

# 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

## Contents

<b>General terms</b>	<b>1</b>
<b>1 Background</b>	<b>1</b>
1.1 Introduction	1
1.2 Objectives	2
<b>2 Structure</b>	<b>3</b>
2.1 Components	3
2.2 Priority	3
2.3 Obligation to procure	3
<b>3 Term and variation</b>	<b>4</b>
3.1 Commencement Date	4
3.2 Expiry	4
3.3 Early withdrawal of the Undertaking	4
3.4 Variation for a particular Port Terminal	4
3.5 Other variations	4
<b>4 Scope</b>	<b>5</b>
4.1 Application to negotiation of Access Agreements in relation to Port Terminal Services	5
4.2 Meaning of Port Terminal Services and Port Terminal Facility	6
4.3 Nature of Port Terminal Services	6
4.4 What this Undertaking does not cover	6
<b>5 Price and non-price terms</b>	<b>7</b>
5.1 Standard offer non-price terms and conditions	7
5.2 Obligation to publish price terms	8
5.3 Access to Port Terminal Services	8
5.4 Standard Terms	9
5.5 Non-discriminatory access	9
5.6 Variation to Reference Prices and Standard Terms	10
5.7 Request for information	11
<b>6 Negotiating for access</b>	<b>11</b>
6.1 Good faith negotiation	11
6.2 Framework	11
6.3 Preliminary inquiry	11
6.4 Access Application	13
6.5 Negotiation of Access Agreement	14
6.6 Prudential requirements	15
6.7 Access Agreement	16
<b>7 Dispute resolution</b>	<b>17</b>
7.1 Disputes	17
7.2 Negotiation	18
7.3 Mediation	18
7.4 Referral to arbitration	19

7.5	Appointment of arbitrator	19
7.6	Arbitration procedure if the ACCC is the arbitrator	20
7.7	Arbitration procedure if the arbitrator is not the ACCC	21
<hr/>		
<b>8</b>	<b>Confidentiality</b>	<b>24</b>
8.1	Treatment of Confidential Information	24
8.2	Dispute resolution	25
<hr/>		
<b>9</b>	<b>Capacity management</b>	<b>25</b>
9.1	Continuous Disclosure Rules	25
9.2	Port Loading Protocols	26
9.3	Variation of Port Loading Protocols	26
9.4	Objection notice	28
9.5	Changes to the capacity allocation system to introduce an auction	29
9.6	Objection notice - Auction system	32
9.7	No hindering access	37
<hr/>		
<b>10</b>	<b>Publication of other information</b>	<b>38</b>
10.1	Publication of information on stock at each Port Terminal	38
10.2	Publication of capacity information	38
10.3	Performance indicators	38
10.4	Publication of vessel booking applications	39
<hr/>		
<b>11</b>	<b>Report on key service standards</b>	<b>39</b>
11.1	Performance Report	39
<hr/>		
<b>12</b>	<b>Contact details</b>	<b>41</b>
<hr/>		
<b>13</b>	<b>Definitions</b>	<b>42</b>
13.1	Definitions	42
13.2	Interpretation	46
<b>Schedule 1 – Access Application information</b>		<b>48</b>
<b>Schedule 2 – Port Loading Protocols</b>		<b>49</b>
<b>Schedule 3 - Standard Terms</b>		<b>50</b>
<b>Schedule 4 – Auditor</b>		<b>51</b>
<b>Port Schedule A – Port Adelaide, Inner Harbor - Berth 27</b>		<b>54</b>
<b>Port Schedule B – Port Adelaide, Outer Harbor - Berth 8</b>		<b>58</b>
<b>Port Schedule C – Port Giles</b>		<b>62</b>
<b>Port Schedule D – Wallaroo</b>		<b>66</b>
<b>Port Schedule E – Port Lincoln</b>		<b>70</b>
<b>Port Schedule F – Thevenard</b>		<b>74</b>

# Port Terminal Services Access Undertaking

## General terms

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### 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.

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## **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.

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### **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.

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## 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.

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## 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.

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## 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.

