1 Definitions

The following definitions apply unless the context requires otherwise:

Auction Rules means those rules set out in Schedule 1 of the Registered Seller's Port Loading Protocols as varied from time to time.

Authorised User means a person under Your control that has been issued with a User Code and Password by Tradeslot, for the purpose of accessing the Service. The maximum number of Authorised Users is specified in Part B of Schedule 1.

Commencement Date means the date specified as such in Part B of Schedule 1.

Lot Specification means a unique specification of goods that a Registered Seller wishes to sell via auction on the Shipping Capacity Auctions website.

Online Auction means each auction conducted in accordance with the Auction Rules and this Agreement

Password means the phrase issued to Your Authorised Users by Tradeslot on acceptance of Your Registration Form.

Premium Increment, Auction Fee, Bidder are defined in the Auction Rules.

Registered Seller means Viterra Operations Ltd, 124-130 South Terrace, Adelaide SA 5000.

Registration Form means a *Tradeslot Registered Bidder Agreement* completed by You.

Service means access to and use of the Shipping Capacity Auction website in accordance with this Agreement and the Auction Rules.

Shipping Capacity Auctions website means the website at www.shippingcapacity.com.

Term means the initial term of Agreement as specified in Part B of Schedule 1 and includes any subsequent extensions made to the term.

User Code means the code issued to Your Authorised Users by Tradeslot on acceptance of Your Registration Form.

Viterra Operations Ltd (Viterra) website means the website at <http://www.viterra.com.au/>

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, body corporate, partnership, unincorporated body or other entity includes any of them.
- (e) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (f) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible form but excludes any communication using email.
- (g) A reference to dollars and \$ is to Australian currency.
- (h) A reference to a *year* or a *month* is to a calendar year or month respectively
- (i) The Schedules form part of this Agreement. If there is any inconsistency between the provisions of a Schedule, then the provisions of the Schedule will prevail to the extent of the inconsistency and the provisions of this Agreement must be construed accordingly.

2. Agreement

2.1 Services and Term

Tradeslot agrees to provide You with the Service from the Commencement Date, in accordance with this Agreement.

3. Auction Rules

The Registered Seller has made Auction Rules regarding the conduct of Online Auctions and the Service and You agree to comply with such Auction Rules. The Registered Seller may make, amend, alter and replace such rules in accordance with the Port Loading Protocols.

4. Your Specific Obligations

4.1 You agree:

- (a) to obtain access to the Shipping Capacity Auction website at Your own expense and using Your own equipment;

- (b) at all times to use the Service and Shipping Capacity Auction website responsibly and in accordance with all applicable laws, by-laws and regulations;
- (c) not to misuse the Service or Shipping Capacity Auction website in any way, including to perform or assist anyone in performing any unlawful act;
- (d) to only access the Service and the Shipping Capacity Auction website by using the User Codes and Passwords issued to Your Authorised Users and not to attempt to access the Services or Shipping Capacity Auction website using another person's User Code and Password;
- (e) to pay all taxes, duties, levies, stamp duty and government charges arising out of or in relation to Your use of the Service or any transaction entered into by You as a result of the use of the Service.
- (f) not to interfere with, manipulate, damage or disrupt any networks connected or used in relation to the Service;
- (g) to at all times ensure that Tradeslot has up-to-date information in relation to You and Your use of the Service;
- (h) not to make any statement which has the effect of or implies that Tradeslot certifies or endorses any product, service or activity of any person, or any information or material referred to or transmitted through the use of the Service;
- (i) that You will not, without the prior written consent of Tradeslot, resell, assign or transfer, or attempt to resell, assign or transfer Your rights or obligations under this Agreement;
- (j) You will not (or enable any person to) load a virus, Trojan Horse, time bomb, worm, cancelbot, or other computer software that may cause the Shipping Capacity Auction website to fail, overload or perform in a manner inconsistent with the functional operation of the Service.
- (k) to at all times accept and adhere to the Auction Rules;
- (l) to the full extent permitted by law, that You use the Service at Your own risk.

4.2 You acknowledge that Tradeslot:

- (a) may provide information relating to Your use of the Service and Shipping Capacity Auction website, only if that information does not disclose Your personal details (unless You have given Tradeslot permission in writing to do so);
- (b) does not make any representations about any goods or services You may bid for using the Services;
- (c) is not responsible for any losses, damages, actions, claims, costs and expenses You may suffer through Your failure to maintain security in relation to Your Passwords and User Codes or through unauthorised use of Your Passwords or User Codes;
- (d) provides the Service on an 'as is' and 'as available' basis and makes no warranties or representations of any kind;
- (e) to the maximum extent permitted by law, expressly excludes all representations and warranties (express, implied or statutory) including the warranties of merchantability, fitness, quality or suitability for a particular purpose, which may

relate in any way to the supply of the Service or otherwise in connection to this Agreement;

- (f) takes no responsibility for ensuring that:
 - i. Lot Specifications have been correctly specified;
 - ii. You are invited to be a Bidder to respond to the Registered Seller's Lot specifications;
 - iii. The Registered Seller set a reasonable Auction Fee, or Premium Increment, in relation to each Lot specification listed;
 - iv. You are allowed sufficient time for registering and bidding for each Lot Specification listed on the Shipping Capacity Auction website; and
 - v. You have access to the Shipping Capacity Auction website during an Online Auction.

