



Port Loading Protocols

Port Loading Protocols

Overview

These Port Loading Protocols (“**Protocols**”) provide information in relation to the pathway for the export of Grain commodities from the Port Terminals and set out the processes and procedures that Viterra will apply to allocate and contract Capacity, and to order and manage vessels for loading.

These Protocols are structured as follows:

- **Part A: Definitions and Interpretation** - sets out the definitions and rules of interpretation relevant to these Protocols.
- **Part B: Allocation of Long Term Capacity – Long Term Agreements** - details how Clients may apply for Long Term Capacity under Long Term Agreements and how Viterra will allocate Long Term Capacity to Clients.
- **Part C: Allocation of Short Term Capacity – First-in-first-served** - details how Clients may apply for, and how Viterra will allocate, Short Term Capacity.
- **Part D: Dealings with Bookings** - outlines the procedures and conditions for the movement, transfer and surrender of Bookings.
- **Part E: Operational matters** - explains how Viterra will organise Slots and the Terminal Services Priority for vessel movements. Part E also sets out the operational requirements that Clients must meet with respect to each Booking, including notice periods and stock entitlement.
- **Part F: Dispute resolution, variation of Protocols and other administrative arrangements** - sets out the procedure for resolving disputes under these Protocols, the process for varying these Protocols, and various other administrative provisions.
- **Port Terminal Schedules 1 to 6** - set out the provisions of these Protocols (if any) that apply to individual Port Terminals. To the extent of any inconsistency between the provisions included in a Port Terminal Schedule and Parts A to F, the Port Terminal Schedule prevails.
- **Attachments 1 to 3** - Attachment 1 sets out the Operational Requirements for each Booking. Attachment 2 sets out the Transfer Form required as part of the transfer procedure described in Part D. Attachment 3 sets out the provisions relating to the appointment and functions of the Auditor.

Contents

PART A: Definitions and Interpretation	4
1	Definitions
	4
2	Interpretation
	10
PART B: Allocation of Long Term Capacity – Long Term Agreements	11
3	Process for acquiring Long Term Capacity
	11
3.1	Publication of Capacity available to be contracted under a Long Term Agreement
	11
3.2	When to apply for Long Term Capacity
	11
3.3	How to apply for Long Term Capacity
	11
3.4	Application once submitted is irrevocable
	12
3.5	Maximum and minimum requirements for Initial Long Term Capacity
	12
3.6	Process for allocating Initial Long Term Capacity
	13
3.7	Clients to provide information to support their application for Long Term Capacity
	16
3.8	Negotiation of Long Term Agreements
	16
3.9	Long Term Agreements – Booking fees
	17
3.10	Unallocated Long Term Capacity
	17
3.11	Additional Long Term Capacity
	17
PART C: Allocation of Short Term Capacity – First-in-first-served	18
3.12	Minimum quantity to remain available for booking as Short Term Capacity
	18
3.13	Publication of available Short Term Capacity
	18
3.14	When Short Term Capacity will be available for booking
	18
3.15	How to apply for Short Term Capacity
	19
3.16	Circumstances in which a Booking Form may be declared invalid or rejected
	19
3.17	Allocation of Short Term Capacity
	20
3.18	Terms on which Short Term Capacity is provided
	20
3.19	Additional Short Term Capacity
	20
4	Movement of Bookings
	21
4.1	Requests to move a Booking
	21
4.2	Response to requests to move a Booking
	21
4.3	Movement of Bookings
	21
5	Transferring Bookings
	22
5.1	Transfer requirements
	22
5.2	Acceptance of transfer by Viterra
	22
5.3	General provisions
	23
6	Surrender of Capacity
	23
6.1	Surrender of Short Term Capacity and refund of booking fee
	23
6.2	Surrender of Long Term Capacity
	25
6.3	Refund of Long Term Capacity booking fee
	25
PART E: Operational Matters	27

7	Slot Bookings	27
7.1	Update of Shipping Stem	27
7.2	Split Bookings	27
7.3	Allocation of Estimated Load Date	27
8	Changes in Slots and Estimated Load Dates	27
8.1	Viterra may vary Slot and/or Estimated Load Date	27
8.2	Notification of variation	28
9	Guiding Principles for determining Terminal Services Priority	28
9.1	Order of arrival	28
9.2	Priority - loading	28
9.3	Priority - services other than loading	29
9.4	Priority - loading and other services	30
9.5	Grace Period	30
9.6	Tolerance limits	31
9.7	Two-port loading	32
9.8	Marine surveys	32
10	Failure to Meet Table A Requirements	32
10.1	Notification of failure	32
10.2	Failure to name a vessel	33
11	Demonstrating Stock Entitlement	33
11.1	Stock entitlement	33
11.2	Stock at Third Party Sites	33
12	Export Standard Requirements	34
12.1	Site Assembly and Transport Plan	34
PART F: Dispute Resolution, Variation of Protocols and Other		35
13	Dispute Resolution	35
13.1	Resolution of disputes between parties	35
13.2	Alternative dispute resolution	36
13.3	Non-discriminatory access	36
14	Varying these Protocols	36
14.1	Variation of Protocols	36
14.2	Code no longer applicable to a Port Terminal	36
15	Viterra Website	37
16	Use of Information	37
17	Subsequent Allocation Periods	37
17.1	Objection Notice process	37
17.2	If the ACCC issues an Objection Notice	37
18	Transitional Provisions	38
18.1	Transition from Auction	38
Schedules		39

Schedule 1 - Port Terminal, Inner Harbour, Berth 27, South Australia	40
Schedule 2 - Port Adelaide, Outer Harbor, Berth 8, South Australia	41
Schedule 3 – Port Giles, South Australia	42
Schedule 4 – Wallaroo, South Australia	43
Schedule 5 – Port Lincoln, South Australia	44
Schedule 6 – Thevenard, South Australia	45
Attachment 1: Table A - Operational requirements	46
Attachment 2: Transfer Notice	48
Attachment 3: Auditor	50
1. Audit on outcome of capacity allocation	50

PART A: Definitions and Interpretation

1 Definitions

ACCC means the Australian Competition and Consumer Commission.

Additional Long Term Capacity means new Capacity that becomes available for booking by Clients, but excludes:

- (a) Initial Long Term Capacity;
- (b) Short Term Capacity; and
- (c) Additional Short Term Capacity.

Additional Short Term Capacity means Capacity that becomes available for booking in respect of a Year after the Shipping Stem is opened for bookings in respect of that Year.

Allocation Period means:

- (a) the period commencing 1 October 2016 and ending on 30 September 2019 ("**First Allocation Period**"); and
- (b) each subsequent two year period commencing on 1 October and ending on the 30 September which occurs two years later ("**Subsequent Allocation Period**").

Allocation Start Date means in respect of a Subsequent Allocation Period, 1 February in the Year that commences 33 months prior to the start of that Subsequent Allocation Period.

Associated Entity has the meaning given in the Corporations Act and includes any person acting as an agent of the relevant Client.

Auction means the sale by auction of Capacity in accordance with the Previous Protocols.

Auction Premium Rebate has the meaning given in the Previous Protocols.

Auditor means the independent auditor appointed at the direction of the ACCC in accordance with clause 13.3.

Booking means an allocation of Capacity contracted under a Long Term Agreement or made and accepted under the first-in-first-served system, in each case in accordance with these Protocols.

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

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

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

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

Capacity Allocation System has the meaning given in the Code.

Client means a person that uses, or wishes to use, the services provided by means of the Port Terminal Facilities on the terms of a Service Agreement.

Code means the Port Terminal Access (Bulk Wheat) Code of Conduct, declared by the *Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014*.

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

Credit Support means either:

- (a) a guarantee given by a Related Body Corporate of the Client that is acceptable to Viterra (acting reasonably); or
- (b) 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 Viterra and which is in a form reasonably satisfactory to Viterra.

Dispute Notice has the meaning given in clause 13.1(a).

DA means the Commonwealth Department of Agriculture.

Estimated Load Date means has the meaning given in clause 7.3.

ETA means estimated time of arrival.

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

Flinders Ports SA Port Rules means the port operating rules contained at <http://www.flindersports.com.au>.

