

Port Terminal Services Access Undertaking

Dated

by

Viterra Operations Limited (ABN 88 007 556 256) of
124-130 South Tce Adelaide SA 5000 ("**Port Operator**")

in favour of

Australian Competition and Consumer Commission
being a body corporate established under **section 6A** of the CCA
 ("**ACCC**")

Port Terminal Services Access Undertaking

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Port Terminal Services Access Undertaking

General terms

1 Background

1.1 Introduction

- (a) The Port Operator operates the Port Terminal Facilities at the Port Terminals.
- (b) The Port Terminal Facilities provide services relating to the export of Bulk Wheat and other commodities.
- (c) The Port Operator has historically provided access to services provided by the Port Terminals to third parties under open access policies.
- (d) A Related Body Corporate of the Port Operator is an Accredited Wheat Exporter under the *Wheat Export Marketing Act 2008* (Cth). The current accreditation of the Related Body Corporate expires on 30 September 2011. The Related Body Corporate intends to apply for accreditation under the WEMA for a further period commencing on 1 October 2011.
- (e) The WEMA and WEAS provide that, if a company (or an associated entity of the company) is the provider of one or more port terminal services (as defined under that Act), the company or associated entity, as the case may be, must satisfy the 'access test' in order for the company to be eligible for accreditation to export Bulk Wheat.
- (f) As at the date of this Undertaking, a person passes the 'access test' in relation to a port terminal service (as defined under the WEMA) if at that time:
 - (i) the person complies with the continuous disclosure rules in relation to a port terminal service; and
 - (ii) either there is:
 - (A) an access undertaking in operation (under Division 6 Part IIIA of the CCA) relating to the provision to Accredited Wheat Exporters of access to the port terminal service for purposes relating to the export of Bulk Wheat; or
 - (B) a decision in force that a regime established by a State or Territory for access to the port terminal service is an effective access regime (under Division 2A Part IIIA of the CCA) and under that regime Accredited Wheat Exporters have access to the port terminal service for purposes relating to the export of Bulk Wheat.
- (g) The Port Operator has submitted this Undertaking to the ACCC for approval under Part IIIA of the CCA for the purpose of satisfying the 'access test'.

- (h) The ACCC monitors compliance of undertakings accepted under Part IIIA of the CCA.
- (i) The ACCC may approve the Regulated Access, Pricing and Monitoring Committee or a member of the ACCC to exercise a decision-making function under this Undertaking on its behalf and that approval may be subject to any conditions which the ACCC may impose.

1.2 Objectives

The Undertaking has the following objectives:

- (a) providing a framework to manage negotiations with Applicants for access to services provided by certain facilities at the Port Terminals in relation to export of Bulk Wheat;
- (b) establishing a workable, open, non-discriminatory and efficient process for lodging and processing Access Applications;
- (c) providing a non-discriminatory approach to pricing and the provision of Port Terminal Services under which the Port Operator publishes reference prices annually and, subject to clause 5.1(c) offers access to certain standard services on the terms and conditions set out in Schedule 3;
- (d) operating consistently with the objectives and principles in Part IIIA of the CCA and the Competition Principles Agreement;
- (e) reaching an appropriate balance between:
 - (i) the legitimate business interests of the Port Operator, including:
 - (A) the recovery of all efficient costs associated with the granting of access to the Port Terminal Services;
 - (B) a fair and reasonable return on the Port Operator's investment in the Port Terminal Facility commensurate with its commercial risk;
 - (C) the Port Operator's business interests relating to the export of grain other than Bulk Wheat and to the export of non-grain commodities using the Port Terminal Facilities; and
 - (ii) the interest of the public, including:
 - (A) ensuring efficient use of resources; and
 - (B) the promotion of economically efficient investment, use and operation of the Port Terminals; and
 - (iii) the interests of Applicants wanting access to the Port Terminal Services, including providing access to the Port Terminal Services:
 - (A) on non-discriminatory price and non-price terms; and

- (B) in a transparent, open, efficient and non-discriminatory manner;
- (f) providing an efficient, effective and binding dispute resolution process in the event that the Port Operator and the Applicant are unable to negotiate a mutually acceptable Access Agreement; and
- (g) in accordance with the objective in s44AA(b) of the CCA, providing for a uniform approach to access to the Port Terminal Services at the different Port Terminals to the extent practicable having regard to the different characteristics of the Port Terminals.

2 Structure

2.1 Components

- (a) This Undertaking applies in relation to access to Port Terminal Services provided by means of Port Terminal Facilities at a number of Port Terminals. The Port Terminal Facilities are geographically separate and have different physical and operating characteristics and modes of operation.
- (b) Accordingly, this Undertaking comprises:
 - (i) these General Terms (and Schedules) which apply to Port Terminal Services provided by means of each Port Terminal Facility; and
 - (ii) the specific Port Schedules which set out the Standard Port Terminal Services provided at each Port Terminal, and apply only to Port Terminal Services provided by means of Port Terminal Facilities at that particular Port Terminal.

2.2 Priority

To the extent of any inconsistency between the General Terms and the Schedules, they are to apply in the following order of priority:

- (a) the Port Schedules;
- (b) the General Terms;
- (c) Schedule 2 (Port Loading Protocols); and
- (d) Schedules 1 and 3.

2.3 Obligation to procure

If the performance of an obligation under this Undertaking requires a Related Body Corporate of the Port Operator to take some action or refrain from taking some action, the Port Operator must procure that Related Body Corporate to take that action or refrain from taking that action.

3 Term and variation

3.1 Commencement Date

For the purposes of section 24 of the WEMA, this Undertaking commences on 1 October 2011 and the Port Operator will comply with this Undertaking on and from that date.

3.2 Expiry

This Undertaking expires on the earlier of:

- (a) 30 September 2014; or
- (b) the day the ACCC consents to the Port Operator withdrawing the Undertaking in accordance with Part IIIA of the CCA (including under clause 3.3).

3.3 Early withdrawal of the Undertaking

The Port Operator may seek the approval of the ACCC to the withdrawal of this Undertaking on the occurrence of any of the following events:

- (a) the Port Operator or a Related Body Corporate ceases to be an Accredited Wheat Exporter under the WEMA; or
- (b) the WEMA and/or other legislation is amended such that there is no longer any requirement under legislation for the Port Operator to have in place an access undertaking under Part IIIA of the CCA in relation to access to any of the Port Terminal Services in order for the Port Operator or its Related Bodies Corporate to export Bulk Wheat.

3.4 Variation for a particular Port Terminal

The Port Operator may seek the approval of the ACCC to the variation of this Undertaking by removing the Port Terminal Services provided at a particular Port if the Port Terminal is disposed of to a person who is not a Related Body Corporate of the Port Operator and the Port Operator ceases to operate or control the Port Terminal Facilities at that Port Terminal.

3.5 Other variations

- (a) If, during the term of the Undertaking, the Port Operator is of the opinion that circumstances have changed such that this Undertaking is no longer:
 - (i) commercially viable for the Port Operator or becomes inconsistent with the objectives set out in clause 1.2; or
 - (ii) consistent with the Continuous Disclosure Rules as a result of changes to the WEMA or other legislation,

the Port Operator may seek the approval of the ACCC to vary this Undertaking.

- (b) Prior to seeking the approval of the ACCC under clause 3.5(a), the Port Operator will first consult with counterparties to Access Agreements and Applicants regarding the proposed variation.

4 Scope

4.1 Application to negotiation of Access Agreements in relation to Port Terminal Services

- (a) This Undertaking applies only to:
- (i) access to Port Terminal Services; and
 - (ii) the negotiation of any Access Agreement entered into, or to be entered into, by the Port Operator and a User in respect of Port Terminal Services to be provided by the Port Operator at any time during the period 1 October 2011 to 30 September 2014.
- (b) This Undertaking does not apply to:
- (i) the negotiation of any Access Agreement which will have a commencement date after the expiry of this Undertaking; or
 - (ii) any service to the extent that it is subject to a regime established by a State or Territory for access to the service which has been determined by the Commonwealth Minister to be an effective access regime pursuant to section 44N of the CCA.
- (c) To ensure that the terms of this Undertaking apply to the negotiation of Access Agreements which involve the provision of Port Terminal Services from 1 October 2011, the Port Operator will not execute any Access Agreement in respect of the provision of Port Terminal Services for any period from 1 October 2011 until after the commencement of this Undertaking. Subject to the Applicant satisfying the Prudential Requirements, the Port Operator will offer to provide access to Standard Port Terminal Services on the then current Standard Terms and at the then current Reference Prices (and, after the introduction of any Auction System, also in accordance with the Auction System) until the Access Agreement in respect of that period is concluded, negotiations terminate in accordance with this Undertaking or the following 30 September (whichever is earlier).

Note

Clause 5.3 provides further information about contractual arrangements.

In accordance with this Undertaking, Applicants will have an opportunity to negotiate with the Port Operator in relation to:

- (a) *potential variations to the Standard Terms (i.e. the provision of access to Port Terminal Services on non-standard terms). This excludes the Port Loading Protocols which form part of this Undertaking;*
- (b) *the terms on which access may be provided to Port Terminal Services which are not Standard Port Terminal Services;*
- (c) *the Reference Prices; and/or*
- (d) *any combination of the matters set out in paragraphs (a) - (c) above.*

It is intended that successful negotiations will be concluded in an Access Agreement.

4.2 Meaning of Port Terminal Services and Port Terminal Facility

In this Undertaking:

- (a) **“Port Terminal Services”** means the services described in the Port Schedule in relation to Bulk Wheat provided by means of a Port Terminal Facility, the use of a Port Terminal Facility and the use of all other associated infrastructure provided by the Port Operator at a Port Terminal which in each case is necessary to allow Applicants and Users to export Bulk Wheat through that Port Terminal.
- (b) **“Port Terminal Facility”** means a ship loader that is:
- (i) at a Port Terminal; and
 - (ii) capable of handling Bulk Wheat;
- and includes any of the following facilities:
- (iii) an intake/receival facility;
 - (iv) a grain storage facility;
 - (v) a weighing facility;
 - (vi) a shipping belt;
- that is:
- (vii) at the Port Terminal; and
 - (viii) associated with the ship loader; and
 - (ix) capable of dealing with Bulk Wheat.

The Port Terminal Facilities at each Port are described in the relevant Port Schedules.

4.3 Nature of Port Terminal Services

The Port Terminal Services may include:

- (a) intake and receival services;
- (b) storage and handling services;
- (c) ship nomination, acceptance, booking and cancellation; and
- (d) Cargo Accumulation at Port Terminals and ship loading.

4.4 What this Undertaking does not cover

- (a) The grain supply chain comprises the following activities:

- (i) intake and receival services (inland);
 - (ii) grain storage and handling (inland);
 - (iii) transportation (from inland facilities to port facilities);
 - (iv) services at port terminals (at port); and
 - (v) shipping services (at port).
- (b) To avoid doubt, this Undertaking does not apply:
- (i) to access to services not being Port Terminal Services provided by the Port Operator in relation to Bulk Wheat; or
 - (ii) in relation to other facilities owned by the Port Operator which are part of the grain supply chain such as up country receival and accumulation facilities; or
 - (iii) to the transportation of Bulk Wheat to port; or
 - (iv) to grains or other commodities which are not wheat; or
 - (v) to wheat which is not Bulk Wheat.
- (c) Nothing in this Undertaking prevents the Port Operator from agreeing with an Applicant or User to provide access to port terminal services for grains or commodities other than Bulk Wheat and other services related to Port Terminal Services.

5 Price and non-price terms

5.1 Standard offer non-price terms and conditions

- (a) Subject to the Applicant satisfying the Prudential Requirements, the Port Operator will offer to supply the Standard Port Terminal Services to an Applicant:
- (i) on the standard non-price terms and conditions (“**Standard Terms**”) set out in Schedule 3 to this Undertaking; and
 - (ii) at the Reference Prices published in accordance with clause 5.2 and, after the introduction of any Auction System, also in accordance with the Auction System.

Note

See the Note below clause 4.1(c).

- (b) Unless varied in accordance with clause 5.6(e), the Standard Terms will apply for the term of this Undertaking.
- (c) Clause 5.1(a) does not prevent the Port Operator and any Applicant from negotiating non-standard terms in accordance with this Undertaking.

5.2 Obligation to publish price terms

- (a) The Port Operator must, for access to each Standard Port Terminal Service, publish reference prices (“**Reference Prices**”) on the Port Operator’s website by no later than 1 September each year during the term of this Undertaking (in respect of each following year, commencing 1 October, to which this Undertaking applies).
- (b) Unless varied in accordance with clauses 5.6(a) and (b), the Reference Prices must apply for a period not ending before the following 30 September after publication.
- (c) If the Port Operator has not already complied with clause 5.2(a) at the commencement of this Undertaking, then it must do so within 3 Business Days of its commencement.
- (d) The Port Operator must give the ACCC copies of the Reference Prices within 2 Business Days following publication.
- (e) Clause 5.2 does not prevent the Port Operator and any Applicant from negotiating non-standard prices for Port Terminal Services in accordance with this Undertaking.

Note

See the Note below clause 4.1(c).

- (f) The Port Operator must, throughout the term of this Undertaking, publish in a prominent place on its website (in the same location as the Shipping Stem) details in relation to:
 - (i) the specific services covered by the charges set out in the Reference Prices including, where appropriate, the quantum of these services; and
 - (ii) the criteria (if any) which must be satisfied in order to qualify for any charges set out in the Reference Prices.

Note

In accordance with this Undertaking, Applicants will have an opportunity to negotiate with the Port Operator in relation to the Reference Prices and the application of, or Port Terminal Services underpinning, those prices. Disputes can be resolved in accordance with the processes set out in clause 7.

The criteria referred to in clause 5.2(f) may include criteria (if any) for Approved Third Party Storages.

5.3 Access to Port Terminal Services

- (a) In accordance with clauses 5.1 and 5.2, the Port Operator will offer to enter into an Access Agreement with Applicants in respect of that Applicant’s access to Port Terminal Services which, unless otherwise

agreed by the Port Operator and the Applicant, will expire on the following 30 September.

- (b) On the expiry of any Access Agreement, the Port Operator will, during the term of this Undertaking, offer to enter into a new Access Agreement with Applicants in respect of access to Port Terminal Services which, unless otherwise agreed by the Port Operator and the Applicant, will expire on the following 30 September.
- (c) If, at any time during the term of this Undertaking, the Port Operator and Applicant are not able to agree on the terms of a new Access Agreement in accordance with this Undertaking, then, subject to the Applicant satisfying the Prudential Requirements, the Port Operator will offer to provide access to the Standard Port Terminal Services on the then current Standard Terms and at the then current Reference Prices (and, after the introduction of any Auction System, also in accordance with the Auction System) until the Access Agreement in respect of that period is concluded, negotiations terminate in accordance with this Undertaking or the following 30 September (whichever is earlier). Subject to clause 7.1(c), the Access Agreement, once concluded by the Port Operator and Applicant, will be effective from the later of 1 October of the relevant season and the date on which the Applicant submitted the Access Application (and each party will make any necessary adjustments to give effect to that earlier start date). For the avoidance of doubt, the Applicant will not be entitled to seek to negotiate the terms of the Port Loading Protocols.
- (d) For the avoidance of doubt (and subject to clause 4.1(a) and 5.6(g)), the terms of this Undertaking will apply to the negotiation of any:
 - (i) new Access Agreements (including after the expiry of any other Access Agreement); and
 - (ii) variation to an Access Agreement required by the Port Operator during the term of that Access Agreement,

in each case during the term of this Undertaking.