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## 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.

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## **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.

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## 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](http://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(j) and clause 9.6(m), 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 it becomes aware that in all the circumstances the reasons specified in the relevant notice no longer exist, those reasons are addressed, or for any other reason.

**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) unless a different period is agreed by the Port Operator and the ACCC, the Port Operator will submit a revised variation proposal (including a revised variation notice (“**Revised Variation Notice**”)) to the ACCC within 95 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 (or such other period as may be agreed by the Port Operator and the ACCC) (“**Revised Proposal Decision Date**”) whether it will withdraw its Auction Objection Notice in respect of the Revised Variation Notice (as varied in accordance with clause 9.6(h) or (i) if applicable) or whether it proposes that the notice will remain in force, together with its reasons for that decision; 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 127 Business Days.
- (g) If the date for submission of the Revised Variation Notice or the date by which the ACCC must make its decision in respect of the Revised Variation Notice is extended by agreement between the Port Operator and the ACCC in accordance with clause 9.6(f)(ii) or clause 9.6(f)(iii) (as the case requires), then in addition to the extension set out in clause 9.6(f)(iv), the date set out in clause 9.5(a) will be extended by the Further Period. In this Access Undertaking, the “Further Period” means the period of time beyond 95 Business Days agreed by the Port Operator and the ACCC in accordance with clause 9.6(f)(ii) plus the period of time beyond 30 Business Days agreed by the Port Operator and the ACCC in accordance with clause 9.6(f)(iii).
- (h) If the Port Operator submits a Revised Variation Notice in accordance with clause 9.6(f) at any time prior to 1 June 2012, it may withdraw that Revised Variation Notice on or before 9 July 2012, and re-submit a different Revised Variation Notice at any time prior to the expiry of the period set out in clause 9.6(f)(ii) (as extended by agreement between the Port Operator and the ACCC). The submission of a further version of the

Revised Variation Notice in accordance with this clause 9.6(h) will not require the Port Operator to recommence the consultation process under clause 9.5(c) or clause 9.5(g) and will restart the time period set out in clause 9.6(f)(iii).

- (i) Notwithstanding clause 9.6(h), 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, 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(i) will not require the Port Operator to recommence the consultation process under clause 9.5(c) or clause 9.5(g) or restart the time period set out in clause 9.6(f)(iii).
- (j) 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(h) or (i) 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**

- (k) If the Port Operator does not introduce an Auction System by the date specified in clause 9.5(a) (as extended in accordance with clauses 9.6(f)(iv) and 9.6(g)) (“**Final Date**”), then:
  - (i) the Port Operator will not breach this Undertaking; and
  - (ii) subject to clause 9.6(k)(v) and clause 9.6(o)(ii)(A), unless otherwise agreed between the Port Operator and the ACCC, the Port Operator will not, on and from 1 February 2013, 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(k)(ii) or clause 9.6(k)(v) 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;
- (iv) subject to clause 9.6(l), if, during any period to which clause 9.6(k)(ii) or clause 9.6(k)(v) 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; and

- (v) if the Final Date occurs on or after 24 January 2013 (and the Port Operator has not introduced an Auction System by that date), then, unless otherwise agreed by the ACCC, the Port Operator will not on and from the date that is 5 Business Days after the 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.
- (l) Clause 9.6(k) 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 1 February 2013 (or the Final Date if it occurs after 1 February 2013), or from facilitating the receipt, transfer or movement of Bulk Wheat to other clients or to meet domestic out-turn requirements.
- (m) 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**

- (n) 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 except in accordance with clause 9.6(o).
- (o) If, as at:
  - (i) 16 August 2012 the Auction System has not been implemented, the Port Operator may re-open the Shipping Stem to accept new bookings on a first-in-first-served basis from all persons (including the Port Operator's Trading Division) for shipment from the Port Terminals during the period 1 October 2012 to 31 January 2013;
  - (ii) 12 November 2012:
    - (A) the Auction System has not been implemented and the Final Date has not occurred, the Port Operator may re-open the Shipping Stem to accept new bookings on a first-in-first-served basis from all persons (including the Port Operator's Trading Division) for shipment from the Port Terminals during the period from 1 February 2013

to 30 April 2013. However, if at the time the Final Date occurs the Port Operator has not introduced an Auction System, the Port Operator:

- (i) will, unless otherwise agreed by the Port Operator and the ACCC, cancel any bookings (with full refund) that its Trading Division has made in respect of the shipment of Bulk Wheat from the Port Terminals during the period 1 February 2013 to 30 April 2013 (which bookings have not already been executed), such cancellation to be on and from the day that is 5 Business Days following the Final Date and make those bookings available to:
  - (aa) persons other than the Port Operator's Trading Division in respect of Bulk Wheat and other grain commodities; and
  - (bb) the Port Operator's Trading Division in respect of grain commodities other than Bulk Wheat,

in each case on a first-in-first-served basis; and

- (ii) will not, unless otherwise agreed by the Port Operator and the ACCC, provide Port Terminal Services in respect of Bulk Wheat to the Port Operator's Trading Division for any period from the later of 1 February 2013 and 5 Business Days after the Final Date unless and until the ACCC consents to a variation to this Undertaking to introduce an Auction System;

- (B) the Auction system has not been implemented (and the Final Date has occurred such that the Port Operator is no longer able to provide Port Terminal Services in respect of Bulk Wheat to its Trading Division on and from 1 February 2013, unless otherwise agreed by the Port Operator and the ACCC), the Port Operator may re-open the Shipping Stem to accept new bookings for shipment from the Port Terminals on and from 1 February 2013:

- (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, subject to clause 9.6(o)(i), 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.
- (p) Clause 9.6(o) will not apply if, after the Final Date, the ACCC consents to a variation to this Undertaking to introduce an Auction System and the Auction System provides for different transitional arrangements to enable implementation of the Auction System.
- (q) 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**

- (r) 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.

- (s) 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.

**G. Introduction of an Auction System**

- (t) For the purpose of this Access Undertaking, the Auction System will be taken to be introduced and implemented if the variations to the Port Loading Protocols and Standard Terms relating to the primary allocation of port-loading capacity by auction (including any transitional arrangements) have taken effect (regardless of the date on which the first auction may be held).

**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).

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## **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 receipts 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).

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## **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.

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## 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](http://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.

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## 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** .

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

.....  
(Signature)

.....  
(Name)

.....  
(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:

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### **1 Request details**

#### **1.1 Season**

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### **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

# Port Terminal Services Access Undertaking

## Schedule 3 - Standard Terms

# 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.

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### 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

Maximum<sup>1</sup> 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 capacity<sup>2</sup> is estimated to be approximately 640 tph.

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<sup>1</sup> 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.

<sup>2</sup> Average Capacity takes into account the number of discharge points that Viterro 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](http://www.flindersports.com.au).

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

(b) Rail receival comprises:

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

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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](http://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](http://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

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# **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.

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## **4 Additional published protocols and information**

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

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## 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](http://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](http://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](http://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.

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## **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.

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## **4 Additional published protocols and information**

- Standard Terms (Schedule 3 to the Undertaking)

- Vittera Port Loading Protocols:  
[www.vittera.com.au/port-access-scheduling](http://www.vittera.com.au/port-access-scheduling)
- Vittera Chain of Responsibility Code of Conduct and Vittera Carrier Agreement:  
  
[www.vittera.com.au](http://www.vittera.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.

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### 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](http://www.flindersports.com.au).

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## **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](http://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](http://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](http://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

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# **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.

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# **4 Additional published protocols and information**

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

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

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### 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](http://www.flindersports.com.au).

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## **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](http://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](http://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](http://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

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## **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.

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## **4 Additional published protocols and information**

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

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

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### 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](http://www.flindersports.com.au).

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## **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](http://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](http://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](http://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

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## 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.

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## 4 Additional published protocols and information

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

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### 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](http://www.flindersports.com.au).

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## **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](http://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](http://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

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## 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.

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## 4 Additional published protocols and information

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

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

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