5. Network Services and Availability

- (a) Tradeslot is neither responsible nor liable for any failure to provide the Service as a result of failure beyond its reasonable control. You acknowledge that access to the Service may be disrupted by failures or disruptions to telecommunications networks and by routine maintenance or upgrades conducted by Tradeslot or by third parties.
- (b) Tradeslot will endeavour not to perform any routine maintenance or upgrades during an Online Auction.
- (c) Where an Online Auction is unexpectedly disrupted, Tradeslot will respond to that disruption in accordance with the Auction Rules.
- (d) You must notify Tradeslot of any faults or problems with the Service, immediately upon becoming aware of them.

6. Password and Security

6.1 You are Responsible

Tradeslot will issue a User Code and Password for each of Your Authorised Users. You must, and must ensure that Your Authorised Users will, keep Your User Codes and Passwords secure and confidential.

6.2 Use of User Code and Password

- (a) You acknowledge that Tradeslot can assume that any information or electronic transmission submitted to the Service listed under Your User Codes and using Your Passwords originates from You, and;
- (b) You release and discharge Tradeslot in respect of any losses, damages, actions, claims, costs and expenses suffered or incurred by You as a result or otherwise in connection with the use of Your User Codes and Passwords.

6.3 Notification of Unauthorised Use

You must immediately notify Tradeslot upon becoming aware of any unauthorised use of a User Code or if You believe a User Code or Password has become compromised.

6.4 Replacement Password and Account

On the loss or theft of a User Code or Password (and if You immediately notify Tradeslot of such loss or theft), Tradeslot agrees to issue Your Authorised User with a new User Code and/or Password, as the case may be.

6.5 Audit of Authorised Users

You must ensure that the number of Authorised Users does not exceed the maximum specified in Part B of Schedule 1. Tradeslot reserves the right to take all reasonable steps to ensure this obligation is complied with.

7. Confidentiality and Security

- (a) Each of Tradeslot and You agrees to take precautions not less than those employed to protect its own confidential information and proprietary information, to protect the confidential information and proprietary information of the other party from disclosure.
- (b) You acknowledge that although Tradeslot will take all reasonable precautions to protect the security of the Service, the Service may involve the transmission of information over data networks that may not be secure. Accordingly, You agree that Tradeslot will not be liable for any interception by a third party of a transmission, or for any damage caused in connection with a transmission beyond its reasonable control.

8. Intellectual Property

8.1 Rights in the Shipping Capacity Auction website

You acknowledge and agree that all rights (including intellectual property rights) in the Shipping Capacity Auction website and the contents of that site are and will remain owned by Tradeslot, the Registered Seller or its licensors.

8.2 No licence

Nothing in this Agreement will be construed as conferring upon You any licence or other rights to the intellectual property or other proprietary rights of Tradeslot, the Registered Seller, their respective affiliates or any other third party.

8.3 No reverse engineering

You must not copy, modify, merge, create a derivative work of, reverse engineer, decompile, reverse assemble the whole or any part of the Shipping Capacity Auction website or otherwise attempt to obtain the algorithms by which the Shipping Capacity Auction website performs its functions.

8.4 Other intellectual property rights

You acknowledge that Tradeslot and/or the Registered Seller owns or has exclusive rights to the Tradeslot trademarks and copyright, including the Shipping Capacity Auction website, the system design and the system 'look and feel'. Unless specified in this Agreement, You have no right to use or do any act (or allow any person to do any act) inconsistent with Tradeslot's ownership and rights in such trademarks and copyrights.

9. Upgrades and Support

- (a) If You notify Tradeslot of any:
 - (i) difficulties You are having with the Service – Tradeslot must endeavour to notify You of an appropriate method of use (by telephone, fax or email as Tradeslot considers appropriate) as soon as reasonably practicable; or
 - (ii) defect in the Service – Tradeslot must endeavour to correct that defect as soon as reasonably practicable.
- (b) Apart from the services identified in clause 9(a), Tradeslot is not obliged to provide any other support or maintenance to You, unless otherwise agreed in writing.