5.4 Standard Terms

- (a) The Standard Terms offered to an Applicant must include the then current Port Loading Protocols which form part of this Undertaking (Schedule 2).
- (b) Nothing in this Undertaking prevents the parties agreeing to include terms relating to access to the Port Terminal Services in an agreement also applying to access to other services provided by the Port Operator but, to avoid doubt, this Undertaking will only apply to the terms relating to the provision of access to Port Terminal Services.

5.5 Non-discriminatory access

- (a) In providing access to Port Terminal Services, the Port Operator must not discriminate between different Applicants or Users in favour of its own Trading Division, except to the extent that the cost of providing access to other Applicants or Users is higher.

- (b) Within 5 Business Days of executing an Access Agreement with its own Trading Division, the Port Operator must provide to the ACCC a copy of that Access Agreement.
- (c) During the term of this Undertaking, the ACCC may by notice in writing require the Port Operator to appoint an Auditor to provide a report in relation to the Port Operator's compliance with clause 5.5(a). If the ACCC requires the Port Operator to appoint an Auditor, the provisions set out in Schedule 4 will apply.
- (d) The ACCC may authorise a Member of the ACCC to exercise any powers under clause 5.5(c) of this Undertaking on behalf of the ACCC.

5.6 Variation to Reference Prices and Standard Terms

Variation to Reference Prices

- (a) The Port Operator may vary the Reference Prices from time to time.
- (b) Any variation under clause 5.6(a) must be published at least 30 days prior to the date on which it is to become effective in the same locations as the Port Operator ordinarily publishes its Reference Prices.
- (c) The Port Operator must provide the ACCC with copies of variations to the Reference Prices within 2 Business Days following publication.
- (d) To avoid doubt, any variations to the Reference Prices do not automatically override the terms of existing Access Agreements (unless the prices specified in the Access Agreement are the Reference Prices as varied from time to time).

Variation to Standard Terms

- (e) The Port Operator may vary the Standard Terms:
 - (i) at any time with the consent of the ACCC in accordance with section 44ZZA(7) of the CCA; or
 - (ii) at any time in accordance with clause 9.5 and clause 9.6 to make changes associated with implementing, maintaining and giving effect to an Auction System for the allocation of Port Terminal Capacity, and to implement charges and a charging mechanism to apply in relation to the Auction System.
- (f) The Port Operator must publish any variation under clause 5.6(e)(i) in a prominent place on its website within 2 Business Days of the variation taking effect. The Port Operator must publish any variation under clause 5.6(e)(ii) in accordance with clause 9.5.
- (g) Any variations made to the Standard Terms in accordance with clause 5.6(e)(i) will not automatically override the terms of existing Access Agreements. Variations made in accordance with clause 5.6(e)(ii) will automatically override the terms of existing Access Agreements.

5.7 Request for information

- (a) The ACCC may, by written notice, request the Port Operator to provide information or documents that are required by the ACCC for the reasons specified in the written notice to enable it to exercise its powers or functions in relation to this Undertaking.
- (b) The Port Operator will provide any information requested by the ACCC under clause 5.7(a) in the form and within the timeframe (being not less than 14 days) specified in the notice.

6 Negotiating for access

6.1 Good faith negotiation

The Port Operator will negotiate with an Applicant for the provision of access to Port Terminal Services in good faith in accordance with the terms of this Undertaking. Applicants must also negotiate with the Port Operator in relation to the provision of access to Port Terminal Services in good faith in accordance with the terms of this Undertaking.

6.2 Framework

- (a) This part of the Undertaking outlines the process to be followed for an Applicant to gain access to the Port Terminal Services. It provides for:
 - (i) **Preliminary inquiry** - preliminary exchanges of information and meeting to enable an Access Application to be lodged;
 - (ii) **Access Application** - submission of a formal Access Application by the Applicant;
 - (iii) **Negotiation** - negotiating an Access Agreement;
 - (iv) **Access Agreement** – acceptance and execution of an Access Agreement.
- (b) If, at any time during the process for negotiating an Access Agreement, a Dispute arises between the parties, either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in clause 7.

6.3 Preliminary inquiry

- (a) **Provision of information**
 - (i) Subject to clause 6.3(a)(iv), the Port Operator will provide any information requested by an Applicant which is related to access to the Port Terminal Services and which is reasonably required by the Applicant to assist in negotiations in relation to an Access Application within 5 Business Days of receiving the request.
 - (ii) If the Applicant's request for information is not sufficiently clear or detailed to enable the Port Operator to identify and collate the information sought by the Applicant, the Port Operator must

notify the Applicant within 3 Business Days and seek further clarification of the Applicant's request.

(iii) Upon receiving clarification from the Applicant, the Port Operator will provide the information requested to the Applicant within a further 4 Business Days. For the avoidance of doubt, the Applicant may seek further information in accordance with clause 6.3(a)(i) at any time prior to the completion of an Access Agreement.

(iv) The Port Operator's obligations under clauses 6.3(a)(i) and 6.3(a)(iii) are subject to:

(A) the Port Operator not disclosing any information which would breach a confidentiality obligation binding on it or which it considers (acting reasonably) is commercially sensitive in relation to its own operations; and

(B) the Port Operator being able to refuse the request if:

(aa) it is unduly and manifestly onerous to the Port Operator, having regard to the following:

- the operational, commercial and logistical information that is required by grain exporters around the world for use of port terminal services for the exporting of Bulk Wheat;
- whether the Port Operator has access to and control of the information requested, or whether compliance with the Applicant's request would require the Port Operator to engage third party consultants or advisers in order to gather, collate or present the information;
- the Port Operator's staffing, technical and financial capability to obtain and provide the information requested by the Applicant;
- the volume of, and timeframe within which, information is requested by the Applicant; or

(ab) the information requested by the Applicant is not ordinarily and freely available to the Port Operator.

(b) Parties with whom the Port Operator must negotiate

(i) The Port Operator reserves the right to negotiate only with an Applicant who complies with the requirements and processes set

out in this Undertaking. If an Applicant does not comply with the relevant obligations and processes and such non-compliance is material, the Port Operator will not be obliged to continue negotiations regarding the provision of access for that Applicant.

- (ii) If the Port Operator refuses to negotiate, or ceases negotiations, with an Applicant for any reason, it will advise the Applicant in writing within 1 Business Day of its decision not to commence or to cease negotiations, including the reasons for that decision.
- (iii) If the Applicant considers that the Port Operator has unreasonably refused to commence, unreasonably delayed, or subsequently unreasonably ceased negotiations for any reason, then the Applicant may refer the matter to the arbitrator in accordance with clause 7.4. If the arbitrator determines that the Port Operator has unreasonably refused to commence or subsequently unreasonably delayed or ceased negotiations, the Port Operator will recommence negotiations immediately, subject to any directions made by the arbitrator.
- (iv) If at any time, the Port Operator considers that an Applicant is not negotiating in good faith as required by this Undertaking, the Port Operator may refer the matter to the arbitrator in accordance with clause 7.4. If the arbitrator determines that the Applicant is not negotiating in good faith, then the Port Operator will be entitled to cease negotiations immediately, subject to any other direction made by the arbitrator. The arbitrator may consider whether or not an Applicant is negotiating in good faith as a preliminary or threshold question in any arbitration.
- (v) If negotiations between the Port Operator and an Applicant cease for any reason, the Applicant will be entitled to submit a new Access Application.

6.4 Access Application

(a) Application process

- (i) The Applicant must be an Accredited Wheat Exporter (or, if the requirement to obtain accreditation under the WEMA and WEAS is removed at any time during the term of this Undertaking, must be otherwise entitled to export Bulk Wheat). It is the responsibility of the Applicant to ensure that they are in compliance with the relevant legal requirements for the exporting of Bulk Wheat.
- (ii) Requests for access to the Port Terminal Services are to be submitted to the Port Operator in the form of an Access Application and in accordance with the requirements of Schedule 1.
- (iii) Prior to an Applicant submitting an Access Application, the Port Operator will, if requested by the Applicant, attend an initial meeting or telephone call with the Applicant within 3 Business Days of the request to discuss the Access Application and to provide clarification of the process as outlined in this

Undertaking and in particular, the information requirements set out in Schedule 1.

(b) **Acknowledgment**

- (i) Upon receiving an Access Application from an Applicant, the Port Operator will acknowledge receipt of the Access Application in writing (or electronically) to the Applicant within 2 Business Days, or such longer period as specified in accordance with clauses 6.4(b)(iii) and 6.4(b)(iv).
- (ii) If the Access Application is incomplete, the Port Operator may, prior to acknowledging the Access Application, seek in writing:
 - (A) such additional information as is reasonably required to enable the Port Operator to consider the Access Application; or
 - (B) clarification of the information that has been provided in the Access Application, to the extent that such clarification is reasonably required to enable the Port Operator to consider the Access Application.
- (iii) If the Port Operator seeks additional information or clarification in accordance with clause 6.4(b)(ii), it will advise the Applicant of the additional information or the clarification required within 2 Business Days of receipt of the Access Application.
- (iv) Upon receiving the required information or clarification from the Applicant, the Port Operator will provide written acknowledgment of the receipt of the completed Access Application within 2 Business Days.

6.5 Negotiation of Access Agreement

- (a) Following the Port Operator's acknowledgment under clause 6.4(b), both parties will, if requested by the Applicant, commence negotiations as soon as reasonably practicable, and in any event within 5 Business Days (or such longer period as agreed between the parties), to progress towards an Access Agreement.
- (b) The Negotiation Period ("**Negotiation Period**") will commence upon the Port Operator acknowledging the Access Application under clause 6.4(b) and will cease upon any of the following events:
 - (i) execution of an Access Agreement in respect of access sought by the Applicant;
 - (ii) written notification by the Applicant that it no longer wishes to proceed with its Access Application;
 - (iii) the expiration of three months from the commencement of the Negotiation Period, or if both parties agree to extend the Negotiation Period, the expiration of the agreed extended period;

- (iv) following referral to arbitration in accordance with clause 6.3(b)(iv), the arbitrator determines that the Applicant is not negotiating in good faith;
- (v) following a determination or direction by either the ACCC or other arbitrator in accordance with clause 7, where an Applicant does not comply with a determination or direction of the ACCC or other arbitrator, and that determination or direction is not the subject of review; or
- (vi) a notice issued by the Port Operator under clause 6.6(d) becoming effective.

Note:

See clause 6.3(b)(iii) - If the Port Operator ceases negotiations, Applicants can refer this to dispute resolution in accordance with clause 7.

- (c) Upon cessation of the Negotiation Period, the Port Operator will be entitled to cease negotiations with the Applicant.
- (d) If for any reason the Negotiation Period ceases and an Access Agreement has not been executed, the Applicant will be entitled to submit a new Access Application at any time, in which case clause 6 of this Undertaking will apply.

6.6 Prudential requirements

- (a) Within 5 Business Days of receiving an Access Application, the Port Operator may require the Applicant to demonstrate to the Port Operator that it is able to meet the Prudential Requirements and to undertake that it can meet the Prudential Requirements for the duration of the proposed Access Agreement.
- (b) Upon receiving a request by the Port Operator under clause 6.6(a), the Applicant must demonstrate that it can meet the Prudential Requirements within 7 Business Days.
- (c) The Port Operator will assess whether the Applicant meets the Prudential Requirements within 5 Business Days of receiving the required documents or evidence from the Applicant.
- (d) If the Applicant cannot satisfy the Prudential Requirements, the Port Operator may issue a notice of intent to end the Negotiation Period, to become effective 10 Business Days after the issue of the notice.
- (e) If the Port Operator issues a notice of intent under clause 6.6(d), it will provide to the Applicant written reasons for its decision to end the Negotiation Period at the time it issues the notice. The written reasons must include the reasons why the Port Operator considers that the Applicant has not satisfied the Prudential Requirements.
- (f) For the purposes of clause 6.6(a) the Applicant will be required to meet the following Prudential Requirements:

- (i) the Applicant must be Solvent; and
 - (ii) the Applicant, or a Related Body Corporate of the Applicant, must not be currently, or have been in the previous two years, in Material Default of any agreement with the Port Operator; and
 - (iii) the Applicant must be able to demonstrate to the Port Operator that it has a legal ownership structure with a sufficient capital base and assets of value to meet the actual or potential liabilities under an Access Agreement, including timely payment of access charges and payment of insurance premiums and deductibles under the required policies of insurance or otherwise provides Credit Support acceptable to the Port Operator (acting reasonably).
- (g) For the purposes of clause 6.6(a), the Port Operator may require the Applicant to provide evidence that it is able to meet the Prudential Requirements. This evidence may include:
- (i) credit references (including from a credit reference agency);
 - (ii) details of the Applicant's credit rating (if applicable); and/or
 - (iii) the Applicant's most recent financial statements.

The Port Operator will also consider the Applicant's previous credit history with the Port Operator.

6.7 Access Agreement

- (a) The granting of access will be finalised by the execution of an Access Agreement. The parties to the Access Agreement will be the Port Operator and an Accredited Wheat Exporter.
- (b) A negotiated Access Agreement will, unless otherwise agreed between Port Operator and the Applicant at least include the Port Loading Protocols set out in Schedule 2.
- (c) Subject to clause 4.1(c) once the Applicant has notified the Port Operator that it is satisfied with the terms and conditions of the Access Agreement as drafted, the Port Operator will, within 2 Business Days, provide a final Access Agreement (or, if applicable, an amendment to an existing Access Agreement) to the Applicant for execution.
- (d) Subject to clause 4.1(c), if the Port Operator offers an Access Agreement and the Applicant accepts the terms and conditions offered in that Access Agreement, both the Port Operator and the Applicant will execute the Access Agreement. The parties will use reasonable endeavours to comply with this clause within 5 Business Days of the Port Operator providing a final Access Agreement to the Applicant in accordance with clause 6.7(c), or such longer period as agreed between the parties.

7 Dispute resolution

7.1 Disputes

- (a) Any Dispute will, unless otherwise expressly agreed to the contrary by both parties, be resolved in accordance with this clause 7 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 7. The Port Operator and Applicant must act in good faith to seek to resolve the Dispute in accordance with this clause 7.
- (b) Any disputes in relation to an Access Agreement once executed will be dealt with in accordance with the provisions of that Access Agreement.
- (c) If the Dispute relates to the terms and conditions on which the Port Operator is offering access to the Port Terminal Services, an Applicant may only seek mediation in accordance with clause 7.3 or arbitration in accordance with clause 7.4 if it issues a Dispute Notice within 90 days of the date on which the Port Operator acknowledged the Access Application in accordance with clause 6.4(b) or clause 6.4(b) of the Access Undertaking accepted by the ACCC on 29 September 2009. For the avoidance of doubt, nothing in this clause 7.1(c) prevents an Applicant from submitting a new Access Application in respect of a particular season ("**New Application**") at any time prior to concluding an Access Agreement, and:
 - (i) the provisions of clauses 6 and 7 will apply to that Access Application; and
 - (ii) subject to the Applicant satisfying the Prudential Requirements, the Port Operator will continue to offer to supply Standard Port Terminal Services to the Applicant on the then current Standard Terms and at the then current Reference Prices (and, after the introduction of any Auction System, also in accordance with the Auction System) while any Access Agreement is negotiated. However, notwithstanding clause 5.3(c) and clause 5.5, that Access Agreement, once concluded by the Port Operator and the Applicant, will be effective in respect of the relevant season from the date on which the Applicant submitted the New Application (and each party will make any necessary adjustments to give effect to that earlier start date).
- (d) The Port Operator will by 31 July of each year during the operation of this Undertaking provide a report to the ACCC on:
 - (i) any material disputes in relation to an Access Agreement; and
 - (ii) any Disputes raised by Applicants, Users or the Port Operator in the last 12 months (except for the first year, in which case the report will apply to the period from the commencement of this Undertaking) including the details of any resolution and the status of unresolved matters.

