



## Viterra Operations Limited Port Loading Protocols

### 1 Introduction

- 1.1 These Viterra Operations Limited Port Loading Protocols (the “**Protocols**”) provide information in relation to the pathway for the export of Grain commodities out of Viterra’s Port Terminals and set out the processes and procedures which Viterra will apply to order and manage vessels for loading. In these Protocols, “Viterra” means Viterra Operations Limited and includes associated entities, related bodies corporate and where applicable, their successors and permitted assigns.
- 1.2 These Protocols apply to all Grain commodities exported from Viterra’s Port Terminals. In the case of Bulk Wheat, these Protocols also form part of the Access Undertaking provided by Viterra to the Australian Competition & Consumer Commission.
- 1.3 These Protocols apply equally to all Clients, including Viterra’s Trading Division.
- 1.4 In order to become a client of Viterra, an exporter (the “**Client**”) must first enter into a Port Terminal Services Agreement and/or a Storage & Handling Agreement (“**Handling Agreements**”) with Viterra.
- 1.5 Any terms not otherwise defined in these Protocols will have the same meaning as defined in the Handling Agreements.

### 2 Slot Booking Process

- 2.1 In order to establish a load date and Terminal Services Priority for a vessel in accordance with these Protocols, the Client must book a Slot on Viterra’s Shipping Stem.
- 2.2 The Client can book a Slot on the Shipping Stem for either a named or TBN vessel by submitting Viterra’s electronic booking form (“**Booking Form**”) with all mandatory fields completed and otherwise in compliance with Table A.
  - 2.2.1 The Booking Form may be found at [www.ezigrain.com.au](http://www.ezigrain.com.au) (“**Ezigrain Website**”).
  - 2.2.2 Clients will receive an individual Client username and password to access the Booking Form online. Clients can obtain a username and password by contacting [Customerservices.aus@viterra.com](mailto:Customerservices.aus@viterra.com).
  - 2.2.3 Viterra will provide a PDF of the Booking Form on its website ([www.viterra.com.au](http://www.viterra.com.au)). If, for any reason, the Client is unable to access the Ezigrain Website to submit the Booking Form electronically, a completed Booking Form must be emailed to Viterra at [vessel\\_nominations.aus@viterra.com](mailto:vessel_nominations.aus@viterra.com). Clients must then submit the Booking Form electronically through the Ezigrain Website when online access becomes available.

The Booking Form will be taken to have been submitted when it is received at vessel\_nominations.aus@viterra.com.

- 2.3 Following receipt of a completed Booking Form, Viterra will place the Client's booking in "Pending" status on the Shipping Stem when the Shipping Stem is next updated. Please note that "Pending" status does not mean that the booking is accepted.
- 2.4 Once the Client's booking is accepted by Viterra (refer clause 3), the Shipping Stem will be amended at the next update to reflect the acceptance.
- 2.5 The Shipping Stem is updated each business day.
- 2.6 Bookings accepted by Viterra are allocated personally to the Client and are not transferable.

### **3 Acceptance of Booking and Ongoing Compliance**

- 3.1 The following conditions must be satisfied before a booking will be accepted by Viterra:
  - 3.1.1 compliance with Table A requirements (to the extent they are required at the time of booking);
  - 3.1.2 Viterra must have sufficient intake, grain storage and shipping capacity to honour the booking, taking into account the status of the Shipping Stem; and
  - 3.1.3 the booking when aggregated with other bookings of the Client must not expose Viterra to undue Performance Risk (refer clause 12).
- 3.2 In order to maximise Port Terminal capacity utilisation, Viterra may accept a new booking on the Shipping Stem only where Viterra, acting reasonably, has an objective and reasonable basis to believe that the new booking and therefore the required stock can be made available without unduly prejudicing other named vessels and bookings on the Shipping Stem.