Force Majeure affecting a person means:

- (a) breakdown (regardless of cause), accidental or malicious damage or destruction of any of the Viterra Port Terminal Facilities or other facilities; or
- (b) anything outside that person's reasonable control including the following events or circumstances (provided they are beyond the person's reasonable control):
 - (i) accident, fire, adverse weather conditions, flood, tidal conditions, earthquake, explosion, or like natural disasters, blockages of ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic, or declarations of a state of emergency;
 - (ii) strikes, stopworks, lockouts, boycotts or any other form of industrial dispute or labour shortage;
 - (iii) material shortages, utility failures, adverse effects of weather or weather related events;
 - (iv) failure, disruption or delay in transportation;
 - (v) executive or administrative order or act of either general or particular application of any Government or any official purporting to act under the authority of that Government, prohibitions or restrictions by domestic or foreign laws, regulations or policies, quarantine or custom restrictions or prohibitions on export; or

- (vi) acts or omissions of any third party (including without limitation Governments, Government agencies, subcontractors or customers).

Grace Period has the meaning given in clause 9.5(a).

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

Initial Application Date means the date specified by Viterra as the last date for submission by Clients of their application for Initial Long Term Capacity in respect of:

- (a) Slots occurring during the First Allocation Period; and
- (b) if the ACCC does not issue an Objection Notice by 1 February 2017 in accordance with clause 17.1(b), Slots occurring during a Subsequent Allocation Period.

Initial Application Period means the time period specified by Viterra for provision by Clients of their application for Initial Long Term Capacity in respect of:

- (a) Slots occurring during the First Allocation Period; and
- (b) if the ACCC does not issue an Objection Notice by 1 February 2017 in accordance with clause 17.1(b), Slots occurring during a Subsequent Allocation Period.

Initial Application Process means the process in respect of an Allocation Period for allocating Initial Long Term Capacity to Clients who applied for Initial Long Term Capacity on or before the Initial Application Date for that Allocation Period.

Initial Long Term Capacity means Long Term Capacity made available to be contracted under Long Term Agreements during the Initial Application Period.

Initial Nomination Cap means:

- (a) 40%, at the Outer Harbor and Port Lincoln Port Terminals in the 6 month period commencing 1 January and ending 30 June; and
- (b) 50%, in all other cases.

Long Term Agreement means an agreement entered into between Viterra and a Client for Long Term Capacity that must not expire after:

- (a) for agreements relating to Long Term Capacity occurring during the First Allocation Period, 30 September 2019; and
- (b) for agreements relating to Long Term Capacity occurring during a Subsequent Allocation Period, the end of that Subsequent Allocation Period,

and to avoid doubt, may also include terms and conditions governing Short Term Capacity allocated in accordance with these Protocols.

Long Term Capacity means Capacity made available by Viterra to contract under Long Term Agreements in accordance with these Protocols for the shipment of Bulk Wheat and other Grains at any time during:

- (a) the First Allocation Period; and
- (b) if the ACCC does not issue an Objection Notice by 1 February 2017 in accordance with clause 17.1(b), any Subsequent Allocation Period,

and includes Initial Long Term Capacity and Additional Long Term Capacity (if any).

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 an agreement between the Client and Viterra.

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

Negotiation Period means the period described in clause 3.8(b).

Objection Notice means a notice issued by the ACCC to Viterra in accordance with clause 17.1(b).

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

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

Port Terminal Facility has the meaning given in the Code.

Port Terminal Services has the meaning given in the Code.

Port Terminal Services Agreement means an agreement entered into between Viterra and a Client for Short Term Capacity.

Previous Protocols means the port loading protocols published by Viterra that were in force on the date immediately prior to the Variation Date.

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

Pricing Document means:

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

Proposed Auditor means a proposed independent auditor to undertake the independent audit specified in clause 13.3.

Protocols means these Port Loading Protocols.

Prudential Requirements means in respect of a Client that:

- (a) the Client is Solvent;
- (b) the Client or an Associated Entity of the Client is not currently or has not in the past 2 years been in Material Default of any agreement with Viterra; and
- (c) the Client must be able to demonstrate to Viterra that it has a legal ownership structure with a sufficient capital base and assets of sufficient value to meet the actual

or potential liabilities under a Long Term 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 Viterra acting reasonably.

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

Quarter means a 3 month period commencing 1 October, 1 January, 1 April or 1 July.

Related Body Corporate has the meaning given in the Corporations Act.

Reference Prices has the meaning given in the relevant Services Agreement.

Reporting Obligations means the reporting obligations imposed by the Code in relation to the provision of Port Terminal Services by Viterra.

Services Agreement means:

- (a) a Long Term Agreement;
- (b) a Standard Long Term Agreement; or
- (c) a Short Term Capacity Services Agreement,

as the case requires.

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

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

Short Term Capacity means:

- (a) Capacity of at least 500,000 tonnes each Quarter that is reserved for booking by Clients on a first-in-first-served basis once the Shipping Stem is opened in respect of the relevant Year; and
- (b) any Capacity in respect of a Year that is initially offered as Long Term Capacity, but is not allocated to a Client as Long Term Capacity at the time the Shipping Stem is opened for Short Term Capacity Bookings for that Year.

Short Term Capacity Services Agreement means:

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

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

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

Solvent means that, in the last 5 years, in respect of a Client:

- (a) the Client 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;
- (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 Client to be wound up without that application being dismissed within one month;
- (d) a controller (as defined in the Corporations Act) of any of the Client's assets has not been appointed; or
- (e) the Client 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 Long Term Agreement means the standard terms and conditions on which Viterra is prepared to provide Long Term Capacity to a Client, as amended from time to time in accordance with the Code.

Standard Terms means the standard non-price terms and conditions as set out on the Viterra Website from time to time.

STC Cancellation Notice has the meaning given in clause 6.1.

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

Table A means the Table A attached as Attachment 1 to these Protocols.

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

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

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

Transferee has the meaning given in clause 5.1(a)(ii).

Transferor has the meaning given in clause 5.1(a).

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

Variation Date means the date these Protocols take effect in accordance with the variation process set out in the Previous Protocols and the ACCC approval process set out in the Code.

Viterra means Viterra Operations Pty Ltd (ABN 88 007 556 256) and includes Associated Entities, Related Bodies Corporate and where applicable, their successors and permitted assigns.

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

Year means the period from 1 October to 30 September.

2 Interpretation

- (a) In these Protocols, unless the context otherwise requires:
- (i) singular words will also have their plural meaning and vice versa;
 - (ii) a reference to a person includes companies and associations;
 - (iii) a reference to a consent of a party means the prior written consent of that party;
 - (iv) headings are for convenient reference only and do not affect the interpretation of these Protocols;
 - (v) a reference to a clause, Part or a Schedule is a reference to a clause, Part or Schedule of these Protocols;
 - (vi) a reference to a party includes its successors and permitted assigns;
 - (vii) notices that are required to be given in writing to Viterra may, if so agreed by Viterra, be provided in electronic form;
 - (viii) 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;
 - (ix) 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;
 - (x) a reference to \$ and dollars is to Australian currency;
 - (xi) a reference to time is a reference to the local time in Adelaide, South Australia (unless otherwise stated); and
 - (xii) nothing in these Protocols is to be interpreted against a party solely on the ground that the party put forward these Protocols or a relevant part of them.
- (b) To the extent of any inconsistency, the terms of a Schedule override the terms of Parts A to F (inclusive) of these Protocols.

PART B: Allocation of Long Term Capacity – Long Term Agreements

3 Process for acquiring Long Term Capacity

3.1 Publication of Capacity available to be contracted under a Long Term Agreement

Viterra will publish on the Viterra Website:

- (a) no later than 15 Business Days before the Initial Application Date:
 - (i) details of the Initial Long Term Capacity that is available to be contracted under Long Term Agreements for the relevant Allocation Period, including any special conditions applying to any Initial Long Term Capacity. This Initial Long Term Capacity will be provided in respect of each individual Slot at the Port Terminals; and
 - (ii) a copy of the Standard Long Term Agreement; and
- (b) from time to time, details of any Additional Long Term Capacity that becomes available to be contracted under Long Term Agreements, including any special conditions applying to any Additional Long Term Capacity.

3.2 When to apply for Long Term Capacity

- (a) **(Initial Long Term Capacity)** Clients may apply for Initial Long Term Capacity in respect of an Allocation Period during the Initial Application Period for that Allocation Period. Viterra will publish details of the Initial Application Period on the Viterra Website at least 15 Business Days' prior to the commencement of the Initial Application Period.
- (b) **(Additional Long Term Capacity)** Clients may apply for Additional Long Term Capacity within the time period specified in respect of that Additional Long Term Capacity on the Viterra Website.