7.2 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.

7.3 Mediation

- (a) If the Dispute is not resolved in accordance with clause 7.2 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 7.3; 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 7.4(a)) refer the Dispute to be determined by arbitration under clause 7.4.
- (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 Applicant and the Executive Manager Grain Division of the Port Operator (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 chief executive officer of the Applicant and the Executive Manager Grain Division of the Port Operator under clause 7.3(b) (or such longer period as is agreed between those executives), the Dispute will be referred to formal mediation in South Australia.
- (d) A Dispute referred to mediation in accordance with clause 7.3(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 Port Operator and the Applicant or User 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.

7.4 Referral to arbitration

- (a) Notwithstanding any other provision of this Undertaking, a party may, by notice in writing to the other (“**Arbitration Notice**”), refer a Dispute to arbitration in accordance with this clause 7.4 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;
 - (iii) the contact details of the person issuing the Dispute Notice (and, if that person is the Port Operator, the contact details of the party to whom the Dispute Notice is issued); and
 - (iv) whether the parties have agreed, or are likely to agree, upon a private arbitrator if the ACCC does not arbitrate the Dispute.
- (b) If the Dispute referred to in the Arbitration Notice is already the subject of mediation in accordance with clause 7.3, that mediation will cease immediately.
- (c) Any arbitration will be conducted in accordance with clauses 7.5 to 7.7.

7.5 Appointment of arbitrator

- (a) If a Dispute is referred to arbitration in accordance with clause 7.4, the Port Operator must, within 2 Business Days, provide the ACCC with a copy of the relevant Dispute Notice and Arbitration Notice. All correspondence with the ACCC under this clause 7 must be addressed to:

The General Manager
Transport and General Prices Oversight
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne VIC 3000
Fax: (03) 9663 3699

- (b) If within 5 Business Days of receiving notice in accordance with clause 7.5(a) the ACCC advises the Port Operator and any other party to the Dispute in writing that it wishes to be the arbitrator in respect of the Dispute, then the ACCC will be appointed to arbitrate the dispute and the arbitration will be conducted in accordance with clause 7.6.
- (c) If the ACCC:
 - (i) advises the Port Operator and any other party to the Dispute in writing within 5 Business Days of receiving notice in accordance with clause 7.5(b) that it does not wish to be the arbitrator in respect of the Dispute; or
 - (ii) does not advise the Port Operator and any other party to the Dispute in writing within 5 Business Days of receiving notice in

accordance with clause 7.5(b) that it wishes to be the arbitrator in respect of the Dispute,

then, subject to clause 7.5(e) the arbitration will be conducted by an arbitrator appointed by the agreement of the parties to the Dispute.

- (d) The ACCC may authorise a Member of the ACCC to make a decision or to exercise any powers under clause 7.5(b) or (c) of this Undertaking on behalf of the ACCC.
- (e) If clause 7.5(c) applies and the parties fail to agree an arbitrator within 5 Business Days of the expiry of the 5 Business Days referred to in clause 7.5(c)(i) or (ii), 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 Port Operator must 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).

7.6 Arbitration procedure if the ACCC is the arbitrator

- (a) If the ACCC is the arbitrator, then except as set out in clause 7.6(b), the arbitration will be conducted in accordance with the procedures, and the ACCC will have the powers, set out in Subdivisions C-E and G of Division 3 of Part IIIA of the CCA and any references to a “final determination” or “interim determination” in those Subdivisions will be taken to mean a final or interim determination made by the ACCC under clause 7.6 of this Undertaking.
- (b) In any arbitration conducted by the ACCC in accordance with this Undertaking:
 - (i) the ACCC may, as a preliminary issue, determine whether or not, or the extent to which, the Dispute relates to a Port Terminal Service that is the subject of this Undertaking and therefore the extent to which the ACCC has jurisdiction to consider the Dispute in accordance with this Undertaking;
 - (ii) the ACCC may not make a determination which would have any of the effects described in section 44W of the CCA;
 - (iii) the ACCC may not make a determination which would have the effect of setting the terms and conditions of access to a Port Terminal Service for more than one season (expiring on the following 30 September) or in respect of any period following the expiry of this Undertaking;
 - (iv) the ACCC must have regard to the provisions of this Undertaking (including clause 5.5);
 - (v) section 44ZG(5), and the penalties referred to in sections 44ZG(2), 44ZI, 44ZJ and 44ZK, of the CCA will not apply;
 - (vi) sections 44ZO(1)-(4) of the CCA will not apply. A determination or direction of the ACCC will be final and binding, subject to any rights of review, and will have effect on and from the date specified by the ACCC. Any or all of the

provisions of a final determination may be expressed to apply from a specified day which is earlier than the day on which it takes effect. However, that specified day may not be earlier than:

- (A) 1 October in any year, being the start of the relevant season or the date on which the Applicant submitted an Access Application (whichever is later); or
 - (B) if clause 7.1(c) applies, the date on which the Applicant submitted the New Application.
- (c) Other than in circumstances where the determination or direction is the subject of review, if an Applicant or User does not comply with a determination or direction of the ACCC, the Port Operator will not be obliged to continue negotiations for the provision of access to Port Terminal Services for that Applicant.
- (d) Other than where the determination or direction is the subject of review, the Port Operator will comply with the determination or directions of the ACCC.

7.7 Arbitration procedure if the arbitrator is not the ACCC

- (a) If the arbitrator of a Dispute is not the ACCC, the arbitration will be conducted 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 7.7(i) and provided any indemnity as required in accordance with clause 7.7(k);
 - (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, as a preliminary issue, determine whether or not, or the extent to which, the Dispute relates to a Port Terminal Service that is the subject of this Undertaking and therefore the extent to which the arbitrator has jurisdiction to consider the Dispute in accordance with this Undertaking;
 - (vii) 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;

- (viii) 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;
 - (ix) the arbitrator will present its determination in a draft form to the parties and allow opportunity to comment from the parties before making a final determination;
 - (x) 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;
 - (xi) unless the parties to the Dispute agree otherwise, any determination by the arbitrator will be confidential;
 - (xii) the arbitrator may make any determination or direction in relation to the Dispute that it considers appropriate. For the avoidance of doubt, such determination or direction may include making a binding determination in relation to the Dispute, or requiring the parties to continue or re-commence negotiations;
 - (xiii) the arbitrator may make an interim determination but only granting access to Standard Port Terminal Services on the Standard Terms and at the then current Reference Prices (and, after the introduction of any Auction System, also in accordance with the Auction System).
- (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;
 - (ii) the subject matter of the Dispute is trivial, misconceived or lacking in substance; or
 - (iii) the party who notified the Dispute has not engaged in negotiations in good faith.
- (c) In deciding a Dispute, the arbitrator must have regard to:
- (i) the provisions of this Undertaking (including clause 5.5); and
 - (ii) the matters set out in section 44X(1) of the CCA.
- (d) In deciding a Dispute, the arbitrator may have regard to any other matters that it thinks are relevant.
- (e) In deciding a Dispute, the arbitrator must not:
- (i) without the consent of all parties, make a determination which relates to matters which were not specified in the Arbitration Notice;
 - (ii) without the consent of all parties, allow any other party to join or intervene in the arbitration (except as set out in clause 7.7(j)(iii));

- (iii) make a determination which would have the effect of setting the terms and conditions of access to a Port Terminal Service for more than one season (expiring on 30 September) or in respect of any period following the expiry of this Undertaking;
 - (iv) make a determination which would have any of the effects described in sections 44V(2)(d) or (da) of the CCA; or
 - (v) make a determination which would have any of the effects described in sections 44W of the CCA.
- (f) 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. Any or all of the provisions of a final determination may be expressed to apply from a specified day which is earlier than the day on which it takes effect. However, that specified day may not be earlier than:
- (i) 1 October in any year, being the start of the relevant season or the date on which the Applicant submitted an Access Application (whichever is later); or
 - (ii) if clause 7.1(c) applies, the date on which the Applicant submitted the new and complete Access Application.
- (g) Other than in circumstances where the determination or direction is the subject of review by a court of law, if an Applicant or User does not comply with a determination or direction of the arbitrator, the Port Operator will not be obliged to continue negotiations for the provision of access to Port Terminal Services for that Applicant.
- (h) Other than where the determination or direction is the subject of review by a court of law, the Port Operator will comply with the lawful determination or directions of the arbitrator.
- (i) 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.
- (j) If the arbitrator of a Dispute is not the ACCC, the parties' appointment of the arbitrator must provide that:
- (i) the arbitrator must keep the ACCC advised, not less frequently than fortnightly, about the progress of the arbitration, including timelines and processes;
 - (ii) the arbitrator must provide a copy of any correspondence between the arbitrator and the ACCC relating to procedural or other matters to the parties within 3 Business Days; and
 - (iii) the ACCC will have the absolute right to make submissions to the arbitrator in respect of the Dispute (subject only to complying with the procedures and timeframes for submissions determined by the arbitrator).

- (k) 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 7, such indemnity excluding circumstances where the conduct of the arbitrator constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
- (l) The Port Operator must send a copy of any determination made by the arbitrator to the ACCC within 2 Business Days of the determination being made.
- (m) The *Commercial Arbitration and Industrial Referral Agreements Act 1986 (SA)* will apply to any arbitration undertaken in accordance with this clause 7.7. Subject to any legal requirement to the contrary, to the extent of any inconsistency between that Act and this Undertaking, this Undertaking will prevail.

8 Confidentiality

8.1 Treatment of Confidential Information

- (a) Subject to clause 8.1(b), if a party provides Confidential Information to another party either:
 - (i) as part of the negotiation process for access to the Port Terminal Services; 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 access to the Port Terminal Services or resolving any Dispute in accordance with this Undertaking.
- (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 7 of this Undertaking for the purposes of that mediation or arbitration (and, if the ACCC is the arbitrator, subject to the ACCC's standard confidentiality protocols and procedures);
 - (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.

8.2 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 7, the mediator or arbitrator must (and the terms and conditions 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. This clause 8.2 is subject to the ACCC's obligations under legislation.
- (b) For the purpose of clause 8.2, any arbitrator appointed in accordance with clause 7 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 7 may make confidential and non-confidential versions of its determination and limit access to the confidential versions to specific individuals.

9 Capacity management

9.1 Continuous Disclosure Rules

- (a) The Port Operator must, as a condition of this Undertaking, comply with the Continuous Disclosure Rules from time to time, which at the commencement of this Undertaking involve publishing on its website in relation to Port Terminal Services:
 - (i) a statement setting out the Port Operator's policies and procedures for managing demand for the Port Terminal Services (including the Port Operator's policies and procedures relating to the nomination and acceptance of ships to be loaded using the Port Terminal Services) ("**Port Loading Protocols**"); and
 - (ii) a Shipping Stem (to be updated each Business Day) setting out:
 - (A) the name of each ship scheduled to load grain using a port terminal service;
 - (B) for each ship referred to in sub clause (A), the date when the ship was nominated to load grain using a Port Terminal Service;
 - (C) for each ship referred to in sub clause (A), the date when the ship was accepted as a ship scheduled to load grain using a Port Terminal Service;

- (D) for each ship referred to in sub clause (A), the quantity of grain to be loaded by the ship using a Port Terminal Service;
 - (E) for each ship referred to in sub clause (A), the estimated date on which grain is to be loaded by the ship using a Port Terminal Service.
- (b) The Port Loading Protocols and the Shipping Stem are available at www.viterra.com.au.

9.2 Port Loading Protocols

- (a) As at the commencement date of this Undertaking, the Port Loading Protocols which apply to the provision of Port Terminal Services at Port Terminals owned or operated by the Port Operator are set out in Schedule 2.
- (b) The Port Loading Protocols must be, and continue to be, a comprehensive statement of the Port Operator's policies and procedures for managing demand for Port Terminal Services.
- (c) The Port Operator must comply with the terms of the Port Loading Protocols (as varied from time to time in accordance with clause 9.3) when providing access to Port Terminal Services in accordance with this Undertaking.
- (d) In the Port Loading Protocols and in the Standard Terms, the term "Client" includes a person who is a User within the meaning of this Undertaking.

9.3 Variation of Port Loading Protocols

- (a) The Port Operator may vary the Port Loading Protocols (whether or not included in an Access Agreement) from time to time in accordance with clause 9.3(b) or clause 9.5 subject to the following conditions:
 - (i) any variations to the Port Loading Protocols must be consistent with:
 - (A) the objectives of this Undertaking set out in clause 1.2;
 - (B) the Port Operator's obligations to provide non-discriminatory access in accordance with clause 5.5; and
 - (ii) the Port Loading Protocols must include an expeditious dispute resolution mechanism for dealing with disputes over compliance with the Port Loading Protocols or the Port Operator's rejection of cargo booking applications.
- (b) Subject to clause 9.5, the Port Operator may vary the Port Loading Protocols at any time if it:
 - (i) undertakes a consultation process with Major Users in relation to the proposed variation in accordance with clause 9.3(c); and

- (ii) provides Major Users with written notice of the proposed variation (“**Variation Notice**”) at least 20 Business Days before the proposed variation takes effect.
- (c) For the purpose of clause 9.3(b)(i), consultation by the Port Operator with Major Users will involve the Port Operator:
- (i) 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;
 - (ii) 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);
 - (iii) 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 variations;
 - (iv) publishing on its website any written submissions received from interested parties under this clause 9.3(c) within 5 Business Days of receiving that submission. For the avoidance of doubt, the Port Operator is not required to publish on its website any part of a written submission that:
 - (A) contains information which is subject to a claim of confidentiality by a third party; or
 - (B) contains offensive or abusive material or is otherwise inappropriate for publication.

If the Port Operator excises any part of a written submission for the reasons set out above, it will nonetheless publish the remainder of the submission on its website and provide a copy of the entire submission to the ACCC within 5 Business Days of receiving the submission;

- (v) meeting with interested parties (if requested) to discuss the proposed variations and for the interested parties to provide feedback to the Port Operator (if any). Such meetings can be conducted with one or more interested parties, and may be conducted by telephone;
- (vi) considering the issues raised (if any) by Major Users and any other interested parties. The Port Operator may, where necessary:
 - (A) seek clarification and further details from relevant parties; and/or
 - (B) make any modifications to the variation proposal which are acceptable to the Port Operator, acting in good faith, to reflect the feedback (if any) received from interested parties. For the avoidance of doubt, any modifications to the variation proposal made in accordance with this clause 9.3(c)(vi) will not require the Port Operator to

recommence the consultation process under clause 9.3(b) or clause 9.3(c);

- (d) The Port Operator will be deemed to have satisfied its obligation to consult with Major Users in clause 9.3(b)(i) if it complies with the requirements set out in clause 9.3(c), even if no Major User or other interested party provides any response to the Consultation Notice issued by the Port Operator.
- (e) For the purpose of clause 9.3(b)(ii), the Port Operator must:
 - (i) publish the Variation Notice in a prominent place on its website; and
 - (ii) provide a copy of the Variation Notice to the ACCC within 1 Business Day of the date on which the Variation Notice is published.
- (f) The Port Operator must:
 - (i) publish an updated copy of the Port Loading Protocols in a prominent place on its website; and
 - (ii) provide a copy of the revised Port Loading Protocols to the ACCC,

within 3 Business Days of any variation to the Port Loading Protocols taking effect.