In circumstances where a booking does not involve a named vessel, Viterra may have regard to the following matters in forming its objective and reasonable belief (some or all of which may be relevant depending on operational arrangements at the specific Port Terminal and other relevant circumstances):

- 3.2.1 the maximum elevation capacity at the relevant Port Terminal;
  - 3.2.2 previous volumes moved through the terminal over equivalent booking periods;
  - 3.2.3 the availability of up-country stock from all providers, if Viterra (in consultation with the Client) is able to determine this availability;
  - 3.2.4 the availability of transport from all providers, if Viterra (in consultation with the Client) is able to determine the level of transportation available; and
  - 3.2.5 any other considerations that Viterra considers to be relevant in the circumstances.
- 3.3 The Client may divide a booked Slot into more than one booking provided that:
    - 3.3.1 each of those bookings is within the same booking Slot; and
    - 3.3.2 the total tonnage of all of the "split" bookings does not exceed the tonnage specified for the original booking (including the tolerance allowed for the original booking).

Viterra will issue separate reference numbers for each of the “split” bookings. The Client must contact Viterra and update all applicable Booking Forms, including Booking Forms for the “split” bookings.

Tonnages may also be transferred between bookings in the same Slots with the prior written agreement of Viterra.

For the purposes of this clause 3.3, the date of nomination of the Slot for “split” bookings is the same as the date of booking of the original “non-split” Slot.

#### **4 Advice of Acceptance or Non-Acceptance**

Viterra will reply to the Client within 5 business days following the receipt of a fully completed Booking Form, with notification of:

- 4.1 acceptance of the booking nominated by the Client on a TBN basis; or
- 4.2 acceptance of the booking nominated by the Client for a named vessel; or
- 4.3 non-acceptance of the booking nominated by the Client, including reasons for non-acceptance;

**or**

- 4.4 in circumstances where Viterra cannot satisfy the Client’s booking in full due to operational factors (including a lack of available capacity or existing commitments to other export shippers), a proposal for a Client’s acceptance of alternative arrangements, namely:
  - 4.4.1 an alternative Slot;
  - 4.4.2 acceptance of non-standard service levels and associated costs; and/or
  - 4.4.3 alternative port arrangements, stock swaps or load grades.
- 4.5 Viterra cannot guarantee acceptance of a booking within 5 business days where the Client and Viterra have entered into discussions and/or negotiation in relation to the booking Slot. Where this occurs, the vessel will remain on the Shipping Stem in a pending status until the relevant issues are resolved.

#### **5 Allocation of Load Date**

As soon as reasonably practicable after the Client names its vessel and its ETA (and, in any event, within 2 business days), Viterra will assess its terminal services capacity and notify the Client of the vessel’s estimated load date (“**Load Date**”).

#### **6 Notification of Changes in Slots and Load Dates**

- 6.1 Viterra will endeavour to ensure that the Client’s Slot and Load Date will be held for the Client. However, in certain circumstances, Viterra may make changes to the Slot or Load Date for the following reasons:
  - 6.1.1 If the cargo is not in an export ready and shippable position by the relevant Load Date;
  - 6.1.2 If a Force majeure event occurs;

- 6.1.3 If there is a change of Terminal Services Priority in accordance with these Protocols (see clauses 7-8);
  - 6.1.4 If a vessel fails to pass required marine and Australian Quarantine and Inspection Service port surveys;
  - 6.1.5 If poor or dangerous weather reasonably requires the scheduled Slot or Load Date to be delayed in the interests of safety;
  - 6.1.6 In accordance with clause 12, to ensure that the booking does not expose Viterra to undue Performance Risk or Slot hoarding by a Client;
  - 6.1.7 If there is a change to the ETAs of the Client's vessel or others in the queue (see clause 8);
  - 6.1.8 If there is a delay in receipt of the Client's authority to load;
  - 6.1.9 If necessary to reflect the impact of any changes to Flinders Ports SA Port rules for Grain Berth Loading Priorities at the relevant port;
  - 6.1.10 If the Client has failed to comply with the requirements detailed in the Protocols or Handling Agreements;
  - 6.1.11 If non-Grain vessels are being loaded at common berths under the Flinders Port SA rules and this will impact on the Slot or Load Date;
  - 6.1.12 If it is necessary to clean berths or facilities between the departure and arrival of vessels.
- 6.2 In the event of a change in the Client's Slot or Load Date, Viterra will provide notification to Client via the Shipping Stem on the Viterra website. The Shipping Stem is updated each business day and is available to all Clients.
- 6.3 In the event that a Slot is vacated (for example because of a failure to adhere to Table A requirements) the Shipping Stem will be updated and Clients may apply to book the vacated Slot on a "first come first served" basis.