3.3 How to apply for Long Term Capacity

Clients may apply for Long Term Capacity by submitting an application to Viterra in the form published by Viterra on the Viterra Website from time to time, and which includes the following information:

- (a) the Client's details, including business name, ABN, business address and contact details;
- (b) the Client's tonnage requirements for each Slot at each nominated Port Terminal during the term of the Long Term Agreement. For an Initial Application Process, such tonnage requirements must not exceed the maximum amount specified in clause 3.5(a) or be less than the minimum requirements specified in clause 3.5(b);
- (c) the minimum amount of Long Term Capacity the Client wishes to acquire in each Slot at each nominated Port Terminal during the term of the Long Term Agreement if the total amount of Long Term Capacity nominated by the Client is not available. This must not be an amount less than the minimum requirements set out in clause 3.5(b); and
- (d) an acknowledgement that the Client has been provided with a copy of, and will be bound by the terms of, the Standard Long Term Agreement and will comply with the terms of the Standard Long Term Agreement:

- (i) for the duration of the relevant Allocation Period; and
- (ii) in respect of any Long Term Capacity allocated to the Client, provided that Long Term Capacity:
 - (A) is equal to or greater than the minimum amount of Long Term Capacity nominated by the Client in accordance with clause 3.3(c); and
 - (B) does not, without the Client's agreement, exceed the total amount of Long Term Capacity nominated by the Client in accordance with clause 3.3(b),

unless the Client and Viterra execute a Long Term Agreement on terms other than the Standard Long Term Agreement.

3.4 Application once submitted is irrevocable

An application for Long Term Capacity, once submitted by a Client, is:

- (a) irrevocable and will constitute a binding offer by the Client to enter into the Standard Long Term Agreement with Viterra subject only to the Long Term Capacity allocated to the Client being within the Capacity limits specified in clause 3.3(d)(ii); and
- (b) an offer that, notwithstanding any negotiations, will remain open for acceptance by Viterra unless and until it is rejected by Viterra in writing or a Long Term Agreement is entered into between Viterra and the Client on different terms.

3.5 Maximum and minimum requirements for Initial Long Term Capacity

- (a) A Client's application for Initial Long Term Capacity at a Port Terminal for any Quarter must not, when taken together with any application for Initial Long Term Capacity by an Associated Entity of the Client (except in circumstances where Viterra considers, acting reasonably, that the Associated Entity operates a commercially separate export function from that undertaken by the Client) be for an amount that is greater than the Initial Nomination Cap as a percentage of the Initial Long Term Capacity that is available at that Port Terminal in that Quarter.
- (b) The minimum amount of Long Term Capacity for which a Client may apply during an Initial Application Process is 25,000 tonnes (excluding tolerance) in each Year during the relevant Allocation Period.
- (c) If, during an Initial Application Process, a Client's application for Initial Long Term Capacity at a Port Terminal for any Quarter exceeds the amount of Initial Long Term Capacity specified in clause 3.5(a) or is for less than the minimum amount specified in clause 3.5(b):
 - (i) Viterra will invite the Client to resubmit its application for Initial Long Term Capacity ("**Revised Application**") within 1 Business Day; and
 - (ii) if the Client:
 - (A) does not submit a Revised Application in accordance with clause 3.5(c)(i); or
 - (B) submits a Revised Application but the Client's Revised Application for one or more Port Terminals in a Quarter exceeds the amount of Initial Long Term Capacity specified in clause 3.5(a) (or the Revised Application is for less than the minimum amount specified in clause 3.5(b)),

Viterra may:

- (C) if the application or Revised Application does not meet the minimum requirements specified in clause 3.5(b), reject the application in its entirety; or
 - (D) if the application or Revised Application exceeds the maximum requirements specified in clause 3.5(a), reject all or part of the relevant application to the extent it relates to the relevant Port Terminal and Quarter.
- (d) Notwithstanding clauses 3.5(a) and 3.5(c), a Client may be allocated more than the Initial Nomination Cap as a percentage of the Initial Long Term Capacity available at a Port Terminal as a result of negotiations conducted in accordance with these Protocols.
- (e) This clause 3.5 only applies in respect of Initial Long Term Capacity.

3.6 Process for allocating Initial Long Term Capacity

- (a) **(Publication of aggregate tonnage applications)** Viterra will, no later than 3 Business Days after the Initial Application Date for each Allocation Period, publish on the Viterra Website details of the aggregate amount of tonnes for which it has received applications in accordance with clause 3.3 in respect of each Quarter at each Port Terminal.
- (b) **(Allocation if supply equals or exceeds demand)** If, at the end of the Initial Application Period, there is sufficient Initial Long Term Capacity available to satisfy all applications received in accordance with clause 3.3 for the relevant Allocation Period, Viterra will allocate that Initial Long Term Capacity and accept all Clients' offers under clause 3.4 in respect of that Initial Long Term Capacity.
- (c) **(If initial demand exceeds supply)** If, at the end of the Initial Application Period, there is not sufficient Initial Long Term Capacity available to satisfy all applications received in accordance with clause 3.3 for the relevant Allocation Period, Viterra will invite all applicants to submit a revised application under clause 3.3 by the date specified on the Viterra Website. For the avoidance of doubt:
- (i) Viterra may enter into discussions with one or more Clients to seek to facilitate the matching of available Initial Long Term Capacity with Clients' requirements;
 - (ii) clauses 3.4 and 3.5 will apply to any revised application submitted in accordance with this clause 3.6(c); and
 - (iii) if a Client chooses not to submit a revised application in accordance with this clause 3.6(c), that Client's initial application submitted under clause 3.3 will remain in force.
- (d) **(Allocation if supply equals or exceeds revised demand)** If, immediately following the date specified by Viterra in accordance with clause 3.6(c), there is sufficient Initial Long Term Capacity available to satisfy all applications (either revised or unchanged) by Clients, Viterra will allocate that Initial Long Term Capacity and accept all Clients' offers under clause 3.4 in respect of that Initial Long Term Capacity.
- (e) **(If revised demand exceeds supply)** If, by the date specified by Viterra in accordance with clause 3.6(c), there remains insufficient Initial Long Term Capacity to satisfy all applications (either revised or unchanged) by Clients for the relevant Allocation Period, Viterra will:
- (i) allocate Initial Long Term Capacity and accept Clients' offers under clause 3.4 in respect of all Slots for which available Initial Long Term Capacity exceeds or equals demand; and

- (ii) in respect of all other Slots, enter into negotiations with each Client that was not allocated all Initial Long Term Capacity set out in its application (as revised) with a view to determining whether or not alternative allocations may satisfy the Client's requirements. This may involve:
 - (A) Viterra increasing the Initial Long Term Capacity available at any Port Terminal (subject to clause 3.12);
 - (B) determining whether alternative Slots (at the same or different Port Terminal) will satisfy the Client's commercial requirements;
 - (C) subject to clause 3.5(b), determining whether one or more Clients is willing to reduce the minimum amount of Initial Long Term Capacity that they are willing to acquire in particular Slots; and/or
 - (D) determining whether Clients may withdraw their application in respect of a Slot in particular years.

- (f) If Viterra enters into negotiations with Clients in accordance with clause 3.6(e):
 - (i) Viterra will publish on the Viterra Website the date by which any negotiations in respect of Initial Long Term Capacity allocations must conclude, such date not being less than 15 Business Days after publication ("**Allocation Cut-Off Date**");
 - (ii) Clients must reply promptly and in any event within 1 Business Day, to any request made by Viterra relating to the Client's willingness to vary its application. If a Client does not reply promptly, Viterra will continue to progress negotiations with other Clients; and
 - (iii) any variations that are made to a Client's application as a result of such negotiations will not constitute a new application for Long Term Capacity and will therefore rank in priority to subsequent application under the first-in-first-served process.