9.4 Objection notice

- (a) If the Port Operator seeks to vary the Port Loading Protocols in accordance with clause 9.3(b), the ACCC may object to the proposed variation (or any part of the variation). If the ACCC objects to a proposed variation (or any part of the variation), it must issue a notice to the Port Operator stating that it objects to the proposed variation and providing reasons for its objection. The ACCC will publish any notice issued under this clause 9.4(a) on the ACCC's website.
- (b) Any notice issued under clause 9.4(a) must be issued at least 10 Business Days prior to the date on which it is proposed that the variation will become effective.
- (c) If the ACCC proposes to issue a notice under clause 9.4(a), then at least 5 Business Days before issuing that notice, the ACCC must provide the Port Operator with a draft notice stating its intention to object to the proposed variation and providing reasons for that intended objection.
- (d) In issuing a draft notice under clause 9.4(c) or a final notice under clause 9.4(a), the ACCC must have regard to whether the proposed variation:
 - (i) is material; and
 - (ii) amounts to a breach of the anti-discrimination provision in clause 5.5 or the no hindering access provision in clause 9.7.

- (e) The ACCC may withdraw a draft notice issued under clause 9.4(c) or a notice issued under clause 9.4(a) if in all the circumstances it becomes aware that the reasons specified in the draft notice issued under clause 9.4(c) or the notice issued under clause 9.4(a) no longer exist.
- (f) If the ACCC issues a notice under clause 9.4(a), the Port Operator must, within 3 Business Days, either:
 - (i) withdraw the proposed variation and commence a new variation process (in which case, the Port Operator must place a notice in a prominent place on the Port Operator's website explaining the withdrawal and commencement of a new process and notify the ACCC in writing of the withdrawal and commencement of a new process); or
 - (ii) withdraw the proposed variation and confirm the status of the existing Port Loading Protocols (in which case, the Port Operator must publish a notice to this effect in a prominent place on its website and notify the ACCC in writing that it has withdrawn the proposed variation and confirmed the status of the existing Port Loading Protocols).

9.5 Changes to the capacity allocation system to introduce an auction

A. The variation process

- (a) Subject to clause 9.6(f)(iv), the Port Operator will vary the Port Loading Protocols and/or Standard Terms to introduce an Auction System for the allocation of Port Terminal Capacity by no later than 14 May 2012.
- (b) The Port Operator may vary the Port Loading Protocols and/or Standard Terms in accordance with clause 9.5(a) by:
 - (i) providing Major Users and the ACCC with written notice of the proposed variations ("**Auction Variation Notice**"); and
 - (ii) publishing that notice in a prominent place on its website (with a reference to the publication of the notice on the Shipping Stem),

which, subject to clause 9.6(h) and clause 9.6(k), must be in each case at least 45 Business Days before the proposed variations take effect.
- (c) Prior to issuing an Auction Variation Notice, the Port Operator will consult with Major Users and the ACCC in accordance with clause 9.5(g).

B. The Auction System

- (d) Unless otherwise agreed by the ACCC and the Port Operator, the Auction System will incorporate the following features:
 - (i) an auction should be the primary means of allocating port-loading capacity at each Port Terminal. For the avoidance of doubt, "port-loading capacity" means the capacity that is made available by the Port Operator to exporters to enable the export of Bulk Wheat, barley and other grain commodities through the Port Terminals;

- (ii) capacity should be defined on a consistent basis in terms of metric tonnes per month available at each Port Terminal and should reflect the total Available Capacity volumes that appear in the capacity table published in accordance with clause 10.2(a). For the avoidance of doubt, the total Available Capacity volumes may change from time to time (subject to the requirement to publish reasons set out in clause 10.2(b));
- (iii) subject to satisfying the Prudential Requirements and complying with the auction rules, all *bona fide* clients should have an equal opportunity to participate in the auction process;
- (iv) the auction should be conducted in a transparent and non-discriminatory manner;
- (v) Slots should be allocated to those clients that value them most;
- (vi) the Auction System should feature rules to create disincentives which apply equally to all clients on booking in excess of reasonably anticipated requirements. For the avoidance of doubt, the Auction System will satisfy this requirement if it involves a mechanism to rebate any auction premiums paid by clients as part of the auction process to users of the Port Terminals on a pro rata basis; and
- (vii) rights purchased in the auction should be tradable and transferable between *bona fide* clients, subject to reasonable rules relating to the period of notice required to be given to the Port Operator and the tonnage and commodity involved. Any transfer fee payable to the Port Operator in relation to trades or transfers as between exporters should be cost-based.

For the avoidance of doubt, clause 9.5(d)(i) does not prevent the Port Operator from consulting with Major Users and the ACCC in relation to potential mechanisms to allocate:

- (viii) Additional Capacity which is requested by an exporter and becomes available after any auction for use prior to the next scheduled auction;
 - (ix) a proportion of port-loading capacity as “base load capacity” for major exporters on an objective and take or pay basis; and/or
 - (x) capacity that is “passed in” at auction on a different basis,
- in each case as part of the Auction System.

- (e) The Auction System will apply to new bookings on and from the date the Port Loading Protocols and/or Standard Terms are varied in accordance with clause 9.5 and clause 9.6 (“**Effective Date**”). The Auction System will not apply to bookings that have been accepted prior to the Effective Date, even if those bookings relate to shipments after the Effective Date.

C. The consultation process

- (f) Unless otherwise agreed between the Port Operator and the ACCC, the Port Operator will commence consultation with Major Users and the

ACCC to vary the Port Loading Protocols and/or Standard Terms to introduce an Auction System by no later than 30 January 2012.

- (g) Consultation by the Port Operator with Major Users and the ACCC will involve the Port Operator:
- (i) providing a written Consultation Notice to Major Users and the ACCC setting out details of the proposed Auction System, and inviting comments from interested persons;
 - (ii) 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);
 - (iii) providing a period of not less than 15 Business Days for interested parties to provide their comments (if any) in relation to the proposed variations;
 - (iv) the Port Operator publishing on its website any written submissions received from interested parties under this clause 9.5(g) within 5 Business Days of receiving that submission. For the avoidance of doubt, the Port Operator is not required to publish on its website any part of a written submission that:
 - (A) contains information which is subject to a claim of confidentiality by a third party; or
 - (B) contains offensive or abusive material or is otherwise inappropriate for publication.
- If the Port Operator excises any part of a written submission for the reasons set out above, it will nonetheless publish the remainder of the submission on its website and provide a copy of the entire submission to the ACCC within 5 Business Days of receiving the submission;
- (v) meeting with interested parties (if requested) to discuss the proposed variations and for the interested parties to provide feedback to the Port Operator (if any). Such meetings can be conducted with one or more interested parties, and may be conducted by telephone;
 - (vi) considering the issues raised (if any) by Major Users, the ACCC and any other interested parties. The Port Operator may, where necessary:
 - (A) seek clarification and further details from relevant parties; and/or
 - (B) make any modifications to the variation proposal which are acceptable to the Port Operator, acting in good faith, to reflect the feedback (if any) received from interested parties. Any modifications to the variation proposal made in accordance with this clause 9.5(g)(vi) will not require the Port Operator to recommence the consultation process under clause 9.5(c) or clause 9.5(g);

- (h) The Port Operator will be deemed to have satisfied its obligation to consult with Major Users and the ACCC in clause 9.5(c) if it complies with the requirements set out in clause 9.5(g), even if no Major User, the ACCC or interested party provides any response to the Consultation Notice issued by the Port Operator.

9.6 Objection notice - Auction system

A. The ACCC may issue an Objection Notice

- (a) The ACCC may object to any or all of the variations set out in an Auction Variation Notice by issuing a notice in writing to the Port Operator (“**Auction Objection Notice**”). The Auction Objection Notice must:
 - (i) be issued at least 10 Business Days prior to the date on which it is proposed that the variation will become effective (“**Objection Notice Date**”);
 - (ii) state that the ACCC objects to the proposed variation or variations and provide reasons; and
 - (iii) be published on the ACCC’s website.
- (b) If the ACCC proposes to issue an Auction Objection Notice, then at least 5 Business Days before issuing that notice, the ACCC must provide the Port Operator with a draft notice stating its intention to issue an Auction Objection Notice and providing reasons for that intended objection.
- (c) In issuing an Auction Objection Notice or a draft notice under clause 9.6(b), the ACCC must have regard to:
 - (i) whether the proposed variations incorporate the features set out in clause 9.5(d);
 - (ii) whether the proposed variations would amount to a breach of the anti-discrimination provision in clause 5.5 or the no hindering access provision in clause 9.7;
 - (iii) the desirability of having a degree of consistency with other auction systems in Australia for the exporting of Bulk Wheat, balanced with the need to apply the system having regard to any different characteristics of the Port Operator’s operations and the South Australian industry;
 - (iv) the matters set out in section 44ZZA(3) of the CCA; and
 - (v) any submissions by the Port Operator and/or other interested persons.
- (d) The ACCC may withdraw a draft notice issued under clause 9.6(b) or an Auction Objection Notice if in all the circumstances it becomes aware that the reasons specified in the relevant notice no longer exist or if those reasons are addressed.

B. What happens if the ACCC does not issue an Auction Objection Notice

- (e) If the ACCC does not issue an Auction Objection Notice in relation to an Auction Variation Notice, the variation will take effect in accordance with, and on and from the date specified in, the Auction Variation Notice.

C. What happens if the ACCC issues an Auction Objection Notice

- (f) If the ACCC issues an Auction Objection Notice:
- (i) the Auction Variation Notice will not take effect;
 - (ii) the Port Operator will submit a revised variation proposal (including a revised variation notice (“**Revised Variation Notice**”)) to the ACCC within 35 Business Days of the date of the Auction Objection Notice, and use its best endeavours to address the issues raised in the Auction Objection Notice. The submission of a revised variation proposal under this clause 9.6(f) will not require the Port Operator to recommence the consultation process under clause 9.5(c) or clause 9.5(g);
 - (iii) the ACCC will advise the Port Operator in writing within 30 Business Days of receiving the revised proposal whether it will withdraw its Auction Objection Notice in respect of the Revised Variation Notice (as varied in accordance with clause 9.6(g) if applicable) or whether it proposes that the notice will remain in force for the reason that some or all of its concerns have not been addressed, together with its reasons for that decision (“**Revised Proposal Decision Date**”); and
 - (iv) unless a different period is agreed by the Port Operator and the ACCC, the date set out in clause 9.5(a) will be extended by a period of 67 Business Days.
- (g) The Port Operator may at any time prior to the date that is 15 Business Days before the Revised Proposal Decision Date change the Revised Variation Notice to incorporate changes to address specific drafting and/or procedural issues raised by the ACCC, and submit a further version of the Revised Variation Notice to the ACCC. The ACCC may in its discretion extend the period of time for the Port Operator to submit a further version of the Revised Variation Notice if it considers that this will facilitate the introduction of an Auction System. The submission of a further version of the Revised Variation Notice in accordance with this clause 9.6(g) will not require the Port Operator to recommence the consultation process under clause 9.5(c) or clause 9.5(g).
- (h) If in accordance with clause 9.6(f)(iii) the ACCC withdraws any Auction Objection Notice in relation to the Revised Variation Notice (as varied in accordance with clause 9.6(g) if applicable), the Port Operator may vary the Port Loading Protocols and/or Standard Terms to give effect to the proposal in respect of which the ACCC has withdrawn its objections, by providing Major Users and the ACCC with notice in writing and publishing that notice in a prominent place on its website, in each case at least 10 Business Days before the variations take effect.

D. What happens if an Auction System is not introduced

(i) If the Port Operator does not introduce an Auction System by the date specified in clause 9.5(a) (as extended in accordance with clause 9.6(f)(iv), then:

- (i) the Port Operator will not breach this Undertaking; and
- (ii) unless otherwise agreed between the Port Operator and the ACCC, the Port Operator will not, from the Business Day immediately following that date as extended (“**Final Date**”), provide Port Terminal Services in respect of Bulk Wheat to the Port Operator’s Trading Division unless and until the ACCC consents to a variation to this Undertaking to introduce an Auction System.

For the avoidance of doubt:

- (iii) if, during any period to which clause 9.6(i)(ii) applies, the Port Operator’s Trading Division makes a booking in respect of a commodity other than Bulk Wheat, the Port Operator will not agree to any subsequent request by the Trading Division to amend that booking so that it relates to Bulk Wheat, or allow the Trading Division to use that booking for the export of Bulk Wheat; and
- (iv) subject to clause 9.6(j), if, during any period to which clause 9.6(i)(ii) applies, the Port Operator provides Port Terminal Services in respect of Bulk Wheat to the Port Operator’s Trading Division, the Port Operator will breach this Undertaking;
- (j) Clause 9.6(i) does not prevent the Port Operator from supplying storage services at its Port Terminals in respect of Bulk Wheat that is already held at the Port Terminal as at the Final Date, or from facilitating the receipt, transfer or movement of Bulk Wheat to other clients or to meet domestic out-turn requirements.
- (k) If the ACCC consents to a variation of this Undertaking before or after the Final Date to introduce an Auction System, the Port Operator may vary the Port Loading Protocols and/or Standard Terms to introduce the Auction System by:
 - (i) providing Major Users and the ACCC with written notice of the proposed variations; and
 - (ii) publishing that notice in a prominent place on its website (with a reference to the publication of the notice on the Shipping Stem),

in each case at least 5 Business Days before the proposed variations take effect.

E. Transition to the Auction System

(l) Subject to clause 9.6(m), unless otherwise agreed by the ACCC and the Port Operator, the Port Operator will not accept any new bookings onto the Shipping Stem for shipment from the Port Terminals on or after 1

October 2012 until the Auction System is implemented in accordance with clause 9.5 and this clause 9.6.

- (m) If, as at 16 August 2012 the Port Operator is not able to provide Port Terminal Services in respect of Bulk Wheat to its Trading Division (for the reason specified in clause 9.6(i)), the Port Operator will re-open the Shipping Stem to accept new bookings for shipment from the Port Terminals on or after 1 October 2012:
 - (i) by persons other than the Port Operator's Trading Division in respect of Bulk Wheat and other grain commodities; and
 - (ii) by the Port Operator's Trading Division in respect of commodities other than Bulk Wheat.

The Port Operator:

- (iii) will provide at least 5 Business Days notice of the re-opening of the Shipping Stem by publishing that notice in a prominent place on its website (with a reference to the publication of the notice on the Shipping Stem); and
 - (iv) will re-open the Shipping Stem for individual periods of 3 months, and will provide at least 5 Business Days notice of the re-opening of the Shipping Stem for each succeeding 3 month period.
- (n) Clause 9.6(m) will not apply if, after the Final Date, the ACCC consents to a variation to this Undertaking to introduce an Auction System.
 - (o) The Port Loading Protocols (as varied from time to time in accordance with clause 9.3) will remain in force unless and until varied in accordance with clause 9.5.

F. Following variation to introduce an Auction System

- (p) The Port Operator must:
 - (i) publish an updated copy of the Port Loading Protocols and Standard Terms in a prominent place on its website; and
 - (ii) provide a copy of the revised Port Loading Protocols and Standard Terms to the ACCC,

within 3 Business Days of any variation in accordance with clause 9.5 and clause 9.6 taking effect.
- (q) After the date that any variations in accordance with clause 9.5 and 9.6 take effect, the Port Operator may vary the Port Loading Protocols from time to time in accordance with clause 9.3 of this Undertaking. For the purposes of this Undertaking, the Port Loading Protocols include any document that replaces or is attached to the Port Loading Protocols to introduce the Auction System.

9.7 No hindering access

- (a) The Port Operator, or a Related Body Corporate of the Port Operator, must not engage in conduct for the purpose of preventing or hindering access to the Port Terminal Services by any other Applicant or User in the exercise of a right of access under this Undertaking.
- (b) A person may be taken to have engaged in conduct for the purpose referred to in clause 9.7(a) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or from other relevant circumstances. This clause 9.7(b) does not limit the manner in which the purpose of a person may be established for the purposes of clause 9.7(a).