## **7 Guiding Principles for determining Terminal Services Priority**

For the purposes of this clause 7, in determining the order of arrival of vessels at 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 Rules) first will be considered to be the first arrived vessel.

- 7.1 The following principles will be followed by Viterra in determining the priority of terminal services at port for the loading of vessels on the Shipping Stem:
- 7.1.1 Viterra will schedule vessels to load in order of arrival to the relevant Port Terminal, subject to the Client meeting the following conditions:
    - a. A booking has been made by the Client and that booking has been accepted by Viterra onto the Shipping Stem;
    - b. The Client has provided details of the vessel name and all other details required under these Protocols;

- c. The Client complies with, and is not in default of any obligation under, the relevant Handling Agreement;
- d. The Client's vessel has passed marine and Australian Quarantine and Inspection Service port surveys and is ready to load;
- e. Where the grain berth is congested, the Client has performed marine surveys at anchorage where possible;
- f. Cargo for the named vessel is available and in a shipping position;
- g. The Client has provided Viterra with 14 days' notice prior to the vessel ETA;
- h. The vessel arrival time is within the Client's 15 day booking Slot; and
- i. The Client has not made any changes to load grades and/or quality requirements within the last 14 days.

If Clients do not meet the conditions set out in this clause 7.1.1, Viterra reserves the right to re-prioritise and load vessels outside the order of arrival where it is practically achievable and Viterra 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.

7.1.2 Where Viterra is required to determine priority of Terminal Services at port other than the loading of vessels, it will do so based on the estimated order of vessel arrival, subject to the Client meeting the following conditions:

- a. A booking has been accepted by Viterra onto the Shipping Stem;
- b. The Client has provided to Viterra details of the vessel name and all other details required under these Protocols;
- c. The Client complies with, and is not in default of any obligation under, the relevant Handling Agreement;
- d. The Client has provided Viterra with 14 days' notice prior to the vessel ETA;
- e. The current vessel ETA is within its 15 day booking Slot;
- f. The Client has not made any changes to load grades and/or quality requirements within the last 14 days.

For the purposes of this clause 7.1.2, 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.

If Clients do not meet the conditions set out in this clause 7.1.2, Viterra 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 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.

- 7.1.3 In determining whether (and how) to re-prioritise vessels if the conditions in clause 7.1.1 or 7.1.2 are not satisfied, Viterra 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):
- a. whether the stock at the Port Terminal can be utilised on alternative vessels that have arrived or are now due to arrival first, or will be now load-ready first;
  - b. the length of the anticipated delays;
  - c. the practicality of re-positioning terminal stock and the impact any such re-positioning would have on other Port Terminal users;
  - d. the ability for Viterra or Clients to amend accumulation plans;
  - e. the ability for the Client to supply transport;
  - f. the associated costs and impact on efficiency of the overall supply chain;
  - g. the extent to which the overall speed and efficiency of the Port Terminal will be enhanced on an objective and ascertainable basis;
  - h. whether it will reduce the overall wait time over all named vessels; and
  - i. any other considerations which Viterra considers relevant in the circumstances.

**Example**

The following list provides a non-exhaustive list which sets out Viterra's views as to the most likely reasons that it may need to re-prioritise load order or Port Terminal services in accordance with clause 7.1.1 or 7.1.2:

- (i) the original vessel ETA has changed;
- (ii) the vessel has been substituted and the ETA has changed;
- (iii) a Client does not issue an authority to load;
- (iv) Flinders Port SA Port Rules impact on the original load priority of the vessel;
- (v) a Force Majeure event occurs;
- (vi) the Client has not adhered to the terms of the Protocols;
- (vii) the Client's vessel has not passed marine and AQIS surveys and is not load ready;
- (viii) the Client did not perform marine surveys at anchorage in circumstances where

- the grain berth is congested and such survey was possible;
- (ix) the stock for the named vessel is not available or in shipping position;
- (x) the arrival time is outside of its booking Slot;
- (xi) the Client is not compliant with the relevant handling agreement;
- (xii) the Client has not provided 14 days notice prior to the vessel ETA;
- (xiii) stock is or can be made available at port;
- (xiv) stock is in a load ready position for another vessel;
- (xv) where the Client occupies the berth and has stock available but will not work the vessel on a 24 hour / 7 day basis; or
- (xvi) the Client changes load grades or quality specifications within 14 days of estimated arrival.