- (g) (**Allocation of Initial Long Term Capacity**) If, by the Allocation Cut-Off Date there remains insufficient Initial Long Term Capacity to satisfy all applications received in respect of the Slots for which Initial Long Term Capacity has not already been allocated under clause 3.6(e)(i), Viterra may allocate the available Initial Long Term Capacity for those Slots having regard to, and where they conflict, seeking to apply and balance, the following factors:
 - (i) Viterra's overarching objective of maximising the amount of Long Term Capacity allocated and maximising the efficient operation of the supply chain;
 - (ii) nominations for Long Term Capacity at multiple Port Terminals will generally be accepted in priority to nominations for Long Term Capacity at fewer Port Terminals;
 - (iii) nominations for Long Term Capacity in more Slots in a Year will generally be accepted in priority to nominations of Long Term Capacity in fewer Slots in a Year;
 - (iv) nominations for larger amounts of Long Term Capacity will generally be accepted in priority to nominations for smaller amounts of Long Term Capacity; and
 - (v) Long Term Capacity will be allocated in priority to Clients who:
 - (A) have a demonstrated ability to accumulate Grain at the relevant Port Terminal as required to utilise the Long Term Capacity sought;

- (B) can reasonably demonstrate to Viterra that they intend to physically export Bulk Wheat or other Grains themselves and that there is a reasonable likelihood that they themselves will utilise the Long Term Capacity sought; and
 - (C) have demonstrated flexibility and responded promptly during the negotiation of their requirements in respect of over-demanded Slots.
- (h) In having regard to and balancing the factors listed in clause 3.6(g), Viterra may have regard to the requirements of individual Port Terminals and the weight attributed to the various factors may differ across Port Terminals.
- (i) If Viterra proposes to allocate Initial Long Term Capacity to a Client in respect of an Allocation Period in accordance with clause 3.6(g), the following provisions will apply:
 - (i) Viterra will notify the Client in writing of the proposed allocations of Initial Long Term Capacity to that Client.
 - (ii) The Client must, within 1 Business Day of receiving Viterra's notice:
 - (A) offer in writing to acquire some or all of the Initial Long Term Capacity set out in Viterra's notice ("**Offer Notice**"); or
 - (B) issue a Dispute Notice in accordance with clauses 13.1(a) and 13.1(b) of these Protocols.
 - (iii) The Offer Notice submitted by a Client is irrevocable and will constitute a binding offer by the Client to enter into a Standard Long Term Agreement with Viterra in respect of all of the Initial Long Term Capacity specified in the Offer Notice, subject to:
 - (A) any reductions to that amount of Initial Long Term Capacity that Viterra makes (by notice in writing to the Client) as a result of Viterra resolving a dispute raised by any Client in accordance with clause 3.6(i)(ii)(B) of these Protocols; and
 - (B) any variations that Viterra and the Client may subsequently agree in accordance with clause 3.8 of these Protocols.
 - (iv) The Offer Notice submitted by a Client will remain open for acceptance by Viterra unless and until it is rejected by Viterra in writing or a Long Term Agreement is entered into between Viterra and the Client on different terms.
 - (v) On the conclusion of any dispute arising in connection with a Dispute Notice issued by a Client in accordance with clause 3.6(i)(ii)(B) (see clause 13.1 of these Protocols), Viterra will:
 - (A) in relation to a Client that issued a Dispute Notice, notify the Client in writing of any changes to the proposed allocations of Initial Long Term Capacity to that Client. The Client must, within 1 Business Day of receiving Viterra's notice advise Viterra in writing whether or not it wishes to acquire some or all of the Initial Long Term Capacity set out in Viterra's notice ("**Revised Offer Notice**"). The Revised Offer Notice will be treated as an Offer Notice for the purposes of clauses 3.6(i)(iii) and 3.6(i)(iv) of these Protocols; and
 - (B) in relation to a Client that issued an Offer Notice, notify the Client of any reductions to the amount of Initial Long Term Capacity specified in their Offer Notice that Viterra has made in accordance with clause 3.6(i)(iii)(A).

- (vi) If a Client does not submit:
 - (A) an Offer Notice or a Dispute Notice within the timeframe specified in clause 3.6(i)(ii); or
 - (B) a Revised Offer Notice within the timeframe specified in clause 3.6(i)(v),

Viterra may revoke the proposed allocation and re-allocate the relevant Initial Long Term Capacity to other Clients. If an Offer Notice or Revised Offer Notice relates to only part of the proposed allocation of Initial Long Term Capacity set out in Viterra's notice, Viterra may re-allocate the part that is not included in the Offer Notice or Revised Offer Notice to other Clients.

- (vii) This clause 3.6(i) does not apply to any Initial Long Term Capacity allocated in accordance with clause 3.6(e)(i).
- (j) **(Publication of aggregate Initial Long Term Capacity Allocations)** After concluding the Initial Application Process in respect of an Allocation Period, Viterra will:
 - (i) notify each Client of the outcome of its application for Long Term Capacity; and
 - (ii) publish on the Viterra Website details of the aggregate amount of Initial Long Term Capacity allocated in respect of each Slot at each Port Terminal.

3.7 Clients to provide information to support their application for Long Term Capacity

- (a) Viterra may at any time before the conclusion of the Initial Application Process in respect of an Allocation Period request that a Client provides information which demonstrates that it:
 - (i) is able to meet the Prudential Requirements; or
 - (ii) has a genuine intention of utilising the Long Term Capacity sought or has a reasonable likelihood of utilising that Long Term Capacity at the level sought.
- (b) If Viterra, acting reasonably, is not satisfied that a Client has demonstrated the matters referred to in clause 3.7(a), within 5 Business Days of receiving Viterra's request, Viterra will inform the Client by written notice that it is not ready to accept the Client's request for Long Term Capacity and provide reasons for this decision.
- (c) The Client may within 7 Business Days of receiving a notice under clause 3.7(b) (or such longer period agreed with Viterra) submit further information to Viterra that demonstrates the matters referred to in clause 3.7(a).
- (d) If, following the receipt of the additional information referred to in clause 3.7(c), Viterra is still not satisfied with respect to the matters in clause 3.7(a), it may reject the Client's request for Long Term Capacity.

3.8 Negotiation of Long Term Agreements

- (a) During the Negotiation Period a Client that has been allocated Long Term Capacity may seek to negotiate the terms and conditions of the Standard Long Term Agreement with Viterra. Viterra and the Client must each negotiate in good faith and the Client must ensure that the contents of the negotiations remain confidential.
- (b) The Negotiation Period will commence upon a Client making a negotiation request in respect of the Standard Long Term Agreement and will cease upon the earlier of:

- (i) execution of a Long Term Agreement by both Viterra and the Client (in the form of the Standard Long Term Agreement or otherwise) in respect of the Long Term Capacity acquired by the Client;
 - (ii) the expiration of 60 Business Days (excluding any days involving alternative dispute resolution procedures undertaken in accordance with clause 13.2) from the commencement of the Negotiation Period, unless the parties agree to extend the Negotiation Period (for example, if they consider that they are close to reaching agreement on the terms on a Long Term Agreement); and
 - (iii) the date the Client informs Viterra in writing that it no longer wishes to enter into a Long Term Agreement.
- (c) If the negotiation process ceases other than because a Long Term Agreement has been executed, the Client will be bound by the terms of the Standard Long Term Agreement in respect of the Long Term Capacity allocated to it.

3.9 Long Term Agreements – Booking fees

- (a) Unless agreed by Viterra and a Client in writing, Clients will be required to pay the booking fees for Long Term Capacity acquired in respect of any Year (as specified in the Pricing Document) by no later than 1 July of the previous Year.
- (b) If a Client does not comply with clause 3.9(a):
 - (i) Viterra may re-offer the relevant Long Term Capacity allocated to that Client to other Clients; and
 - (ii) the Client must pay to Viterra, as a debt due and payable, the booking fees payable in respect of the Long Term Capacity that was allocated to it (and which remains unpaid).
- (c) Viterra may seek Credit Support in respect of the obligations set out in this clause 3.9.

3.10 Unallocated Long Term Capacity

If any Long Term Capacity for any Allocation Period is not acquired by Clients under the relevant Initial Application Process, Viterra may make that Capacity available as:

- (a) Long Term Capacity, prior to the Shipping Stem opening for the relevant Year; or
- (b) Short Term Capacity, once the Shipping Stem has been opened for the relevant Year.

3.11 Additional Long Term Capacity

Viterra will apply a similar process to that set out in clauses 3.3 to 3.9 in respect of any Additional Long Term Capacity that becomes available for booking by Clients, and will provide (by written notice on the Viterra Website) at least 3 Business Days' notice of any timing requirements in relation to the application for, negotiations in respect of, or allocation of such Additional Long Term Capacity.

PART C: Allocation of Short Term Capacity – First-in-first-served

3.12 Minimum quantity to remain available for booking as Short Term Capacity

- (a) Vitterra will make at least 500,000 tonnes of Short Term Capacity available in each Quarter for Booking on a first-in-first-served basis.
- (b) Vitterra's intention is that the Short Term Capacity referred to in clause 3.12(a) will be spread across all Port Terminals broadly in line with the proportion of Capacity offered at Auction at each Port Terminal during the 2015/2016 Year. For operational reasons, this cannot precisely reflect the proportion of Capacity offered at Auction at each Port Terminal during the 2015/2016 Year. However, Vitterra's intention is that it will broadly be in line with this proportion.
- (c) If, in any Quarter, the proportion of Short Term Capacity offered at a particular Port Terminal varies from the amount offered at that Port Terminal in the corresponding Quarter of the previous Year by more than 10%, Vitterra will publish reasons for that variance on the Vitterra Website.
- (d) This clause 3.12:
 - (i) is subject to clause 14.2(a)(ii); and
 - (ii) does not apply in respect of Additional Short Term Capacity.