10. Your Warranties

You warrant to Tradeslot that:

- (a) to the best of Your knowledge all information contained in the Tradeslot Registration Form is true, accurate and complete and that Tradeslot may rely on this information;
- (b) other than contained in this Agreement and the Auction Rules, You have not relied on any representations made by Tradeslot or any other party in relation to the Service.

11. Limitation of Liability and Indemnity

11.1 Limitation of liability

- (a) To the extent that warranties implied by law in relation to the supply of the Service by Tradeslot to You cannot be excluded, Tradeslot's liability for any loss or liability arising out of this Agreement, or the supply of the Service, shall be limited to (at Tradeslot's discretion) the supply of the Service again or the cost of having the Service supplied again.
- (b) Under no circumstances will Tradeslot be liable to You for any indirect, incidental or consequential damages, any damages for loss of profits, goodwill or anticipated savings, or any damages for other intangible losses even if they may reasonably be supposed to have been in the contemplation of the parties and whether under contract, tort, equity, statute or otherwise however occasioned (including due to negligence) arising out of or otherwise in connection with this Agreement. Tradeslot's aggregate liability for loss and damage not excluded and otherwise in connection with this Agreement (including for Tradeslot's negligence) is limited to **[\$100]**.
- (c) Tradeslot's liability under this Agreement shall be reduced proportionately to the extent Your acts or omissions contributed directly or indirectly to the loss and damage or to the extent Tradeslot's liability was caused directly or indirectly by any failure by You to comply with Your obligations under this Agreement.

11.2 Indemnity

You release and indemnify Tradeslot and its related corporations from and against all losses, damages, actions, claims, costs and expenses suffered or incurred by Tradeslot or its related corporations as a result of or otherwise in connection with Your use of the Service, including any authorised or unauthorised use of Your User Code or Password.

12. Termination

- (a) Either Tradeslot or You may terminate this Agreement immediately by notice in writing to the other party, if that party:-
 - (i) commits a breach of this Agreement (unless the breach is capable of remedy, in which case if the party in breach fails to remedy the breach within 14 days after being required in writing to do so); or
 - (ii) enters bankruptcy, liquidation or administration, has a receiver or other type of controller appointed or enters a composition or arrangement with its creditors, or becomes or is deemed to become insolvent.
- (c) Upon any termination of this Agreement, You:
 - (i) will no longer be entitled to use the Service (and will not attempt to do so); and
 - (ii) will have Your User Codes and Passwords immediately revoked;
- (d) Termination of this Agreement does not affect any accrued rights or remedies of either You or Tradeslot.

13. Relationship between Parties

Nothing in this Agreement constitutes Tradeslot as Your partner, agent or employee or of any other persons, including any Registered Seller. Tradeslot provides a forum for parties to meet for the purposes of entering into contracts with each other for the purchase and supply of goods and services. Nothing in this Agreement grants You the authority or power to bind, contract in the name of, or create a liability against Tradeslot.

14. Waiver

If You breach any of the terms and conditions of this Agreement, Tradeslot's failure to pursue legal action or to enforce any remedy against You will not constitute a waiver of Tradeslot's legal rights. Any waiver of any provision of this Agreement will only be effective if it is in writing and signed by Tradeslot or an agent or representative of Tradeslot.

15. Governing law and jurisdiction

Unless expressly stated to the contrary, the laws of Victoria, Australia govern this Agreement. You consent to the non-exclusive jurisdiction of Victorian Courts regarding any disputes in connection with this Agreement.

16. Notice

Any notice or other communication given or made under this Agreement must be in writing, signed by the sender and delivered to the intended recipient at the relevant address specified in Part A of Schedule 1.

17. Amendment

No amendment or variation of or to this Agreement is valid or binding on a party unless made in writing and executed by both You and Tradeslot.

EXECUTED as an agreement.

Signed for and on behalf of **Tradeslot Pty Ltd** by its authorised officer in the presence of:

Signature

Print Name

Witness

Print Name

Signed for and on behalf of _____ by its duly authorised officer in the presence of:

Authorised Officer

Print Name

Witness

Print Name

Schedule 1

A. Contact Details

Your details

1. Name:
2. ACN/ABN:
3. Address:
4. Contact person:
5. Telephone:
6. Fax:
7. Email:

Tradeslot details

1. Name: **Tradeslot Pty Ltd**
2. ACN/ABN: **ABN 69 092 784 846**
3. Address: Suite 6.01, 365 Little Collins Street
Melbourne, VIC 3000
Australia
4. Contact person: Madhuri Dagar
5. Telephone: + 61 3 9016 3436
6. Email: auctionmanager@tradeslot.com

B. Commencement Date & Authorised Users

Commencement Date: / /2012 (dd/mm/2012)

Term: From the Commencement date until 30 September 2014

Number of Authorised Users: up to 5