7.1.4 At Port Terminals, where the Client occupies the berth 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.

7.1.5 Viterra will not require Clients to cancel their current booking and book a new Slot where their nominated vessel arrives outside of the last declared booking Slot (i.e. the nominated 15 day window), provided that:

- a. the vessel arrival is no more than 10 days outside the last declared booking Slot ("**Grace Period**"); and
- b. there is sufficient spare Port Terminal services capacity and the required stock can be made available.

(See also clause 8.2).

Vessels arriving within the Grace Period will be re-prioritised to the next loading time that is practically available, subject to:

- c. Viterra's reasonable ability (and Viterra taking reasonable steps) to accommodate the change; and
- d. Viterra's reasonable ability (and Viterra taking reasonable steps) to re-prioritise the vessel in a manner that limits the practical impact on all bookings. 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.

In determining the next loading time that is practically available (and will reflect the most efficient outcome), Viterra 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 Client or Viterra to increase capacity;
- (vii) the overall speed and efficiency of the Port Terminal; and
- (viii) any other considerations that Viterra considers relevant in the circumstances.

Where a Client's vessel fails to arrive within the booking Slot or Grace Period, the booking will be removed from the Shipping Stem.

7.1.6 Where a Client applies to book a Slot later than the timeframes specified in Table A (and at the time of booking nominates a vessel and specifies the vessel ETA):

- a. Viterra will take reasonable steps to accommodate that nominated vessel provided that there is sufficient spare Port Terminal services capacity and the required stock can be made available; and
- b. Viterra may remove that vessel from the Shipping Stem in the event that the vessel has not arrived within 10 days after the nominated ETA.

7.1.7 Where:

- c. the Client is loading a vessel at more than one of Viterra's Port Terminals;
- d. the vessel arrives within its original booking Slot at the first Port Terminal;
- e. the vessel is subsequently delayed at the first Port Terminal; and
- f. as a result of this delay, the Client's vessel arrives outside of its booking Slot 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 7.1.1 and 7.1.2.

7.2 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 may vary Terminal Service Priority to the extent necessary to address these external requirements.

## **8 Changes to Nominations and Failure to Meet Table A Requirements**

8.1 Subject to clause 8.3, where Viterra 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 when they are due (and which are not the subject of a genuine dispute), Viterra will notify the Client in writing within 1 business day. If the Client does not ensure compliance within the



time specified in the notice issued by Vitterra, Vitterra may withdraw the booking from the Shipping Stem.

- 8.2 In determining the time to be specified in the notice for the Client to ensure compliance, Vitterra will:
- 8.2.1 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;
  - 8.2.2 treat like defaults in a like manner. That is, Vitterra will use its best endeavours to treat all Client’s equally and apply any flexibility equally;
  - 8.2.3 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
  - 8.2.4 act reasonably and in good faith.
- 8.3 Where a Client fails to name a vessel within the booking Slot or Grace Period, the booking will be removed from the Shipping Stem. (Refer to clause 7.1.5 for an explanation of the “Grace Period”).

## **9 Demonstrating Stock Entitlement**

- 9.1 The Client is required by Table A to demonstrate at various points of time its entitlement to stock.
- 9.2 Stock entitlement may be demonstrated by the Client providing:
- 9.2.1 details of commodity held by the Client at Vitterra sites that meets the Client’s nomination;
  - 9.2.2 details of commodity held at Third Party Sites (refer clause 10) that meets the Client’s nomination;
  - 9.2.3 adequate evidence of forward purchases and sales commitments going to meeting the Client’s nomination; and
  - 9.2.4 any other form of evidence of entitlement which shows that the Client will have sufficient stock to load the Client’s vessel at the load dates indicated by the vessel’s priority on the Shipping Stem.