3.13 Publication of available Short Term Capacity

- (a) Vitterra will publish on the Vitterra Website:
 - (i) the date the Shipping Stem will open in respect of any Year at least 10 Business Days before the Shipping Stem opens for that Year;
 - (ii) details of the Short Term Capacity that is available for booking in respect of each Year, including any special conditions applying to any Short Term Capacity, at least 10 Business Days before the Shipping Stem opens for that Year; and
 - (iii) subject to clause 3.13(b), details of any Short Term Capacity that becomes available following a surrender of a Booking under clause 6, a movement of a Booking under clause 4 or under clause 10.1(a) within 2 Business Days of that Short Term Capacity becoming available.
- (b) Vitterra may decide not to publish and offer all or part of any Short Term Capacity to Clients that becomes available following a surrender of a Booking under clause 6, a movement of a Booking under clause 4 or under clause 10.1(a). In determining whether or not to make that Short Term Capacity available, Vitterra may have regard to a range of operational considerations including, practical constraints at the relevant Port Terminal, current wait time for vessels, the length of the vessel queue and the timing of vessel arrivals within the relevant Slot and Grace Period.

3.14 When Short Term Capacity will be available for booking

Short Term Capacity will become available for booking on a first-in-first-served basis:

- (a) when the Shipping Stem opens for the relevant Year; or
- (b) in the case of Additional Short Term Capacity, 2 Business Days (or such longer time notified by Vitterra) after its availability is published on the Vitterra Website.

3.15 How to apply for Short Term Capacity

- (a) To acquire Short Term Capacity a Client must submit a Booking Form to Viterra. The Booking Form must specify a minimum amount of Short Term Capacity that it wishes to acquire under that Booking Form if the total amount of Short Term Capacity applied for in the Booking Form is not available.
- (b) If:
 - (i) a Client has specified in the Booking Form a minimum amount of Short Term Capacity that it wishes to acquire if the total amount of Short Term Capacity applied for in the Booking Form in respect of the relevant Slot is not available; and
 - (ii) the total amount of Short Term Capacity applied for in the Booking Form in respect of the relevant Slot is not available to be allocated to the Client,

the Client will be allocated the amount of Short Term Capacity in respect of the relevant Slot that is available, provided that such amount is equal to or exceeds the minimum amount specified by the Client in accordance with this clause.

3.16 Circumstances in which a Booking Form may be declared invalid or rejected

- (a) Any Booking Form for Short Term Capacity or Additional Short Term Capacity that is submitted within 2 Business Days of that Capacity becoming available for booking on a first-in-first-served basis will be invalid (and will be disregarded by Viterra) if:
 - (i) the Booking Form is submitted within the same 15 minute period (commencing on the hour) as another Booking Form submitted by the Client or any Associated Entity of the Client (except in circumstances where Viterra considers, acting reasonably, that the Associated Entity operates a commercially separate export function from that undertaken by the Client);
 - (ii) the Short Term Capacity applied for in the Booking Form exceeds 60,000 tonnes; or
 - (iii) the amount of Short Term Capacity or Additional Short Term Capacity applied for in the Booking Form exceeds the amount of Capacity that remains available for allocation on a first-in-first-served basis in respect of the relevant Slot.

This clause 3.16(a) will not apply to the movement of any Booking.

- (b) Viterra will not accept a Booking Form unless:
 - (i) the Client has complied with the requirements set out in Table A (to the extent they are required at the time of booking); and
 - (ii) Viterra has sufficient intake, grain storage and shipping capacity to honour the Booking, taking into account the status of pending and prior Bookings.
- (c) If Viterra considers, acting reasonably, that:
 - (i) a Booking Form for Short Term Capacity or Additional Short Term Capacity that it receives from a Client within 2 Business Days of that Short Term Capacity becoming available for booking on a first-in-first-served basis is not genuinely required for use by that Client; and
 - (ii) the Client has been engaged by another person to submit the Booking Form on that person's behalf for the purpose of circumventing the restrictions in clause 3.16(a) above,

Viterra may in its discretion:

- (iii) reject the Booking Form;
- (iv) cancel the Client's Booking (or the Transferee's Booking if the Client has already transferred the Booking in accordance with clause 5); or
- (v) withhold its consent to the Client transferring that Booking to any other person.

3.17 Allocation of Short Term Capacity

- (a) Viterra will allocate Short Term Capacity to Clients on a first-in-first-served basis as soon as practicable after receipt of a Booking Form.
- (b) Where a Booking Form is accepted, Viterra will notify the Client of its acceptance and such notice will include details of the Short Term Capacity allocated to the Client and the sum payable by the Client to Viterra in accordance with the relevant Services Agreement.
- (c) Where Viterra and the Client have entered into discussions and/or negotiations in relation to a Booking, the proposed Booking will remain on the Shipping Stem in a "pending" status until the relevant issues are resolved.

3.18 Terms on which Short Term Capacity is provided

Unless agreed otherwise by Viterra, all Port Terminal Services provided in respect of Short Term Capacity will be provided on the terms of the relevant Short Term Capacity Services Agreement.

3.19 Additional Short Term Capacity

Viterra may from time to time make available Additional Short Term Capacity for booking by Clients. If the Slot to which Additional Short Term Capacity relates starts:

- (a) during the period starting 6 months after the Additional Short Term Capacity becomes available for booking and expiring at the end of the Year in which the Slot occurs, the Additional Short Term Capacity will be allocated on a first-in-first-served basis in accordance with this Part C; and
- (b) less than 6 months from the date that the Additional Short Term Capacity becomes available for booking, the Additional Short Term Capacity may be allocated at Viterra's discretion.

PART D: Dealings with Bookings

4 Movement of Bookings

4.1 Requests to move a Booking

In respect of any Capacity allocated to a Client, the Client may, subject to clauses 4.2(c) and 4.2(d), no later than 45 days prior to the first day of the relevant Booking Slot, submit a request in writing to Viterra to:

- (a) move that Booking to a different Slot at the same Port Terminal as the relevant Booking; or
- (b) move that Booking to a Slot at a different Port Terminal to the relevant Booking,

in each case where the new Slot occurs within the same Year as the original Slot.

4.2 Response to requests to move a Booking

- (a) Viterra will respond to any request made under clause 4.1 within 3 Business Days of receiving the request and will either:
 - (i) subject to clause 4.2(c), accept the Client's request if there is sufficient Capacity available at the relevant Port Terminal to accommodate the Client's request, having regard to operational considerations and prior Bookings, pending Bookings by other Clients; or
 - (ii) not accept the Client's request if there is insufficient Capacity available at the relevant Port Terminal to accommodate the Client's request, having regard to operational considerations, prior Bookings and pending Bookings by other Clients.
- (b) If Viterra does not accept the Client's request in accordance with clause 4.2(a)(ii), Viterra will, subject to clauses 4.2(c) and 4.2(d), offer to enter into good faith discussions with the Client to determine whether moving the Booking to a different Slot or Port Terminal may be possible (again, having regard to operational considerations, prior Bookings and pending Bookings by other Clients). Viterra will also advise the Client whether or not this may involve additional costs. Unless and until the Booking is moved in accordance with clause 4.3 or pursuant to negotiations in accordance with this clause 4.2(b), the Booking will remain unchanged on the Shipping Stem.
- (c) Viterra will not accept any request to move a Booking to a Slot that occurs in a particular Year if the request is submitted prior to the expiry of 2 Business Days from the date that the relevant Short Term Capacity becomes available for booking in respect of that Year.
- (d) Upon receipt of a written request, Viterra may agree to move a Booking to a different Slot less than 45 days prior to the first day of the original Booking Slot.

4.3 Movement of Bookings

If Viterra accepts the Client's request to move a Booking in accordance with clause 4.2(a)(i):

- (a) Viterra will amend the Shipping Stem on the next Business Day;
- (b) the Booking will be deemed to be varied as of the date of Viterra's written acceptance; and
- (c) it will not be considered a new Booking and no additional booking fee will be payable.