10 Publication of other information

10.1 Publication of information on stock at each Port Terminal

- (a) Unless otherwise agreed by the ACCC, the Port Operator will, on a weekly basis during the term of this Undertaking, publish in a prominent position on its website (in the same location as the Shipping Stem) the following information:
 - (i) the aggregate stock of Bulk Wheat held at each Port Terminal;
 - (ii) the aggregate stock of barley and canola held at each Port Terminal;
 - (iii) the aggregate stocks of any other grains held at each Port Terminal; and
 - (iv) the names of the three largest grades of Bulk Wheat (by volume) held at each Port Terminal.

10.2 Publication of capacity information

- (a) Unless otherwise agreed by the ACCC, the Port Operator will, during the term of this Undertaking, publish in a prominent position on its website (in the same location as the Shipping Stem) an indicative estimate of the Available Capacity for each Port Terminal. This will be based on a number of assumptions and, given its dynamic nature, will be subject to qualifications. It will not involve a guarantee, representation, offer or benchmark in relation to the capacity or throughput that is or may be available at any Port Terminal.
- (b) If the Port Operator varies the indicative estimate of the total amount of Available Capacity that may be available for all bookings (i.e. existing, pending and future bookings) in respect of a particular Port Terminal for a particular month as published on its website, the Port Operator will publish (in the same location) the reasons for that change.

10.3 Performance indicators

- (a) Unless otherwise agreed by the ACCC, the Port Operator will, during the term of this Undertaking, publish in a prominent position on its website (in the same location as the Shipping Stem) the following information:

- (i) the daily road receivals to each Port Terminal (in tonnes) - publish weekly;
 - (ii) the total bookings received at each Port Terminal in the previous month (by number and in tonnes) - publish monthly;
 - (iii) the total bookings rejected at each Port Terminal in the previous month (by number and tonnes) - publish monthly;
 - (iv) the total bookings cancelled at each Port Terminal by Clients in the previous month (by number and tonnes) - publish monthly;
 - (v) the average time taken to assess bookings at each Port Terminal during the previous month - publish monthly. For the avoidance of doubt, this obligation will only apply to bookings made after the commencement of this Undertaking;
 - (vi) the total number of port block-outs at each Port Terminal monthly in the previous month - publish monthly;
 - (vii) the total number of vessels failing survey at each Port Terminal during the previous month - publish monthly.
- (b) To avoid doubt, the publication requirements in clauses 10.1(a), 10.2(a) and 10.3(a) only apply to services provided by means of the Port Terminal Facilities. The Port Operator is not required to publish information in relation to up-country or logistics services.
 - (c) By applying for access to the Port Terminal Services in accordance with this Undertaking, each Applicant expressly consents to the Port Operator publishing information about its stocks in accordance with clause 10.1(a).

10.4 Publication of vessel booking applications

- (a) The Port Operator will publish the following details of any booking applications that it receives for the export of Bulk Wheat on the Shipping Stem on the day that the Shipping Stem is next updated:
 - (i) the name of the exporter; and
 - (ii) the volume of Bulk Wheat to be exported.

The Shipping Stem is updated each Business Day.
- (b) By applying for access to the Port Terminal Services in accordance with this Undertaking, each Applicant expressly consents to the Port Operator publishing information about its vessel nomination applications in accordance with clause 10.4(a).

11 Report on key service standards

11.1 Performance Report

- (a) The Port Operator will provide the ACCC with a report:
- (i) in the case of the period from 1 October 2011 to 31 March 2012, by no later than 31 May 2012;
 - (ii) in the case of the period from 1 April 2012 to 30 September 2012, by no later than 30 November 2012;
 - (iii) in the case of the period from 1 October 2012 to 31 March 2013, by no later than 31 May 2013;
 - (iv) in the case of the period from 1 April 2013 to 30 September 2013, by no later than 30 November 2013;
 - (v) in the case of the period from 1 October 2013 to 31 March 2014, by no later than 31 May 2014; and
 - (vi) in the case of the period from 1 April 2014 to 30 September 2014, by no later than 30 November 2014,

in each case, providing details on the following key service standards in respect of the provision of Port Terminal Services for Bulk Wheat at each Port Terminal during the relevant period:

- (vii) tonnage loaded each month for each Port Terminal;
 - (viii) number of vessels loaded each month for each Port Terminal;
 - (ix) the average waiting time for vessels to complete loading for each month by Port Terminal. Waiting time will exclude if the vessel is not load ready; and
 - (x) percentage of vessels that failed either AQIS or marine surveys for each month by Port Terminal.
- (b) The Port Operator will publish in a prominent position on its website (in the same location as the Shipping Stem), its report to the ACCC within 5 Business Days of the date on which it provides it to the ACCC.

12 Contact details

- (a) Persons wishing to contact the Port Operator for further information or to apply for access to the Port Terminal Services should contact the Port Operator at the following address:

*The General Manager
Commercial and Compliance
Viterrra Operations Ltd
124-130 South Tce
Adelaide SA 5064
Tel: (08) 8238 5217
Fax: (08) 8385 8311
All_Commercial_Compliance@viterrra.com*

- (b) Applicants are also encouraged to review the Port Operator's web site at www.viterrra.com.au which includes information relevant to the Port Terminal Services.

- (c) A notice or consent under this Undertaking (including a Dispute Notice) is only effective if it is:

- (i) in writing, signed by or on behalf of the person giving it;
- (ii) addressed to the person to whom it is to be given; and
- (iii) either:
 - (A) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
 - (B) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - (C) sent by email to that person for the time specified in clause 12(e).

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

- (i) if it is sent by mail, on the third Business Day after posting;
- (ii) if it is delivered or sent by fax:
 - (A) by 5.00 pm (local time in the place of receipt) on a Business Day, on that day; or
 - (B) 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
- (iii) if it is sent by email, 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.

- (e) The Port Operator's address and fax number are as set out in clause 12(a). An Applicant's contact details will be as set out in the Access Application. In each case, the contact details may be amended at any time by notice given in accordance with this clause 12.

13 Definitions

13.1 Definitions

“Access Agreement” means an agreement between a User and the Port Operator for the provision of Port Terminal Services;

“Access Application” means an application for Port Terminal Services as described in clause 6.4;

“Accredited Wheat Exporter” means a person having accreditation as an accredited wheat exporter under the WEAS;

“Additional Capacity” means port-loading capacity that becomes available after any auction for shipping prior to the following auction date;

“Applicant” means the person seeking access to Port Terminal Services under clause 6;

“Auction System” means an auction, booking and nomination system for Port Terminal Capacity;

“Auditor” means the independent auditor appointed at the direction of the ACCC in accordance with Schedule 4 of this Undertaking;

“Available Capacity” means an estimate of, or guide to, the amount of practical Port Terminal capacity that may be available from time to time for the provision of services for the exporting of Bulk Wheat and other Grains at a Port Terminal. Whether or not that capacity (or more or less capacity) can ultimately be delivered to Users will depend on a range of factors, including supply chain constraints, the performance of prior shipments, weather and various matters outside the Port Operator's control;

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

“Business Day” means a day which is not a Saturday, Sunday or public or bank holiday in South Australia, except that if used in relation to a specific Port Terminal means the State or Territory in which the relevant Port Terminal is located;

“Cargo Accumulation” means the receipt and positioning by the Port Operator at a Port Terminal of Bulk Wheat for assembly and loading onto vessels for export at the Port Terminals;

“Cargo Assembly Plan” means a document or documents recording, among other things, the agreed approximate tonnage of Bulk Wheat to be delivered and accumulated by the User at each loading port submitted by the User and accepted, subject to the Port Operator's final determination, by the Port Operator;

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

“**Competition Principles Agreement**” means the agreement entered into by the Commonwealth of Australia and each State and Territory of Australia in 1995 to implement the national competition policy of Australia;

“**Confidential Information**” means information exchanged between the Port Operator and an Applicant or User 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 a party prior to being provided by the party; or
- (h) must be disclosed under the Continuous Disclosure Rules or in order to comply with other legal requirements; or
- (i) ceases to be confidential in nature by any other lawful means;

“**Consultation Notice**” has the meaning given in clause 9.3(c)(i) or clause 9.5(g)(i) (as the case requires);

“**Continuous Disclosure Rules**” means the continuous disclosure rules as defined in subsection 24(4) of WEMA as amended or replaced by other legislation relating to the provision of Port Terminal Services by the Port Operator;

“**Credit Support**” means either:

- (a) a Parent Guarantee; or
- (b) Security;

“**Dispute**” means a bona fide dispute between an Applicant or User and the Port Operator arising under this Undertaking but excludes:

- (a) any disputes in relation to an Access Agreement once executed;
- (b) any dispute about the terms of the Port Loading Protocols (as amended from time to time) which form part of this Undertaking; and

(c) any booking fee, booking fee premia, similar or associated charges determined by the application of any Auction System;

“Dispute Notice” means a written notice provided by an Applicant or User to the Port Operator or by the Port Operator to an Applicant or User specifying the Dispute and requiring the Dispute to be dealt with in the manner set out in clause 7.1;

“ETA” means expected time of arrival;

“General Terms” means clauses 1 - 13 of this Undertaking;

“IAMA” has the meaning given in clause 7.3(d);

“Major Users” means, in respect of the Port Loading Protocols, Users that, as at the date of the proposed variation to the Port Loading Protocols, have exported an average of 50,000 tonnes of commodity through the Port Terminals in each of the preceding 2 seasons;

“Material Default” means any breach of a fundamental or essential term (including financial or payment terms) or repeated breaches of any of the terms of the agreements referred to in clause 6.6(f);

“Negotiation Period” means the period during which negotiation in relation to a final Access Agreement is undertaken as specified in clause 6.5(b);

“Parent Guarantee” means a guarantee given by a Related Body Corporate of the Applicant or User who has an investment grade credit rating or is otherwise acceptable to the Port Operator (acting reasonably);

“Port Loading Protocols” has the meaning given in clause 9.1(a);

“Port Schedules” means Port Schedules A - F to this Undertaking;

“Port Terminal Facility” has the meaning given in clause 4.2;

“Port Terminal Capacity” means, in relation to clauses 5.6(e), 9.3, 9.5 and 9.6, the capacity at each Port Terminal that is made available to Users under any Auction System;

“Port Terminals” means each of the ports operated by the Port Operator at:

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

“Port Terminal Service” has the meaning given in clause 4.2;

“Proposed Auditor” means a proposed independent auditor to undertake the independent audit as outlined in Schedule 4 of this Undertaking;

“Prudential Requirements” means the requirements specified in clause 6.6(f);

“Reference Prices” means the reference prices described in clause 5.2(a), or as varied in accordance with clause 5.6. For the avoidance of doubt, “Reference Prices” do not include any booking fee premia, similar or associated charges determined by the application of any Auction System;

“Related Body Corporate” has the meaning given to Related Body Corporate in the *Corporations Act 2001* (Cth);

“Season” means the one year period between 1 October and 30 September in the subsequent year;

“Security” means an unconditional and irrevocable bank guarantee, letter of credit, performance or insurance bond issued by a bank holding an Australian banking licence or such other reputable person or institution accepted by Port Operator and which is in a form reasonably satisfactory to Port Operator;

“Shipping Stem” has the meaning given in clause 9.1(a)(ii);

“Solvent” means that, in the last five years:

- (a) the Applicant has been able to pay all its debts as and when they become due and has not failed to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001* (Cth);
- (b) a meeting has not been convened to place it in voluntary liquidation or to appoint an administrator;
- (c) an application has not been made to a court for the Applicant to be wound up without that application being dismissed within one month;
- (d) a controller (as defined in the *Corporations Act 2001* (Cth)) of any of the Applicant’s assets has not been appointed; or
- (e) the Applicant has not proposed to enter into or enters into any form of arrangement with its creditors or any of them, including a deed of company arrangement;

“Standard Port Terminal Service” means a Port Terminal Service specified as such in a Port Schedule;

“Standard Terms” means the standard terms and conditions described in clause 5.1(a), or as varied in accordance with clause 5.6(e);

“Trading Division” means a business unit or division of the Port Operator or its Related Bodies Corporate which have responsibility for the trading and marketing of Bulk Wheat;

“User” means 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;

“WEAS” means the Wheat Export Accreditation Scheme 2008;

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

13.2 Interpretation

In this Undertaking, unless the context otherwise requires:

- (a) singular words will also have their plural meaning and vice versa;
- (b) a reference to a person includes companies and associations;
- (c) a reference to a consent of a party means the prior written consent of that party;
- (d) headings are for convenient reference only and do not affect the interpretation of this Undertaking;
- (e) a reference to a clause, Part or a Schedule is a reference to a clause, Part or Schedule of this Undertaking;
- (f) a reference to a party includes its successors and permitted assigns;
- (g) notices that are required to be given in writing to the Port Operator may, if so agreed by the Port Operator, be provided in electronic form;
- (h) a reference to any Act includes all statutes, regulations, codes, by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations, amendments, re-enactments or replacements from time to time of that Act and a reference to “law” includes a reference to any Act and the common law;
- (i) the words “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (j) a reference to \$ and dollars is to Australian currency.

Port Terminal Services Access Undertaking

DATED WEDNESDAY, 21 SEPTEMBER 2011

SIGNED for and on behalf of Viterra Operations Limited
(ABN 88 007 556 256) by its duly authorised officer:



.....
(Signature)

DEAN McQUEEN

.....
(Name)

EXECUTIVE MANAGER, GRAIN

.....
(Position)

Port Terminal Services Access Undertaking

Schedule 1 – Access Application information

Access Applications are to be submitted to the Port Operator in written form and clearly state that the Access Application is made in accordance with this Undertaking and must be accompanied by the following information:

1 Request details

1.1 Season

2 Applicant details

2.1 Company name

2.2 ABN/ACN

2.3 Applicant's Website*

2.4 Address

2.5 Contact details

2.6 Details of authorised company representatives (including authorisation)

2.7 Duration of the Access Agreement sought (if different from the Standard Port Terminal Services Agreement)

* Not mandatory

Port Terminal Services Access Undertaking

Schedule 2 – Port Loading Protocols



Viterra Operations Limited Port Loading Protocols

1 Introduction

- 1.1 These Port Loading Protocols (“**Protocols**”) provide information in relation to the pathway for the export of Grain commodities out of Viterra Operations’ Port Terminals and set out the processes and procedures which Viterra Operations will apply to order and manage vessels for loading. In these Protocols, “Viterra Operations” 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 Operations’ Port Terminals. In the case of Bulk Wheat, these Protocols also form part of the Access Undertaking provided by Viterra Operations to the Australian Competition & Consumer Commission.
- 1.3 These Protocols apply equally to all Clients, including Viterra’s Trading Division.
- 1.4 Any receipt, handling and shipment of Grain at or from Viterra Operations’ Port Terminal Facilities by a Client is also subject to the rights and obligations set out in the relevant Handling Agreement.
- 1.5 Any terms not otherwise defined in these Protocols will have the same meaning as set out in the Access Undertaking and, failing that, the Handling Agreement.

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 Operations’ Shipping Stem.
- 2.2 The Client can book a Slot on the Shipping Stem for either a named or TBN vessel by submitting Viterra Operations’ 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 (“**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.
 - 2.2.3 Viterra Operations will provide a PDF of the Booking Form on its website (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 Operations at vesselnominations.aus@viterra.com. The Client 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 vesselnominations.aus@viterra.com.