## **10 Stock at Third Party Sites**

- 10.1 In order to qualify for stock entitlement for the purposes of Table A, commodities held at a Third Party Site will only be taken into account if:
- 10.1.1 the Third Party Site has been approved by Vitterra (such approval not to be unreasonably withheld) having regard to appropriate industry standards (e.g. hygiene and quality);
  - 10.1.2 The Third Party Site is adequately serviced by road or rail;

- 10.1.3 Upon request by Viterra, the Client promptly provides the most recent treatment history of the commodity;
- 10.1.4 Upon request by Viterra, the Client provides a valid fumigation certificate (as outlined in the Handling Agreements or in a form otherwise approved by Viterra) for the stock to be exported through an Viterra Port Terminal; and
- 10.1.5 Upon request by Viterra, the Third Party Site operator confirms in writing within two Business Days of Viterra's request, the Client's entitlement and that the Client's stock is available for outturn at the commencement of the Client's Slot.

## **11 Export Standard Requirements**

- 11.1 In the event that the Client selects Export Standard for the accumulation of the commodity the subject of a booking, the Client must provide Viterra by no later than 18 days prior to the opening of the first day of the Slot:
  - 11.1.1 a Site Assembly Plan that is complete for the purposes of the export of stock; and
  - 11.1.2 a Transport Plan that is complete for the purposes of the export of stock.
- 11.2 If the Client fails to provide a Site Assembly Plan and/or a Transport Plan as required under clause 11.1, Viterra may re-prioritise the Client's vessel on the Shipping Stem.

## **12 Performance Risk / Anti-hoarding**

- 12.1 Viterra may decide not to accept a booking if it considers (acting reasonably and in good faith) that the booking, taken in aggregate with other Slots of the Client (collectively, the "Nominations") involves an attempt by the Client to reserve Slots in excess of its reasonably anticipated requirements in order to prevent the Client's competitors from obtaining access to Slots at any of Viterra's Port Terminals or limit throughput at the Port Terminal.
- 12.2 In forming its reasonable opinion pursuant to clause 12.1, Viterra must have regard to:
  - 12.2.1 The quantity or grade of the Nominations relative to the forecast quantity or grade of the relevant commodity in the relevant port zone;
  - 12.2.2 The share of the market for the relevant commodity accumulated by the Client in the previous three years;
  - 12.2.3 Any previous failures of the Client within the preceding three calendar years to perform to its Nominations;
  - 12.2.4 Where available in published annual reports and accounts readily available from the Client's corporate website, the Client's profit and annual revenue in the preceding financial year relative to the quantity of the Nominations;
  - 12.2.5 The availability of transport to port;
  - 12.2.6 The extent of economic damage to Viterra's investment in infrastructure and the supply chain which could be caused by non-performance (e.g. a reduction in efficient throughput); and
  - 12.2.7 Any other information provided to Viterra by the Client.

### 13 Dispute Resolution

In the event that the Client disputes Viterra's adherence to these Protocols (including, without limitation the acceptance or rejection of a vessel nomination, or re-prioritisation of terminal services), the following procedures will apply:

- 13.1 The Client must notify Viterra in writing of the dispute, the reasons for the dispute and the resolution which the Client requests ("**Dispute Notice**").
- 13.2 In the case of a dispute regarding rejection of a booking, the Dispute Notice must be received by Viterra by 16:00 Australian Central Standard Time on the next business day following receipt of the notice from Viterra that it does not intend to accept the booking (see clause 4.3);
- 13.3 Viterra must use its best endeavours to respond to the Client within one business day following receipt of the Dispute Notice ("**Viterra Response**"). The Viterra Response must notify the Client whether Viterra will change its decision and, if not, it must provide an explanation or basis for Viterra's decision;
- 13.4 If the Client is not satisfied by the Viterra Response, or if Viterra fails to respond to the Dispute Notice within one business day of its receipt, the Client may serve written notice to Viterra within one business day of receipt of the Viterra Response, or within one business day of when the Viterra Response was due ("**Escalation Notice**");
- 13.5 Upon receipt of the Escalation Notice, Viterra must use all reasonable endeavours to arrange a meeting between Viterra's Executive Manager Grain Division and the Client within two business days of receipt of the Escalation Notice. Where Viterra's Executive Manager Grain Division is unavailable for such a meeting within the timeframe specified, Viterra 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;
- 13.6 At the meeting, Viterra's Executive Manager Grain Division (or Alternate) and the Client will discuss the subject of the Dispute Notice and Viterra 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's 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**");
- 13.7 In reaching the final decision set out in the Decision Notice, Viterra's Executive Manager Grain Division (or Alternate), acting on behalf of Viterra, 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's Executive Manager Grain Division (or Alternate) may also have regard to the objectives of:
  - 13.7.1 maximising the efficient operation of the Port Terminal;
  - 13.7.2 maximising export throughput at the Port Terminal;
  - 13.7.3 ensuring the non-discriminatory treatment of Clients; and
  - 13.7.4 ensuring consistency of decisions.

## 14 Review of these Protocols

- 14.1 Viterra may vary these Protocols from time to time in accordance with clause 14.2 provided that, in the case of Bulk Wheat, while the Access Undertaking is in force:
- 14.1.1 the variations are in accordance with the Access Undertaking; and
  - 14.1.2 the Protocols include an expeditious dispute resolution mechanism for dealing with disputes over compliance with the Protocols.
- 14.2 Viterra may vary these Protocols at any time if it:
- 14.2.1 commences consultation with Major Users in relation to the proposed variation at least 30 days before the variation takes effect; and
  - 14.2.2 provides Major Users with written notice of the proposed variation (“**Variation Notice**”) at least 10 business days before the proposed variation takes effect (which, for the avoidance of doubt, can be given before or after the expiry of the 30 day period set out in clause 14.2.1) by publishing the Variation Notice in a prominent place on its website.
- 14.3 For the purpose of clause 14.2.1, consultation by Viterra with Major Users will involve Viterra:
- 14.3.1 providing a written consultation notice to Major Users setting out the nature of, and reasons for, the proposed variation, and inviting comments from interested persons (“**Consultation Notice**”);
  - 14.3.2 publishing the Consultation Notice in a prominent place on its website (with a reference to the publication of the Consultation Notice on the Shipping Stem);
  - 14.3.3 providing a reasonable period (and, in any event, not less than 10 business days) for interested parties to provide their comments (if any) in relation to the proposed variation;
  - 14.3.4 meeting with interested parties (if requested) to discuss the proposed variations and for the interested parties to provide feedback to Viterra (if any). Such meetings can be conducted with one or more interested parties, and may be conducted by telephone;
  - 14.3.5 considering the issues raised (if any) by Major Users and any other interested parties and, where necessary:
    - a. seeking clarification and further details from relevant parties; and/or
    - b. making any modifications to the variation proposal which are acceptable to Viterra, acting reasonably, to reflect the feedback (if any) received from interested parties;
- 14.4 Viterra will be deemed to have satisfied its obligation to consult with Major Users in clause 14.2.1 if it complies with the requirements set out in clause 14.3, even if no Major User or other interested party provides any response to the Consultation Notice issued by Viterra.
- 14.5 Viterra will publish an updated copy of these Protocols in a prominent place on its website within 3 business days of any variation to the Protocols taking effect.

## 15 Definitions

**Access Undertaking** means the Port Terminal Services Access Undertaking provided to the ACCC by Viterra pursuant to section 24 of the *Wheat Export and Marketing Act 2008* (Cth) and Part IIIA of the *Trade Practices Act 1974* (Cth).

**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.

**Client** means an exporter of commodity out of one of Viterra's Port Terminals that has entered into a Handling Agreement with Viterra.

**ETA** means estimated time of arrival.

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

**Grain** means the seed of any crop or pasture species of any genus or grade and (for the removal of doubt) includes Pulses.

**Laycan** means a period of time from one date to another advised by the Client to Viterra within which a vessel is ordered or expected by the Client to arrive at a Port Terminal to commence loading.