5 Transferring Bookings

5.1 Transfer requirements

- (a) A Client (“**Transferor**”) may transfer a Booking if the following conditions are satisfied:
- (i) the transfer complies with the requirements of this clause 5;
 - (ii) subject to clause 5.3(e), the Transferor and the person to whom the transfer is made (“**Transferee**”) provide a signed notice to Viterra in the form set out in Attachment 2 (“**Transfer Notice**”) executed by both the Transferor and Transferee by no later than:
 - (A) 60 days prior to the first date of the Slot for the relevant Booking where the original Booking and new booking are different in respect of the requirements set out in Table A; or
 - (B) 30 days prior to the first day of the Slot for the relevant Booking where the original Booking and the new booking are identical in respect of the requirements set out in Table A;
 - (iii) if the transferred Booking is in respect of Long Term Capacity:
 - (A) subject to 5.1(a)(iii)(B) and unless agreed otherwise by Viterra, the Transferee has a Long Term Agreement with Viterra in place covering the period in which the transferred Booking occurs; and
 - (B) clause 5.1(a)(iii)(A) does not apply if the Transfer Notice is provided to Viterra after Short Term Capacity is made available for booking on a first-in-first-served basis in respect of the period in which the transferred Booking occurs;
 - (iv) subject to clause 5.1(a)(iii), both the Transferor and Transferee have currently in force a Short Term Capacity Services Agreement with Viterra in relation to the usage of the relevant Port Terminal and neither the Transferee nor Transferor is subject to a notice by Viterra that it is in breach of that agreement;
 - (v) within 7 days of the date on which the Transfer Notice is provided to Viterra, the Transferee provides to Viterra the fee payable in respect of the transfer and a completed Booking Form in respect of the transferred Booking;
 - (vi) the quantity of Grain to be exported by the Transferee is not more than the amount of Grain specified in the Transferor’s original Booking;
 - (vii) the Transferor has met the requirements set out in Table A (to the extent relevant) as at the date of the Transfer Notice;
 - (viii) the Transferor has paid any booking fee payable to Viterra in connection with the Grain the subject of the Transfer Notice, and any other fees or charges which are at that time due or payable to Viterra in connection with that Grain; and
 - (ix) Viterra does not withhold its consent to the transfer in accordance with clause 3.16(c)(v).

5.2 Acceptance of transfer by Viterra

- (a) Subject to the Transferee and Transferor complying with this clause 5 and Viterra not withholding its consent under clause 3.16(c)(iii), Viterra will accept any transfer within 3 Business Days (“**Transfer Acceptance Date**”).

- (b) Vitterra will amend the Shipping Stem on the next Business Day after the Transfer Acceptance Date.

5.3 General provisions

- (a) The Transferee will not be required to pay a new booking fee to Vitterra in respect of the transferred Booking.
- (b) Any purported transfer of a Booking that does not comply with this clause 5 shall be of no effect.
- (c) The transfer of a Booking in accordance with this clause 5 does not affect the operation of clause 4 in respect of that Booking.
- (d) No transfer shall be effective until approved by Vitterra.
- (e) Upon receipt of a Transfer Notice less than:
 - (i) in the case of clause 5.1(a)(ii)(A), 60 days prior to the first day of the Slot for the relevant Booking, Vitterra may, subject to the Transferor and Transferee's compliance with this clause 5, agree to transfer the Booking the subject of the Transfer Notice; and
 - (ii) in the case of clause 5.1(a)(ii)(B), 30 days prior to the first day of the Slot for the relevant Booking, Vitterra may, subject to the Transferor and Transferee's compliance with this clause 5, agree to transfer the Booking the subject of the Transfer Notice.

6 Surrender of Capacity

6.1 Surrender of Short Term Capacity and refund of booking fee

- (a) If, by notice in writing to Vitterra ("**STC Cancellation Notice**"):
 - (i) a Client cancels a Booking for Short Term Capacity; and
 - (ii) that notice is given no later than 6 months prior to the commencement of the relevant Slot, then:
 - (iii) Vitterra will:
 - (A) amend the Shipping Stem on the next Business Day with a note that the Booking has been cancelled; and
 - (B) subject to clause 3.13(b), make the relevant Slot available on a first-in-first-served basis in accordance with Part C of these Protocols; and
 - (iv) if, in the period following receipt of the STC Cancellation Notice in accordance with this clause 6.1, Vitterra does not receive any new Booking by a Client that is for:
 - (A) a quantity of Grain that is (in whole or in part) the subject of the cancelled Booking;
 - (B) export from the same Port Terminal to which the cancelled Booking relates; and
 - (C) shipment in the Slot to which the cancelled Booking relates,

then, subject to clause 6.1(b), the Client that made the cancellation under this clause 6.1 will not be entitled to any refund of the booking fee in whole or in part.

- (b) If, in the period following receipt of the STC Cancellation Notice in accordance with clause 6.1(a), a new Booking for Short Term Capacity is made by a Client for:
- (i) a quantity of Grain that is (in whole or in part) the subject of the cancelled Booking;
 - (ii) export from the same Port Terminal to which the cancelled Booking relates; and
 - (iii) shipment in the Slot to which the cancelled Booking relates,

and that booking is accepted in accordance with these Protocols, Viterra will refund to the Client up to:

- (iv) where the STC Cancellation Notice was given by the Client to Viterra no later than 12 months prior to the commencement of the relevant Slot, 75% of the booking fee paid by the Client on a *pro rata* basis according to the proportion that the Capacity under the new Booking bears to the total Capacity the subject of the cancelled Booking; or
- (v) where the STC Cancellation Notice was given by the Client to Viterra less than 12 months but no later than 6 months prior to the commencement of the relevant Slot, 50% of the booking fee paid by the Client on a *pro rata* basis according to the proportion that the Capacity under the new Booking bears to the total Capacity the subject of the cancelled Booking.

For example, where the Client gives a STC Cancellation Notice to Viterra 8 months before the relevant Slot and all Capacity the subject of the cancelled Booking is the subject of a new Booking, the Client will be reimbursed 50% of the booking fee paid by the Client. But, where only 50% of the Capacity the subject of the cancelled Booking is the subject of a new Booking, the Client will be reimbursed only 25% of the booking fee. For the avoidance of doubt, a booking fee will be payable in respect of the new Booking.

- (c) If, in accordance with clause 3.13(b), Viterra decides not to publish and offer to Clients all or part of the Capacity that becomes available following a surrender of a Booking in accordance with clause 6.1(a), Viterra will refund to the Client that cancelled the Booking an amount up to the amounts specified in clause 6.1(b)(iv) and 6.1(b)(v). For example, where the Client gives a STC Cancellation Notice to Viterra 8 months before the relevant Slot and Viterra decides not to re-offer any of the Capacity surrendered by the Client, the Client will be reimbursed 50% of the booking fee that it has paid in respect of that Capacity. If Viterra decides not to re-offer 40% of the Capacity surrendered by the Client, then unless the 60% that is re-offered to Clients is the subject of a new Booking in accordance with clause 6.1(b), the Client will be reimbursed only 20% of the booking fee that it has paid (representing 50% of the booking fee paid in respect of the Capacity that was not re-offered to Clients by Viterra).
- (d) For the avoidance of doubt:
- (i) any new Bookings under clause 6.1(b) will be allocated in accordance with Part C of these Protocols;
 - (ii) if more than one Booking is cancelled in respect of the same Slot, any new Bookings under clause 6.1(b) will be applied against the cancelled Bookings in order of their cancellation; and

- (iii) a Client will remain liable to pay the Lost Capacity Fee in respect of any proportion of booked Capacity that is re-offered by Viterra but is not the subject of a new Booking.

6.2 Surrender of Long Term Capacity

If, by notice in writing to Viterra (“LTC Cancellation Notice”):

- (a) a Client cancels a Booking for Long Term Capacity; and
 - (b) that notice is given no later than 6 months prior to commencement of the relevant Slot,
- then:

- (c) Viterra will:
 - (i) amend the Shipping Stem on the next Business Day with a note that the Booking has been cancelled; and
 - (ii) subject to clause 3.13(b), make the relevant Slot available on a first-in-first-served basis in accordance with Part C of these Protocols; and
- (d) if, in the period following receipt of the LTC Cancellation Notice in accordance with this clause 6.2, Viterra does not receive any new Booking by a Client that is for:
 - (i) a quantity of Grain that is (in whole or in part) the subject of the cancelled Booking;
 - (ii) export from the same Port Terminal to which the cancelled Booking relates; and
 - (iii) shipment in the Slot to which the cancelled Booking relates,

then the Client that made the cancellation under this clause 6.2 will not be entitled to any refund of the booking fee in whole or in part.