- 2.3 Following receipt of a completed Booking Form, Viterra Operations will place the Client's booking in "Pending" status on the Shipping Stem when the Shipping Stem is next updated. "Pending" status does not mean that the booking is accepted.
- 2.4 Once the Client's booking is accepted by Viterra Operations (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.

Bookings accepted by Viterra Operations are allocated personally to the Client and are only transferable in accordance with clause 11 of these Protocols.

3 Acceptance of Booking and Ongoing Compliance

- 3.1 The following conditions must be satisfied before a booking will be accepted by Viterra Operations:
 - 3.1.1 compliance by the Client with Table A requirements (to the extent they are required at the time of booking); and
 - 3.1.2 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.
- 3.2 In order to maximise Port Terminal capacity utilisation, Viterra Operations may accept a new booking on the Shipping Stem only where Viterra Operations, 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 prior bookings on the Shipping Stem.

TBN vessels

In circumstances where a booking does not involve a named vessel, Viterra Operations 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 estimated maximum available in-load 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 Operations (in consultation with the Client) is able to determine this availability;
- 3.2.4 the availability of transport from all providers, if Viterra Operations (in consultation with the Client) is able to determine the level of transportation available; and
- 3.2.5 any other considerations that Viterra Operations considers to be relevant in the circumstances.

Note

These factors reflect that whether or not a booking can be accepted involves a consideration
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of both the estimated Available Capacity at the Port Terminal and the ability of the Client (or its nominated service provider) to deliver Grain to the Port Terminal.

Split bookings

- 3.3 A 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 at the same Port Terminal; and
 - 3.3.2 the total tonnage of all of the “split” bookings does not exceed the tonnage specified for the original booking.

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 “split” bookings.

Tonnages may also be transferred between bookings in the same Slots (at the same Port Terminal) with the prior written agreement of Viterra Operations.

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

- 4.1 Subject to clauses 4.2 and 4.3, Viterra Operations will reply to the Client within 5 Business Days following the receipt of a fully completed Booking Form, with notification of:
- 4.1.1 acceptance of the booking nominated by the Client on a TBN basis; or
 - 4.1.2 acceptance of the booking nominated by the Client for a named vessel; or
 - 4.1.3 non-acceptance of the booking nominated by the Client, including reasons for non-acceptance.
- 4.2 In circumstances where Viterra Operations cannot satisfy the Client’s booking in full due to operational factors (including a lack of available capacity or existing commitments to other Clients), Viterra Operations will send a proposal to the Client (for the Client’s acceptance) setting out potential alternative arrangements, for example:
- 4.2.1 an alternative Slot;
 - 4.2.2 acceptance of non-standard service levels and associated costs; and/or
 - 4.2.3 alternative port arrangements, stock swaps or load grades.
- 4.3 Viterra Operations cannot guarantee acceptance of a booking within 5 Business Days in circumstances where Viterra Operations and the Client 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 Operations will assess its terminal services capacity and notify the Client of the vessel's estimated load date ("**Load Date**").

6 Changes in Slots and Load Dates by Viterra Operations

6.1 Viterra Operations will endeavour to ensure that the Client's Slot and Load Date will be held for the Client. However, Viterra Operations 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 If there is a change to the ETAs of the Client's vessel or others in the vessel queue (see clause 8);

6.1.7 If there is a delay in receipt of the Client's authority to load;

6.1.8 If necessary to reflect the impact of any changes to Flinders Ports SA Port rules for Grain Berth Loading Priorities at the relevant port;

6.1.9 If the Client has failed to comply with the requirements detailed in these Protocols or its Handling Agreement;

6.1.10 If non-Grain vessels are being loaded at common berths under the Flinders Ports SA Port rules and this will impact on the Slot or Load Date;

6.1.11 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 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.

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, in the event that this capacity becomes available, an email circulated to Clients simultaneously. Clients may apply to book the vacated Slot on a "first come first served" basis. The other clauses of these Protocols will apply to the new booking.

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 SA Port Rules) first will be considered to be the first arrived vessel.

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

7.1.1 Viterra Operations 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 Operations 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 Operations with 14 days' notice prior to the vessel ETA;
- h. The vessel arrival time is within the Client's 15 day booking Slot;
- i. The Client has not made any changes to load grades and/or quality requirements within the last 14 days; and
- j. the vessel has not been substituted and the ETA has not changed within the 14 day period prior to the original ETA.

If a Client does not meet the conditions set out in this clause 7.1.1, Viterra Operations reserves the right to re-prioritise and load vessels outside the order of arrival where it is practically achievable and Viterra Operations considers on reasonable grounds (and on an objective and ascertainable basis) that the overall speed and efficiency of the Port Terminal will be enhanced or delays to named vessels will be minimised.

7.1.2 Where Viterra Operations is required to determine priority of Terminal Services at port other than the loading of vessels (see below), 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 made by the Client and that booking has been accepted by Viterra Operations 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 has provided Viterra Operations 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 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.

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 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):

- 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 Operations 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 it reduce the overall wait time over all named vessels; and

- i. any other considerations which Viterra Operations considers relevant in the circumstances.

Example

The following list provides a non-exhaustive list which sets out Viterra Operations' 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 for another vessel;
- (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.

Grace Period

- 7.1.5 Viterra Operations 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 available spare Port Terminal services capacity and the required stock can be made available.

(See also clause 8.3).

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

- c. Viterra Operations’ reasonable ability (and Viterra Operations taking reasonable steps) to accommodate the change; and
- d. 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. 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 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 capacity;
- (vii) the overall speed and efficiency of the Port Terminal; and
- (viii) any other considerations that Viterra Operations 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.

Short lead-time bookings

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

Two-port loading

- 7.1.7 Where:
- a. the Client is loading a vessel at more than one of Viterra Operations' Port Terminals;
 - b. the vessel arrives within its original booking Slot at the first Port Terminal;
 - c. the vessel is subsequently delayed at the first Port Terminal; and
 - d. 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 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 Operations may vary Terminal Services Priority to the extent necessary to address these external requirements.

8 Failure to Meet Table A Requirements

- 8.1 Subject to clause 8.3, 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 1 Business Day. 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.
- 8.2 In determining the time to be specified in the notice for the Client to ensure compliance, Viterra Operations 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, Viterra Operations will use its best endeavours to treat all Clients 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 Movement of bookings

9.1 In respect of any accepted booking, a Client may, no later than 30 days prior to the first day of the original 30 day booking Slot, submit a request in writing to Viterra Operations to:

9.1.1 move that booking to a different 30 day Slot at the same Port Terminal as the original booking; or

9.1.2 move that booking to a 30 day Slot at a different Port Terminal to the original booking,

in each case where the new 30 day Slot occurs within the same Season as the original Slot.

9.2 A Client will only be entitled to make one request in accordance with clause 9.1 in respect of each booking.

9.3 Viterra Operations will respond to any request made under clause 9.1 within 3 Business Days of receiving the request and will either:

9.3.1 accept the Client’s request if there is sufficient 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

9.3.2 not accept the Client’s request if there is insufficient 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.

9.4 If Viterra Operations is unable to accept the Client’s request in accordance with clause 9.3.2, Viterra Operations will 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 9.5 or pursuant to negotiations in accordance with this clause 9.4, the booking will remain unchanged on the Shipping Stem.

9.5 If Viterra Operations accepts the Client’s request in accordance with clause 9.3.1:

9.5.1 Viterra Operations will amend the Shipping Stem on the next Business Day and, if the moved booking results in additional capacity becoming available, send an “all Client” email advising that additional capacity is available for Clients; and

9.5.2 the booking will be deemed to be varied as of the date of Viterra Operations’ written acceptance. It will not be considered a new booking and no additional booking fee will be payable.

- 9.6 This clause 9 does not affect the operation of clause 3.3 (split bookings).
- 9.7 For the avoidance of doubt, this clause 9 will apply to shipments to be executed after 1 October 2011, regardless of whether the relevant booking was made prior to, on or after that date.

10 Conditional refund of booking fee for early surrender of bookings

10.1 If, by notice in writing to Viterra Operations:

10.1.1 a Client cancels a booking that has been accepted on the Shipping Stem; and

10.1.2 that notice is given no later than 30 days prior to the commencement of the relevant 30 day booking Slot,

then,

10.1.3 Viterra Operations will amend the Shipping Stem on the next Business Day with a note that the booking has been cancelled;

10.1.4 if, in the 14 day period following receipt of the cancellation notice in accordance with this clause 10.1, Viterra Operations does not receive any new booking (by a Client) for:

- (i) a quantity of Grain that is the same or more than that which was the subject of the cancelled booking;
- (ii) export from the same Port Terminal to which the cancelled booking relates; and
- (iii) for shipment in the Slot to which the cancelled booking relates,

the Client that made the cancellation under clause 10.1 will not be entitled to any refund of the booking fee in whole or in part.

10.1.5 if, in the 14 day period following receipt of the cancellation notice in accordance with this clause 10.1, a new booking is made by a Client for:

- (i) a quantity of Grain that is the same or more than that which was the subject of the cancelled booking;
- (ii) export from the same Port Terminal to which the cancelled booking relates; and
- (iii) for shipment in the Slot to which the cancelled booking relates,

and that booking is accepted in accordance with these Protocols (including clause 3.1), Viterra Operations will refund to the Client that cancelled the booking (in accordance with this clause 10.1) 50% of the original booking fee paid by the Client. For the avoidance of doubt, a booking fee will be payable in respect of the new booking.

10.2 For the further avoidance of doubt:

10.2.1 any new bookings under clause 10.1.5 will be allocated on a first in first served basis;

- 10.2.2 if more than one booking is cancelled in respect of the same Slot, any new bookings under clause 10.1.5 will be applied against the cancelled bookings in order of their cancellation; and
- 10.2.3 this clause 10 will apply to shipments to be executed after 1 October 2011, regardless of whether the relevant booking was made prior to, on or after that date.

11 Transferring bookings

11.1 A Client (“**Transferor**”) may transfer a booking that has been accepted by Viterra Operations if the following conditions are satisfied:

11.1.1 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**”) by no later than 30 days prior to the first day of the Slot for the relevant booking;

11.1.2 within 2 Business Days of the date on which the Transfer Notice is provided to Viterra Operations, the Transferee provides to Viterra Operations a completed booking form in respect of the transferred booking. Any changes from the Transferor’s original booking form (other than name) must be agreed by Viterra Operations;

11.1.3 the quantity of Grain to be exported by the Transferee is not more than amount of Grain specified in the Transferor’s original booking;

11.1.4 the Transferor has met the Table A requirements (to the extent relevant) as at the date of the Transfer Notice; and

11.1.5 the relevant booking has not previously been transferred in accordance with this clause 11.

11.2 Subject to the Transferee and Transferor complying with this clause 11, Viterra Operations will accept any transfer within 3 Business Days (“**Transfer Acceptance Date**”).

11.3 Viterra Operations will amend the Shipping Stem on the next Business Day after the Transfer Acceptance Date.

11.4 For the avoidance of doubt:

11.4.1 the Transferee will not be required to pay a new booking fee to Viterra Operations in respect of the transferred booking;

11.4.2 this clause 11 will apply to shipments to be executed after 1 October 2011, regardless of whether the relevant booking was made prior to, on or after that date; and

11.4.3 the transfer of a booking in accordance with this clause 11 does not affect the operation of clause 9 or 10 in respect of that booking.

12 Demonstrating Stock Entitlement

12.1 A Client is required by Table A to demonstrate at various points of time its entitlement to stock.

12.2 Stock entitlement may be demonstrated by the Client providing:

- 12.2.1 details of commodity held by the Client at Viterra Operations sites that meets the Client's nomination;
- 12.2.2 details of commodity held at Third Party Sites (refer clause 13) that meets the Client's nomination;
- 12.2.3 adequate evidence of forward purchases and sales commitments going to meeting the Client's nomination; and
- 12.2.4 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.

13 Stock at Third Party Sites

- 13.1 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:
 - 13.1.1 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));
 - 13.1.2 The Third Party Site is adequately serviced by road or rail;
 - 13.1.3 Upon request by Viterra Operations, the Client promptly provides the most recent treatment history of the commodity;
 - 13.1.4 Upon request by Viterra Operations, the Client provides a valid fumigation certificate (as outlined in the Handling Agreements or in a form otherwise approved by Viterra Operations) for the stock to be exported through a Viterra Operations Port Terminal; and
 - 13.1.5 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 at the commencement of the Client's Slot.

14 Export Standard Requirements

- 14.1 In the event that the Client selects Export Standard for the accumulation of the commodity the subject of a booking, the Client must provide to Viterra Operations by no later than 18 days prior to the opening of the first day of the Slot:
 - 14.1.1 a Site Assembly Plan that is complete for the purposes of the export of stock; and
 - 14.1.2 a Transport Plan that is complete for the purposes of the export of stock.
- 14.2 If the Client fails to provide a Site Assembly Plan and/or a Transport Plan as required under clause 14.1, Viterra Operations may re-prioritise the Client's vessel on the Shipping Stem.

15 Dispute Resolution

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

- 15.1 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**”).
- 15.2 In the case of a dispute regarding rejection of a booking, the Dispute Notice must be received by Viterra Operations by 17:00 Australian Central Standard Time on the next Business Day following receipt of the notice from Viterra Operations that it does not intend to accept the booking (see clause 4.1.3);
- 15.3 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**”). The 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;
- 15.4 If the Client is not satisfied by the 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 the Viterra Operations Response, or within one Business Day of when the Viterra Operations Response was due (“**Escalation Notice**”);
- 15.5 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;
- 15.6 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**”);
- 15.7 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:
- 14.7.1 maximising the efficient operation of the Port Terminal;
 - 14.7.2 maximising export throughput at the Port Terminal;
 - 14.7.3 ensuring the non-discriminatory treatment of Clients; and
 - 14.7.4 ensuring consistency of decisions.

16 Review of these Protocols

16.1 Viterra Operations may vary these Protocols at any time in accordance with clauses 9.3 to 9.6 of the Access Undertaking.

17 Definitions

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).

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:

- (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.

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.

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

Handling Agreement means:

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

Laycan means a period of time from one date to another advised by the Client to Viterra Operations 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.

Port Terminal means, depending upon the context, one or all of Viterra Operations' 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

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

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 Operations 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 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.

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

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

Table A: Booking Process

	Timeline	Vessel	Contract /Load Details	Shipping Period		Export Licence (if applicable)	Current Stock Entitlement
1	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"> • Load Port • Commodity • Tonnage (Min/Max) • Treatment Feed or Malting grade must be indicated when nominating Barley shipments.	30 day Slot		Not required at this point	Not required at this point
2	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"> • Load grades by tonnage and season • Quality details / requirements 	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).
3	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)
4	No later than 18 days prior to the opening of the first day of the booked	TBN	As per section 2 of this table (as required)	As per section 3 of this table (as required)		Viterra Operations 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
	Slot						
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"> • Sampling requirements • Requirement for fumigation certificate 	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 Operations 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 and modifications to Table A information (other than the matters set out in clause 9 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 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 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 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 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.

Attachment 1: Transfer Notice under clause 11 of the Port Loading Protocols

Name of Transferor:

Name of Transferee:

Date of notice:

Original booking date and SCNO number:

 Date of booking:

 SCNO number (if known):

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 (“**Booking**”) in accordance with clause 11 of the Port Loading Protocols.

The Transferor and Transferee acknowledge and agree that:

1. the Transferor remains responsible to Viterra Operations Ltd (“**Viterra Operations**”) for the booking fee paid or payable in respect of the Booking.
2. The Transferee’s Handling Agreement and the Port Loading Protocols will apply to the execution of the Booking by the Transferee.
3. If clause 10 of the Port Loading Protocols applies, Viterra Operations will make any refund (after the Transfer Acceptance Date) to the Transferee.
4. 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.
5. This notice cannot be revoked once signed by the Transferor and Transferee and provided to Viterra Operations.