**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.

**Performance Risk** means the risks identified in clause 12 of these Protocols.

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

- Port Adelaide, South Australia
- Outer Harbor, South Australia
- Port Giles, South Australia
- Wallaroo, South Australia
- Port Lincoln, South Australia; or
- Thevenard, South Australia

**Port Terminal Services Agreement** means a Port Terminal Services Agreement for Standard Port Terminal Services as may be varied by agreement between the Client and Viterra.

**Shipping Stem** means the stem of ships nominated by Clients for loading at Viterra's Port Terminals as published by Viterra.

**Site Assembly Plan** means a plan for assembling stock at one or more storage sites for a ship's cargo.

**Slot** means a Laycan accepted by Viterra via the vessel booking process set out in these Protocols as narrowed at the times specified in Table A.

**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.

**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.

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

**Transport Plan** means a plan for the movement to a Port Terminal of stocks assembled for a ship's cargo.

**Viterra** 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](http://www.viterra.com.au)

**VERSION CONTROL**

<b>Version</b>	<b>Reference</b>	<b>Date of Release</b>	<b>Authorised by</b>
1	EXE/ASR1806/asr	9.09.2009	John Warda
2	EXE/ASR1862/asr	2.12.2009	Ashley Roff

**Table A: Booking Process**

	<b>Timeline</b>	<b>Vessel</b>	<b>Contract /Load Details</b>	<b>Shipping Period</b>		<b>Export Licence (if applicable)</b>	<b>Current Stock Entitlement</b>
<b>1</b>	Greater than 60 days prior to Slot commencing (as per all mandatory fields in electronic Booking Form)	TBN	For each shipping parcel require: <ul style="list-style-type: none"> <li>• Load Port</li> <li>• Commodity</li> <li>• Tonnage (Min/Max)</li> <li>• Treatment</li> </ul> Feed or Malting grade must be indicated when nominating Barley shipments.	30 day Slot		Not required at this point	Not required at this point
<b>2</b>	No later than 60 days prior to the opening of the Slot	TBN	In addition to obligations in section 1 of this table require, <ul style="list-style-type: none"> <li>• Load grades by tonnage and season</li> <li>• Quality details / requirements</li> </ul>	As per section 1 of this table (as required).		As per section 1 of this table (as required)	As per section 1 of this table (as required).
<b>3</b>	No later than 30 days prior to the first day of the Slot commencing	TBN	As per section 2 of this table (as required)	Slot to be reduced to a 15 day period. This period must be within original specified Slot.		As per section 1 of this table (as required)	As per section 1 of this table (as required)
<b>4</b>	No later than 18 days prior to the opening of the first day of the booked Slot	TBN	As per section 2 of this table (as required)	As per section 3 of this table (as required)		Viterra may request evidence of such export licence	Demonstrate ability to meet vessel load requirements

	Timeline	Vessel	Contract /Load Details	Shipping Period		Export Licence (if applicable)	Current Stock Entitlement
5	On advice of named vessel (Refer to clause 8.2)	Named vessel required and all associated mandatory fields must be completed in electronic Booking Form	As per section 2 of this table and completion of blending options on Booking Form. <ul style="list-style-type: none"> <li>• Sampling requirements</li> <li>• Requirement for fumigation certificate</li> </ul>	ETA required		As per section 4 of this table (as required)	As per section 4 of this table (as required).

**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 to accept the booking. For the avoidance of doubt, Clients will not be required to specify a 30 day Slot or a 15 day Slot if they book a Slot within that 30 or 15 day period (as the case requires) in accordance with Item 5 of Table A.
- (2) Changes, alterations & modifications to Table A information (other than the shipping period) provided by a Client in support of the booking can be requested in writing by the Client. Viterra 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's written acceptance of the change and, subject to the other provisions of these Protocols, will not be deemed a new booking. Please note:
  - Viterra is not obliged to accept any requested variation and acceptance will depend on whether the requested change would be likely to compromise Viterra's 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's acceptance of information changes), this will be addressed in accordance with clause 8.1 of the Protocols. The booking fee is not refundable in these circumstances.
  - If the client's requested change is not accepted by Viterra, 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 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) Viterra 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.