6.3 Refund of Long Term Capacity booking fee

- (a) If:
 - (i) the LTC Cancellation Notice is given prior to any Short Term Capacity becoming available for booking on a first-in-first-served basis in respect of the Year in which the Booking occurs; and
 - (ii) in the period following receipt of the LTC Cancellation Notice in accordance with clause 6.2(a):
 - (A) a new Booking is made by a Client for:
 - (aa) a quantity of Grain that is (in whole or in part) the subject of the cancelled Booking;
 - (ab) export from the same Port Terminal to which the cancelled Booking relates; and
 - (ac) shipment in the Slot to which the cancelled Booking relates; and
 - (B) that booking is accepted in accordance with these Protocols,

- (C) Viterra will refund to the Client 75% of the booking fee paid by a Client on a *pro rata* basis according to the proportion that the Capacity under the new Booking bears to the total Capacity the subject of the cancelled Booking.

- (b) For the avoidance of doubt:
 - (i) any new Bookings under this clause 6.3 will be allocated in accordance with Part C of these Protocols;
 - (ii) if more than one Booking is cancelled in respect of the same Slot, any new Bookings under this clause 6.3 will be applied against the cancelled Bookings in order of their cancellation; and
 - (iii) a Client will remain liable to pay the Lost Capacity Fee in respect of any proportion of booked Capacity that is re-offered by Viterra but is not the subject of a new Booking.

PART E: Operational Matters

7 Slot Bookings

7.1 Update of Shipping Stem

Viterra will place all Clients' Bookings on the Shipping Stem as required by the Reporting Obligations then in force.

7.2 Split Bookings

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

7.3 Allocation of Estimated Load Date

- (a) As soon as reasonably practicable after the Client names its vessel and its ETA, Viterra will assess its operational requirements and notify the Client of the vessel's estimated load date ("**Estimated Load Date**").
- (b) The Client acknowledges and agrees that the Estimated Load Date is an estimate of the vessel's load date and that this load date may be subject to change (see clause 8).

8 Changes in Slots and Estimated Load Dates

8.1 Viterra may vary Slot and/or Estimated Load Date

Viterra will endeavour to ensure that the Client's booked Slot and Estimated Load Date will be held for the Client. However, Viterra may make changes to the booked Slot and/or Estimated Load Date for the following reasons:

- (a) if the cargo is not in an export ready and shippable position by the relevant Estimated Load Date;
- (b) if a Force Majeure event occurs;

- (c) if there is a material unresolved dispute between Viterra and the Client, including but not limited to in respect of a non-payment of any storage or handling charges due and payable to Viterra when they are due (and which are not the subject of a genuine dispute);
- (d) if there is a change of Terminal Services Priority in accordance with these Protocols (see clauses 9 and 10);
- (e) if a vessel fails to pass required marine and/or DA port surveys;
- (f) if poor or dangerous weather reasonably requires the scheduled booked Slot or Estimated Load Date to be delayed in the interests of safety;
- (g) if there is a change to the ETA of the Client's vessel or others in the vessel queue (see clause 10);
- (h) if necessary to reflect the impact of any changes to Flinders Ports SA Port Rules for Grain Berth Loading Priorities at the relevant port;
- (i) if the Client has failed to comply with the requirements detailed in these Protocols (including the requirements set out in Table A) or its Services Agreement;
- (j) if non-Grain vessels are being loaded at common berths under the Flinders Ports SA Port Rules and this will impact on the booked Slot or Estimated Load Date;
- (k) if it is necessary for occupational, health & safety reasons including, for example, fumigation;
- (l) if it is necessary to clean berths or facilities between the departure and arrival of vessels; or
- (m) if any other event or circumstance arises as a result of circumstances beyond Viterra's reasonable control including, for example, unavailability of tugs or DA labour.

8.2 Notification of variation

In the event of a change in the Client's booked Slot or Estimated Load Date, Viterra will provide notification to the Client via the Shipping Stem on the Viterra Website. The Shipping Stem is updated each Business Day and is available to all Clients.

9 Guiding Principles for determining Terminal Services Priority

9.1 Order of arrival

For the purposes of this clause 9, in determining the order of arrival of vessels at a Port, where 2 or more vessels arrive at the same time and there is uncertainty as to which vessel is the first arrived, the vessel that drops its anchor in the anchorage (as defined by the Flinders Ports SA Port Rules) first will be considered to be the first arrived vessel.

9.2 Priority - loading

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

- (a) Viterra will schedule vessels to load in order of arrival to the relevant Port, subject to the Client meeting the following conditions:
 - (i) the Client has a Booking;
 - (ii) the Client has provided details of the vessel name and all other details required under these Protocols including under clause 9.8 (where applicable);

- (iii) the Client complies with, and is not in default of, any obligation under its Services Agreement or these Protocols (including the requirements set out in Table A);
 - (iv) the Client's vessel has passed marine and DA port surveys (with copies provided to Viterra) and is ready to load;
 - (v) where the grain berth is congested, the Client has performed an official marine survey at anchorage (for the purpose of being issued with a certificate of fitness to load grain in accordance with applicable legislation) where possible and has provided a copy of the survey to Viterra;
 - (vi) cargo for the Named vessel is available and in a shipping position;
 - (vii) the Client has provided Viterra with 14 days' notice prior to the vessel ETA;
 - (viii) the vessel arrival time is within the Client's 14-16 day Booking Slot;
 - (ix) the Client has not made any changes to load grades and/or quality and/or tonnage requirements within the 14 days prior to the vessel ETA;
 - (x) subject to clause 9.2(a)(xi), the vessel ETA has not been varied by more than one day from the date specified 14 days prior to the original ETA; and
 - (xi) in the case of a vessel substitution, the vessel ETA has not been varied by more than one day from the original vessel ETA.
- (b) If a Client does not meet the conditions set out in clause 9.2(a), Viterra reserves the right to re-prioritise and load vessels outside the order of arrival where it is practically achievable and Viterra considers on reasonable grounds (and on an objective and ascertainable basis) that the overall speed and efficiency of the Port Terminal will be enhanced or delays to Named vessels will be minimised.

9.3 Priority - services other than loading

- (a) Where Viterra is required to determine the priority of terminal services at port other than the loading of vessels (see clause 9.3(b) below), it will do so based on the *estimated* order of vessel arrival, subject to the Client meeting the following conditions:
- (i) the Client has been allocated Capacity;
 - (ii) the Client has provided details of the vessel name and all other details required under these Protocols;
 - (iii) the Client complies with, and is not in default of, any obligation under its Services Agreement or these Protocols (including the requirements set out in Table A);
 - (iv) the Client has provided Viterra with 14 days' notice prior to the vessel ETA;
 - (v) the current vessel ETA is within its 14-16 day Booking Slot;
 - (vi) subject to clause 9.3(a)(vii), the vessel ETA has not been varied by more than one day from the ETA advised in relation to that vessel 14 days prior to the original ETA;
 - (vii) in the case of a vessel substitution, the vessel ETA has not been varied by more than one day from the original vessel ETA; and
 - (viii) the Client has not made any changes to load grades and/or quality and/or tonnage requirements within the 14 days prior to the vessel ETA.

- (b) For the purposes of clause 9.3(a), the provision of “terminal services at port other than loading of vessels” includes, but is not limited to:
 - (i) inward elevation capacity;
 - (ii) labour;
 - (iii) storage capacity; and
 - (iv) allocation of bin space between multiple vessels.
- (c) If a Client does not meet the conditions set out in clause 9.3(a), Viterra reserves the right to re-prioritise terminal services at port other than the loading of vessels in a different order to the *estimated* order of vessel arrival where it is practically achievable and Viterra considers on reasonable grounds (and on an objective and ascertainable basis) that the overall speed and efficiency of the Port Terminal will be enhanced or delays to Named vessels will be minimised.