- 6. Words used in this notice have the same meaning as in the Port Loading Protocols.
- 7. Within 2 Business 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

Port Terminal Services Access Undertaking

Schedule 3 - 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 [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 This Agreement is the Standard Terms.
- E 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 dated [] 2011 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.

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.

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 Receival (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 Receivals means receivals 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 Receival (Classification) Standards and Outturn standards of that same Service Year, or any other grade agreed by the Parties.

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 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.

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 Reveal 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.

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.

Reveal (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 reveal 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 Reveal 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 Receiving Services means the receiving 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 Receiving 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 receipt, 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 receipt from road transport at a Port Terminal Facility, the Client authorises the Company to use Company weighbridges to determine the receipt tonnage.
- (b) For receipt 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 receipt tonnage.
- (c) The Company will use the receipt 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 Port Loading Protocols are available at www.viterra.com.au and may be varied from time to time in accordance with the Access Undertaking.

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 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 such period as specified in the Reference Prices.

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 GST

- (a) If GST is payable by the Company in respect of any Taxable Supply to the Client under this Agreement, the Client must pay any such GST (in addition to any other amounts payable under this Agreement).
- (b) The Company will provide the Client with a tax invoice that complies with the GST Legislation.

- (c) All fees and charges payable under this Agreement are expressed exclusive of GST.

8.8 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.

8.9 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.

8.10 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.

8.11 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 8.11(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 Viterro 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 not 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

Any 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.

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)

Port Terminal Services Access Undertaking

Schedule 4 – Auditor

1. Appointment of Auditor

- 1.1 If, at any time during the term of this Undertaking, the ACCC issues a notice under clause 5.5(c) of the Undertaking, the Port Operator must, within 5 Business Days, advise the ACCC in writing of the identity of the person that it proposes to appoint as the Auditor, together with such information or documents (including the proposed terms of engagement) that the ACCC requires to assess the skill and independence of the Auditor.
- 1.2 The Proposed Auditor must be a person who has the relevant skill to perform the role of Auditor and is independent of the Port Operator. Without limitation, an Auditor is not independent if he or she:
- (a) is a current employee or officer of the Port Operator or a Related Body Corporate of the Port Operator;
 - (b) has been an employee or officer of the Port Operator or a Related Body Corporate of the Port Operator in the past 36 months;
 - (c) in the opinion of the ACCC, holds an interest in the Port Operator or a Related Body Corporate of the Port Operator;
 - (d) has within the past 36 months been a professional adviser to the Port Operator or a Related Body Corporate of the Port Operator;
 - (e) has a contractual relationship, or is an employee or contractor of a firm or company that has a contractual relationship, with the Port Operator or a Related Body Corporate of the Port Operator;
 - (f) is a supplier, or is an employee or contractor of a firm or company that is a supplier, of the Port Operator or a Related Body Corporate of the Port Operator; or
 - (g) is a customer, or is an employee or contractor of a firm or company that is a customer, of the Port Operator or a Related Body Corporate of the Port Operator.
- 1.3 If, within 5 Business Days of receipt by the ACCC of the information or documents from the Port Operator referred to in paragraph 1.1 of this Schedule 4, or such further period as required by the ACCC and notified to the Port Operator:
- (a) the ACCC does not object to the Proposed Auditor, the Port Operator must appoint the Proposed Auditor as Auditor as soon as practicable thereafter (but in any event within 5 Business Days) on terms approved by the ACCC and consistent with the performance by the Auditor of its functions under this Undertakings and forward to the ACCC a copy of the executed terms of appointment of the Auditor; or
 - (b) the ACCC does object to a Proposed Auditor, the Port Operator must as soon as practicable (but in any event within 5 Business Days) appoint a

person identified by the ACCC at its absolute discretion as the Auditor on terms approved by the ACCC and consistent with the performance by the Auditor of its functions under this Undertaking.

2. Scope of the audit

- 2.1 The Port Operator must, within 30 Business Days of the date on which the Auditor is appointed in accordance with paragraph 1.3 of this Schedule 4, provide to the ACCC a written report from the Auditor in relation to the Port Operator's compliance with its obligations under clause 5.5(a) of the Undertaking.
- 2.2 The Port Operator must provide to the Auditor any information or documents requested by the Auditor that the Auditor reasonably considers necessary and relevant for fulfilling its obligations in relation to compliance by the Port Operator with its obligations under clause 5.5(a) of the Undertaking or for reporting to or otherwise advising the ACCC.
- 2.3 The Port Operator must procure the Auditor to provide information or documents or access to the ACCC, as required by the ACCC to ensure compliance with the Undertaking.
- 2.4 In complying with the obligations in this paragraph 2, the Port Operator must:
- (a) take any steps directed by the ACCC in relation to any matter arising from the report of the Auditor referred to in paragraph 2.1 of this Schedule 4 within 10 Business Days of being so directed (or such longer period agreed with the ACCC);
 - (b) direct its personnel, including directors, managers, officers, employees and agents to act in accordance with the obligations set out in this paragraph 2 and ensure such personnel are aware of the Auditor and its role; and
 - (c) provide access, information and/or documents required by the Auditor.
- 2.5 The Port Operator must maintain and fund the Auditor and must indemnify the Auditor for reasonable expenses and any loss, claim or damage arising from the proper performance by the Auditor of functions required to be performed by the Auditor under this Undertaking.

3. Limits on the audit process

- 3.1 The ACCC must not require the Port Operator to appoint an Auditor to undertake an audit in relation to the Port Operator's compliance with its obligations under clause 5.5(a) of the Undertaking more often than twice in each 12 month period during the term of the Undertaking.
- 3.2 If:
- (a) within the period of 3 months prior to the date on which the ACCC issues any notice under clause 5.5(c) of the Undertaking, the Port Operator has submitted an audit report to WEA (to comply with a requirement by WEA) ("**WEA Audit Report**");
 - (b) the WEA Audit Report was prepared by a person that satisfies the criteria for independence set out in paragraph 1.2 of this Schedule 4; and

- (c) the WEA Audit Report addresses the Port Operator's compliance with its obligations under clause 5.5(a) of the Undertaking,

the Port Operator may provide the WEA Audit Report to the ACCC, and the ACCC may accept that report in satisfaction of the requirement for the Port Operator to provide an audit report to the ACCC in accordance with paragraph 2.1 of this Schedule 4.

- 3.3 For the avoidance of doubt, the ACCC will not be required to accept the WEA Audit Report in satisfaction of the requirement for the Port Operator to provide an audit report to the ACCC in accordance with paragraph 2.1 of this Schedule 4 if the ACCC (acting reasonably) considers that the matters set out in paragraphs 3.2(a)-(c) are not satisfied in respect of the WEA Audit Report.

Port Terminal Services Access Undertaking

Port Schedule A – Port Adelaide, Inner Harbor - Berth 27

This Schedule contains information about the Port Adelaide Inner Harbour port terminal. Unless otherwise indicated, terms in this Port Schedule have the same meaning as in the Undertaking.

1 Description of Port

1.1 Location

Moonta Road, Port Adelaide, South Australia

Latitude 34°51'S

Longitude 138°30'E

1.2 Port Terminal Facilities

- Flinders Ports Grain Berth 27, Inner Harbour Port Adelaide
- Intake facilities for road and rail available
- Storage facilities available for positioning of grain for shipping
- Storage facilities available for grower receivals, supply into shipping facilities and longer term storage options
- intake weighbridges
- shipping batch weighers onto 1 shipping belt

1.3 Storage capacity

60,800 mt Steel Shipping bins

278,000 mt concrete vertical silos and bunkers for grower receivals, supply into shipping facilities and longer term storage options

1.4 Practical in-load capacity

Maximum¹ in-load capacity for road intake is 3000 tph, of which 2 receival hoppers are available for accumulation into the shipping bins at a rate of 1600 tph, or alternatively 800 tpa if shipping is concurrently occurring. Average capacity² is estimated to be approximately 640 tph.

¹ Maximum Capacity is the rated capacity of the infrastructure. This represents the physical limits of the existing plant and equipment operating at full engineering capacity.

² Average Capacity takes into account the number of discharge points that Viterra Operations would expect to operate on a given day, based on segregations and other activities also

Average capacity of 625 tph for rail intake is available for accumulation into the shipping bins

1.5 Ship loading capacity

Average shiploading capacity approximately 700 tph wheat

No. of shipping belts: 1

No. of spouts: 2

1.6 Berth details and restrictions

Further information in relation to port facilities is available from Flinders Ports:
www.flindersports.com.au.

2 Port Terminal Services

2.1 Receival services

(a) Road receival comprises:

- up to 10 receival hoppers, of which 2 are available for intake into shipping bins
- Marshalling capacity 50 semitrailers
- intake weighbridges, 80 mt capacity each
- lines provide sample and quality testing services
- Standard intake hours 7.30 am – 3.30 pm Monday to Friday
- During the harvest period, the site receives direct deliveries from growers into long term storage.
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the Viterra Operations website:

www.viterra.com.au

(b) Rail receival comprises:

- Standard gauge line
- Gross weighing
- Trains require shunting 10 wagons at a time

performed, requirements to clear grids and grain paths, and other operating issues experienced at the Terminal.

- Rail operators are required to have a full Rail Safety Plan prior to arranging any rail movements to company sites. This will require all wagons to be fitted with RFID. Further information can be obtained by contacting the Safety, Health and Environment (“SHE”) Department on (08) 8304 5000

2.2 Storage services

Storage for shipping comprises 8 welded steel silos of 7,600 mt capacity each. All shipping is performed through these bins.

278,000 mt of storage for grower deliveries, supply into shipping facilities and longer term storage comprises concrete vertical silos and bunkers with various capacities.

2.3 Weigher Services

Weighing of grain on shipping is via two shore based batch weighers.

2.4 Ship loading services

The Port Operator provides the outturn to ship grain from the Port Operator’s terminal 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to loading, positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the:

- Standard Terms (Schedule 3 to the Undertaking); and
- Port Loading Protocols (Schedule 2 to the Undertaking),

available on the company website: www.viterra.com.au

Information on the Shipping Stem is updated each business day and is available at

www.viterra.com.au/port-access-scheduling

2.5 Cargo Accumulation

The Port Operator provides Cargo Accumulation services at the Port Terminals, including reviewing Cargo Assembly Plans prepared by Users.

Road intake and positioning from long term storage is not provided on a 24 hour / 7 day / week basis.

2.6 Additional services

Dust extraction

3 Additional capacity management terms

Shipping at Port Adelaide is operated on a “just in time” basis. The majority of the tonnage is ideally executed through 8 steel shipping bins. However, this will be supplemented from the concrete vertical bins. The split between bins will be impacted by local rates, stock positioning, blending and fumigation requirements.

This means that shipping capacity can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays, vessels failing surveys and AQIS unavailability.

Port Adelaide Berth 27 can partially load panamax vessels subject to vessel configurations prior to topping up in Port Adelaide Berth 8, Port Giles or Port Lincoln.

4 Additional published protocols and information

- Standard Terms (Schedule 3 to the Undertaking)
- Port Loading Protocols:
www.viterra.com.au/port-access-scheduling
- Viterra Chain of Responsibility Code of Conduct and Viterra Carrier Agreement:
www.viterra.com.au
- Flinders Ports operating rules:
www.flindersports.com.au/

Port Terminal Services Access Undertaking

Port Schedule B – Port Adelaide, Outer Harbor - Berth 8

This Schedule contains information about the Port Adelaide Outer Harbor port terminal. Unless otherwise indicated, terms in this Port Schedule have the same meaning as in the Undertaking.

1 Description of Port

1.1 Location

Outer Harbor, South Australia

Latitude 34°51'S

Longitude 138°30'E

1.2 Port Terminal Facilities

- Flinders Ports Grain Berth 8, Outer Harbor
- Intake facilities for road and rail available
- Shipping storage facilities located at the port
- 1 intake weighbridge
- 2 shipping batch weighers onto 1 shipping belt

1.3 Storage capacity

65,000 mt steel shipping bins

1.4 Practical in load capacity

Maximum Road in-load capacity of 800 tph through 1 receival hopper which equates to an average capacity of 400 tph.

Maximum Rail in-load capacity 2400 tph which equates to an average capacity of 1250 tph.

Maximum Capacity is the rated capacity of the infrastructure. This represents the physical limits of the existing plant and equipment operating at full engineering capacity.

Average Capacity takes into account the number of discharge points that Viterra Operations would expect to operate on a given day, based on segregations and other activities also performed, requirements to clear grids and grain paths, and other operating issues experienced at the Terminal.

1.5 Ship loading capacity

Average Ship loading capacity approximately 1000 tph wheat

No. of shipping belts: 1

No. of spouts: 1

1.6 Berth details and restrictions

Further information in relation to port facilities is available from Flinders Ports:
www.flindersports.com.au.

2 Port Terminal Services

2.1 Receival services

(a) Road receival comprises:

- 1 receival hopper
- Marshalling capacity 12 semitrailers
- 1 intake weighbridge, 100 mt capacity
- lines provide sample and quality testing services
- Standard intake hours 7.30 am – 3.30 pm Monday to Friday
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the Viterra Operations website:

www.viterra.com.au

(b) Rail receival comprises:

- Standard gauge loop line
- Gross and net weighing
- Rail operators are required to have a full Rail Safety Plan prior to arranging any rail movements to Viterra sites. This will require all wagons to be fitted with RFID. Further information can be obtained by contacting the Safety, Health and Environment (“SHE”) Department on (08) 8304 5000

2.2 Storage services

Storage for shipping comprises 8 welded steel silos of 7,500 mt capacity each and 2 welded steel silos of 2,500 mt capacity. All shipping is performed through these bins.

2.3 Weigher Services

Weighing of grain on shipping is via shore-based batch weighers.

2.4 Ship loading services

The Port Operator provides the outturn to ship grain from the Port Operator's terminal, 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to loading positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the:

- Standard Terms (Schedule 3 to the Undertaking); and
- Port Loading Protocols (Schedule 2 to the Undertaking),

available on the Port Operator's website: www.viterra.com.au

Information on the Shipping Stem is updated each business day and is available at:

www.viterra.com.au/port-access-scheduling

2.5 Cargo Accumulation

The Port Operator provides Cargo Accumulation services at the Port Terminals, including reviewing Cargo Assembly Plans prepared by Users.

Road intake and positioning from long term storage is not provided on a 24 hour / 7 day / week basis.

2.6 Additional services

Dust extraction

Outer Harbor is not available for direct grower receivals.

3 Additional capacity management terms

Shipping at Outer Harbor is operated on a "just in time" basis. This means that shipping capacity can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays, vessels failing surveys and AQIS unavailability.

The average capacity numbers for Outer Harbour are still impacted by minor commissioning issues and are likely to improve as supply chain partners become more familiar with operations at Outer Harbour.

4 Additional published protocols and information

- Standard Terms (Schedule 3 to the Undertaking)

- Viterra Port Loading Protocols:
www.viterra.com.au/port-access-scheduling
- Viterra Chain of Responsibility Code of Conduct and Viterra Carrier Agreement:

www.viterra.com.au
- Flinders Ports operating rules:
<http://www.flindersports.com.au/>

Port Terminal Services Access Undertaking

Port Schedule C – Port Giles

This Schedule contains information about the Port Giles port terminal. Unless otherwise indicated, terms in this Port Schedule have the same meaning as in the Undertaking.

1 Description of Port

1.1 Location

Port Giles, South Australia

Latitude 35°05'S

Longitude 138°68'E

1.2 Port Terminal Facilities

- Flinders Ports Grain Berth 1, Port Giles
- Intake facilities for road and rail available
- Storage facilities available for the positioning of grain for shipping
- Storage facilities available for grower receivals, supply into shipping facilities and longer term storage options
- 4 intake weighbridges
- shipping batch weigher

1.3 Storage capacity

75,000 mt steel shipping bins and 164,000 mt concrete vertical silos

221,000 mt of bunkers for grower receivals, supply into shipping facilities and longer term storage options

1.4 Practical in load capacity

Total maximum capacity for road intake is 2650 tph, of which 2 receival hoppers are available for accumulation into the shipping bins at a maximum rate of 1200 tph. Average capacity is estimated to be approximately 840 tph.

Maximum Capacity is the rated capacity of the infrastructure. This represents the physical limits of the existing plant and equipment operating at full engineering capacity.

Average Capacity takes into account the number of discharge points that Viterra Operations would expect to operate on a given day, based on segregations and other activities also performed, requirements to clear grids and grain paths, and other operating issues experienced at the Terminal.

1.5 Ship loading capacity

Average ship loading capacity is approximately 850 tph wheat

No. of shipping belts: 1

No. of spouts: 5

1.6 Berth details and restrictions

Further information in relation to port facilities is available from Flinders Ports:
www.flindersports.com.au.

2 Port Terminal Services

2.1 Receival services

Road receival comprises:

- up to 6 receival hoppers of which 2 are available for intake into shipping bins
- intake weighbridges, 60-140 mt capacity each
- lines provide sample and quality testing services
- Standard intake hours 7.30 am – 3.45 pm Monday to Friday
- During the harvest period, the site receives direct deliveries from growers into long term storage
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the Viterra Operations website:

www.viterra.com.au

2.2 Storage services

Storage for shipping comprises 10 welded steel silos of 7,500 mt capacity each and 164,000 mt of concrete vertical silos of various capacities. .

Storage for grower deliveries, supply into shipping facilities and longer term storage comprises a number of bunkers with 221,000 mt capacity.

2.3 Weigher Services

Weighing of grain on shipping is via one shore based batch weighers.

2.4 Ship loading services

The Port Operator provides the outturn to ship grain from the Port Operator's terminal 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in

relation to loading positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the:

- Standard Terms (Schedule 3 to the Undertaking); and
- Port Loading Protocols (Schedule 2 to the Undertaking),

available on the company website: www.viterra.com.au

Information on the Shipping Stem is updated each business day and is available at:

www.viterra.com.au/port-access-scheduling

2.5 Cargo Accumulation

The Port Operator provides Cargo Accumulation services at the Port Terminals, including reviewing Cargo Assembly Plans prepared by Users.

Road intake and positioning from long term storage is not provided on a 24 hour / 7 day / week basis.

2.6 Additional services

Dust extraction

3 Additional capacity management terms

Shipping at Port Giles is operated on a “just in time” basis. The majority of tonnage is executed through 10 shipping bins, of 75,000 metric tonnes total capacity. However, this will be supplemented from other storage. The split between bins will be impacted by load rates, stock positioning, blending and fumigation requirements.

This means that shipping capacity can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays, vessels failing surveys and AQIS unavailability.

Port Giles operates as both a one port load or second port loading for vessels partially loaded at Port Adelaide or Wallaroo.

4 Additional published protocols and information

- Standard Terms (Schedule 3 to the Undertaking)
- Viterra Port Loading Protocols:
www.viterra.com.au/port-access-scheduling
- Viterra Chain of Responsibility Code of Conduct and Viterra Carrier Agreement:

www.viterra.com.au

- Flinders Ports operating rules:
<http://www.flindersports.com.au/>

Port Terminal Services Access Undertaking

Port Schedule D – Wallaroo

This Schedule contains information about the Wallaroo port terminal. Unless otherwise indicated, terms in this Port Schedule have the same meaning as in the Undertaking.

1 Description of Port

1.1 Location

Wallaroo, South Australia

Latitude 33°56'S

Longitude 137°37'E

1.2 Port Terminal Facilities

- Flinders Ports Grain Berth 2, Wallaroo
- Intake facilities for road available
- Storage facilities available for the positioning of grain for shipping. This capacity may also be utilised to provide segregation for domestic grades.
- Storage facilities available for grower receivals, supply into the shipping bins and longer term storage options
- 3 intake weighbridges
- 1 shipping batch weighers onto 1 shipping belt

1.3 Storage capacity

188,000 mt of shed and concrete shipping bins

568,000 mt bunkers and steel bins for grower receivals, supply into shipping facilities and longer term storage options

1.4 Practical in load capacity

The maximum capacity for road intake is 4200 tph, of which 4 receival hoppers are available for accumulation into the shipping bins at a rate of 1600 tph subject to shipping activity. This equates to an estimated average capacity of 800 tph.

Maximum Capacity is the rated capacity of the infrastructure. This represents the physical limits of the existing plant and equipment operating at full engineering capacity.

Average Capacity takes into account the number of discharge points that Viterra Operations would expect to operate on a given day, based on segregations and

other activities also performed, requirements to clear grids and grain paths, and other operating issues experienced at the Terminal.

1.5 Ship loading capacity

Average ship loading capacity of approximately 600 tph wheat.

No. of shipping belts: 1

No. of spouts: 5

1.6 Berth details and restrictions

Further information in relation to port facilities is available from Flinders Ports: www.flindersports.com.au.

2 Port Terminal Services

2.1 Receival services

Road receival comprises:

- up to 8 receival hoppers
- Marshalling capacity 200 semitrailers
- intake weighbridges, 60-80 mt capacity each
- lines provide sample and quality testing services
- Standard intake hours 7.30 am – 4.15 pm Monday to Friday
- During the harvest period, the site receives direct deliveries from growers into long term storage.
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the Viterra Operations website:
www.viterra.com.au

2.2 Storage services

Storage for shipping comprises concrete vertical silos and shed providing up to 188,000 mt capacity, which may also be utilised to provide segregation capabilities.

Off site bunkers and steel bins comprise a further 568,000 mt capacity. This forms longer term storage for supply into Wallaroo.

2.3 Weigher Services

Weighing of grain on shipping is via one shore based batch weigher.

2.4 Ship loading services

The Port Operator provides the outturn to ship grain from the Port Operator's terminal 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to loading positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the:

- Standard Terms (Schedule 3 to the Undertaking); and
- Port Loading Protocols (Schedule 2 to the Undertaking),

available on the company website: www.viterra.com.au

Information on the Shipping Stem is updated each business day and is available at:

www.viterra.com.au/port-access-scheduling

2.5 Cargo Accumulation

The Port Operator provides Cargo Accumulation services at the Port Terminals, including reviewing Cargo Assembly Plans prepared by Users.

Road intake and positioning from long term storage is not provided on a 24 hour / 7 day / week basis.

2.6 Additional services

Dust extraction

3 Additional capacity management terms

Shipping capacity at Wallaroo can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays, vessels failing surveys, AQIS labour unavailability, the need to provide harvest segregations and the use of shared grain paths.

Wallaroo can partially load panamax vessels subject to vessel configurations prior to topping up in Port Giles or Port Lincoln.

4 Additional published protocols and information

- Standard Terms (Schedule 3 to the Undertaking);
- Viterra Port Loading Protocols:
www.viterra.com.au/port-access-scheduling
- Viterra Chain of Responsibility Code of Conduct and Viterra Carrier Agreement:

www.viterra.com.au

- Flinders Ports operating rules:
<http://www.flindersports.com.au/>

Port Terminal Services Access Undertaking

Port Schedule E – Port Lincoln

This Schedule contains information about the Port Lincoln port terminal. Unless otherwise indicated, terms in this Port Schedule have the same meaning as in the Undertaking.

1 Description of Port

1.1 Location

Port Lincoln, South Australia

Latitude 34°43'S

Longitude 135°50'E

1.2 Port Terminal Facilities

- Flinders Ports Grain Berths 4 and 5, Port Lincoln
- Intake facilities for road and rail available
- Storage Bins available for positioning of grain for shipping
- Storage Bins available for grower receivals, supply into the shipping bins and longer term storage options
- 2 intake and 1 outward weighbridges
- 4 shipping batch weighers onto 2 shipping belts

1.3 Storage capacity

395,500 mt concrete vertical and steel silos and shed for shipping, grower receivals, and longer term storage options.

1.4 Practical in load capacity

Total maximum capacity for road intake of 4000 tph, of which 8 receival hoppers are available for accumulation into the shipping bins at a rate of 3200 tph. This equates to an estimated average capacity of 1120 tph.

Maximum Capacity is the rated capacity of the infrastructure. This represents the physical limits of the existing plant and equipment operating at full engineering capacity.

Average Capacity takes into account the number of discharge points that Viterra Operations would expect to operate on a given day, based on segregations and

other activities also performed, requirements to clear grids and grain paths, and other operating issues experienced at the Terminal.

Maximum capacity of 800 tph for rail intake is available for accumulation into the shipping bins.

1.5 Ship loading capacity

Average Ship loading capacity is approximately 1500 tph wheat

No. of shipping belts: 2

No. of spouts: 2

1.6 Berth details and restrictions

Further information in relation to port facilities is available from Flinders Ports: www.flindersports.com.au.

2 Port Terminal Services

2.1 Receival services

(a) Road receival comprises:

- up to 10 receival hoppers, of which 8 are available for intake into the shipping bins
- Marshalling capacity 20 semitrailers
- 2 intake weighbridges, 30-100 mt capacity each
- lines provide sample and quality testing services
- Standard intake hours 8.00 am – 4.00 pm Monday to Friday
- During the harvest period, the site receives direct deliveries from growers into storage.
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the Viterra Operations website:

www.viterra.com.au

(b) Rail receival comprises:

- Narrow gauge line
- Gross weighing
- Trains require shunting

- Rail operators are required to have a full Rail Safety Plan prior to arranging any rail movements to Port Operator sites. This will require all wagons to be fitted with RFID. Further information can be obtained by contacting the SHE Department on (08) 8304 5000

2.2 Storage services

395,5000 mt concrete vertical and steel silos and shed for shipping, grower receivals, and longer term storage options and blending capability.

2.3 Weigher Services

Weighing of grain on shipping is via four shore based batch weighers.

2.4 Ship loading services

The Port Operator provides the outturn to ship grain from the Port Operator's terminal 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to loading positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the:

- Standard Terms (Schedule 3 to the Undertaking);
- Port Loading Protocols (Schedule 2 to the Undertaking),

available on the company website: www.viterra.com.au

Information on the Shipping Stem is updated each business day and is available at:

2.5

www.viterra.com.au/port-access-scheduling Cargo Accumulation

The Port Operator provides Cargo Accumulation services at the Port Terminals, including reviewing Cargo Assembly Plans prepared by Users.

Road intake and positioning from long term storage is not provided on a 24 hour / 7 day / week basis.

2.6 Additional services

Dust extraction

3 Additional capacity management terms

Shipping capacity can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays and vessels failing surveys. In particular, high temperatures during summer can result in rail assets being stood down due to rail line distortion.

Port Lincoln operates as both a one port load or second port loading for vessels partially loaded at Port Adelaide or Wallaroo.

4 Additional published protocols and information

- Standard Terms (Schedule 3 to the Undertaking);
- Viterra Port Loading Protocols:
www.viterra.com.au/port-access-scheduling
- Viterra Chain of Responsibility Code of Conduct and Viterra Carrier Agreement:

www.viterra.com.au
- Flinders Ports operating rules:
<http://www.flindersports.com.au/>

Port Terminal Services Access Undertaking

Port Schedule F – Thevenard

This Schedule contains information about the Port Adelaide port terminal. Unless otherwise indicated, terms in this Port Schedule have the same meaning as in the Undertaking.

1 Description of Port

1.1 Location

Thevenard, South Australia

Latitude 32°09'S

Longitude 133°39'E

1.2 Port Terminal Facilities

- Flinders Ports Grain Berth, Thevenard
- Intake facilities for road available
- Storage facilities available for the positioning of grain for shipping
- Storage facilities available for grower receivals, supply into shipping facilities and longer term storage options
- intake weighbridges
- shipping batch weigher onto 1 shipping belt

1.3 Storage capacity

172,000 mt concrete vertical and steel shipping bins

175,000 mt of bunkers and sheds for grower receivals, supply into shipping facilities and longer term storage options

1.4 Practical in load capacity

Maximum total capacity for road intake of 2200 tph, of which 5 receival hoppers are available for accumulation into shipping bins at 1400 tph. This equates to an estimated average capacity of 770 tph.

Maximum Capacity is the rated capacity of the infrastructure. This represents the physical limits of the existing plant and equipment operating at full engineering capacity.

Average Capacity takes into account the number of discharge points that Viterra Operations would expect to operate on a given day, based on segregations and

other activities also performed, requirements to clear grids and grain paths, and other operating issues experienced at the Terminal.

1.5 Ship loading capacity

Average ship loading capacity is approximately 600 tph wheat

No. of shipping belts: 1

No. of spouts: 1

1.6 Berth details and restrictions

Further information in relation to port facilities is available from Flinders Ports: www.flindersports.com.au.

2 Port Terminal Services

2.1 Receival services

Road receival comprises:

- up to 8 receival hoppers, of which 5 are available for intake into shipping bins
- Marshalling capacity 60 semitrailers
- intake weighbridges, 100 mt capacity each
- 2 lines provide sample and quality testing services
- Standard intake hours 8.00 am – 5.00 pm Monday to Friday
- During the harvest period, the site receives direct deliveries from growers into storage.
- All road movements are required to meet on-site OH&S and Chain of Responsibility requirements as determined, and modified from time to time, by the Port Operator. Detail is available on the Viterra Operations website:

[http://
www.viterra.com.au](http://www.viterra.com.au)

2.2 Storage services

175,000 mt of capacity for shipping comprises 200,000 mt total capacity.

Storage for grower deliveries, supply into shipping bins and longer term storage options comprise sheds and bunkers of various capacities.

2.3 Weigher Services

Weighing of grain on shipping is via one shore based batch weigher.

2.4 Ship loading services

The Port Operator provides the outturn to ship grain from the Port Operator's terminal 24 hours/day 7 days/week excluding public holidays and subject to labour ordering conditions. This includes standard shipping related services in relation to loading positioning, shipping preparation, stevedoring, sampling, documentation and blending as described in the:

- Standard Terms (Schedule 3 to the Undertaking); and
- Port Loading Protocols (Schedule 2 to the Undertaking),

available on the Port Operator's website: www.viterra.com.au

Information on the Shipping Stem is updated each business day and is available at:

www.viterra.com.au/port-access-scheduling

2.5 Cargo Accumulation

The Port Operator provides Cargo Accumulation services at the Port Terminals, including reviewing Cargo Assembly Plans prepared by Users.

Road intake and positioning from long term storage is not provided on a 24 hour / 7 day / week basis.

2.6 Additional services

Dust extraction

3 Additional capacity management terms

Shipping capacity can be adversely impacted by any constraint along the supply chain including, but not limited to, available transport, availability of grain, labour to load and unload grain, grain fumigation, vessel arrival delays, vessels failing surveys and AQIS labour unavailability.

The grain shipping belt is also used to load regular gypsum and salt vessels.

4 Additional published protocols and information

- Standard Terms (Schedule 3 to the Undertaking)
- Viterra Port Loading Protocols:
www.viterra.com.au/port-access-scheduling
- Viterra Chain of Responsibility Code of Conduct and Viterra Carrier Agreement:
www.viterra.com.au
- Flinders Ports operating rules:
<http://www.flindersports.com.au/>