9.4 Priority - loading and other services

- (a) In determining whether (and how) to re-prioritise vessels if the conditions in clause 9.2 or 9.3 are not satisfied, Viterra may consider the following matters (some or all of which may be relevant depending on operational arrangements at the specific Port Terminal) and other relevant considerations:
 - (i) whether the stock at the Port Terminal can be utilised on alternative vessels that have arrived or are now due to arrive first, or will now be load-ready first;
 - (ii) the length of the anticipated delays;
 - (iii) the practicality of re-positioning terminal stock and the impact any such re-positioning would have on other Port Terminal users;
 - (iv) the ability for Viterra or Clients to amend accumulation plans;
 - (v) the ability for the Client to supply transport;
 - (vi) the associated costs and impact on efficiency of the overall supply chain;
 - (vii) the extent to which the overall speed and efficiency of the Port Terminal will be enhanced on an objective and ascertainable basis;
 - (viii) whether it will reduce the overall wait time over all Named vessels; and
 - (ix) any other considerations which Viterra considers relevant in the circumstances.
- (b) Unless otherwise agreed by Viterra (and such agreement must not be withheld where there is no other Client which has stock and is willing to work a vessel at the relevant Port Terminal on a 24 hour / 7 day basis), where the Client occupies the berth at a Port Terminal it must work the vessel on a 24 hour / 7 day basis. If the Client does not comply with this clause, where requested by Viterra the Client must vacate the berth immediately.

9.5 Grace Period

- (a) Viterra will not cancel a Client’s Booking where the Client’s Named vessel arrives outside of the last day of the declared Booking Slot, provided that:
 - (i) the vessel arrival is no more than 6 days outside the last day of the declared Booking Slot (“**Grace Period**”);

- (ii) there is available operational capacity at the Port Terminal; and
 - (iii) the required stock can be made available.
- (b) At the time Viterra makes Capacity available, it may specify a condition that there will be no Grace Period for the Slot to which that Capacity relates.
- (c) Vessels arriving within the Grace Period (or outside the Grace Period but in accordance with clause 9.7(a) and subject to the Client complying with clause 9.2(a)) will be re-prioritised to the next loading time that is practically available, subject to:
 - (i) Viterra's reasonable ability (and Viterra taking reasonable steps) to accommodate the change; and
 - (ii) Viterra's reasonable ability (and Viterra taking reasonable steps) to re-prioritise the vessel in a manner that limits the practical impact on other Bookings and taking into account Viterra's operational requirements. This may require that the vessel is loaded at the end of the queue of Named vessels. However, in order to make storage capacity available, it may conversely require that the vessel is loaded earlier.
- (d) In determining the next loading time that is practically available (and will reflect the most efficient outcome), Viterra may have regard to the following matters (some or all of which may be relevant depending on operational arrangements at the specific Port Terminal) and other relevant circumstances:
 - (i) the objective of minimising any impact on all other Bookings;
 - (ii) the ability to re-allocate stock;
 - (iii) the objective of minimising the total wait time of all Named vessels and Bookings;
 - (iv) the practical implications (in particular, where stock is already accumulated and cannot be allocated to other vessels);
 - (v) if stock is or can be made available at port;
 - (vi) the ability for the Client or Viterra to increase Port Terminal throughput;
 - (vii) the overall speed and efficiency of the Port Terminal; and
 - (viii) any other considerations that Viterra considers relevant in the circumstances.
- (e) Subject to clause 9.7(a), where a Client's vessel fails to arrive within the Slot or Grace Period:
 - (i) the Booking will be cancelled and removed from the Shipping Stem; and
 - (ii) the Client will remain liable to pay Viterra any Lost Capacity Fee in respect of that cancelled Booking,

unless Viterra in its discretion elects not to cancel that Booking.

9.6 Tolerance limits

- (a) Viterra will permit a +/-10% tolerance in respect of the execution of Capacity acquired by Clients.

- (b) The Lost Capacity Fee and any refunds payable by or to a Client under a Pricing Document will be calculated on the amount of Capacity booked by the Client (excluding any tolerance amounts).

9.7 Two-port loading

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

this will not be considered a new Booking at the second Port Terminal. At the second Port Terminal, priority will be determined in accordance with clauses 9.2 or 9.3.

- (b) Terminal Services Priority may be impacted by the berthing requirements of the Flinders Ports SA Port Rules for Grain Berth Loading Priorities in force from time to time for each Port. Viterra may vary Terminal Services Priority to the extent necessary to address these external requirements.
- (c) Where the Client is loading a vessel at more than one of Viterra Operation's Port Terminals, the Client may, with the consent of Viterra:
 - (i) redistribute the tonnages in respect of those two Bookings across the two Port Terminals within a +/- 10% tolerance provided that the aggregate tonnages across the two Bookings (including tolerance under clause 9.6(a) is not exceeded; or
 - (ii) allocate the total tolerance that is applicable to the two Bookings in accordance with clause 9.6(a) to one of those Bookings.

9.8 Marine surveys

- (a) In circumstances where there is vessel congestion or potential vessel congestion at a Port Terminal, Viterra may require Clients to:
 - (i) engage a qualified marine surveyor to undertake an official marine survey at anchorage (for the purpose of being issued with a certificate of fitness to load grain in accordance with applicable legislation) on arrival of the relevant vessel at the Port Terminal (or, if possible, at an alternate Australian port whilst in transit); and
 - (ii) provide a copy of the marine surveyor's report to Viterra.

10 Failure to Meet Table A Requirements

10.1 Notification of failure

- (a) Subject to clause 10.2, where Viterra identifies that a Client has not met the timeframes set out in Table A, or has failed to pay any storage or handling charges due and payable to Viterra when they become due (and which are not the subject of a genuine dispute), Viterra will notify the Client in writing within one Business Day of identifying the failure. If the Client does not ensure compliance within the time specified in the notice issued by Viterra, Viterra may withdraw the Booking from the Shipping Stem.

- (b) In determining the time to be specified in the notice for the Client to ensure compliance, Viterra will:
 - (i) have regard to the nature of the default. Minor or “technical” issues which are unlikely to have any discernible impact on the efficient operation of the Port Terminal may attract greater flexibility. Conversely, failure to comply with requirements which have the potential to affect other Clients and failure to comply with commercial terms will attract a shorter period for rectification;
 - (ii) treat like defaults in a like manner. That is, Viterra will use its best endeavours to treat all Clients equally and apply any flexibility equally;
 - (iii) use its best endeavours to balance the desirability of providing flexibility to Clients with the need to minimise the impact that such flexibility may have on other Clients or Bookings and the efficient operation of the Shipping Stem; and
 - (iv) act reasonably and in good faith.

10.2 Failure to name a vessel

Where a Client fails to name a vessel within the Booking Slot or Grace Period:

- (a) the Booking will be removed from the Shipping Stem and the Capacity associated with that Booking will be forfeited; and
- (b) the Client will remain liable to pay Viterra any Lost Capacity Fee in respect of that cancelled Booking.

11 Demonstrating Stock Entitlement

11.1 Stock entitlement

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

- (a) details of commodity held by the Client at Viterra sites that meets the Client’s Booking (including any tolerance as referred to in clause 9.6(a));
- (b) details of commodity held at Third Party Sites (refer to clause 11.2) that meets the Client’s Booking;
- (c) adequate evidence of forward purchases and sales commitments going to meeting the Client’s Booking; and
- (d) any other form of evidence of entitlement agreed with Viterra which shows that the Client will have sufficient stock to load the Client’s vessel at the estimated load dates indicated by the vessel’s priority on the Shipping Stem.

11.2 Stock at Third Party Sites

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

- (a) either:
 - (i) the Third Party Site has been approved by Viterra (such approval to be provided in accordance with the published approval criteria and not to be unreasonably withheld having regard to appropriate industry standards (e.g. hygiene and quality)); or
 - (ii) alternative arrangements have been agreed with Viterra;

- (b) the Third Party Site is adequately serviced by road or rail;
- (c) the Client provides the most recent treatment history of the commodity;
- (d) unless otherwise agreed by Viterra, the Client provides a valid fumigation certificate (as outlined in the relevant Services Agreements or in a form otherwise approved by Viterra) for the stock to be exported through a Viterra Port Terminal; and
- (e) upon request by Viterra, the Third Party Site operator confirms in writing within 2 Business Days of Viterra's request, the Client's entitlement and that the Client's stock is available for outturn to meet the Client's Slot.

12 Export Standard Requirements

12.1 Site Assembly and Transport Plan

- (a) In the event that the Client selects Export Standard for the accumulation of the commodity the subject of a Booking, the Client must provide to Viterra:
 - (i) by no later than 18 days prior to the opening of the first day of the Slot, a Site Assembly Plan that is complete for the purposes of the delivery of stock (including any tolerance as referred to in clause 9.6(a)); and
 - (ii) by no later than 14 days prior to the vessel ETA, a Transport Plan that is acceptable and complete for the purposes of the delivery of stock (including any tolerance as referred to in clause 9.6(a)).
- (b) If the Client fails to provide a Site Assembly Plan and/or a Transport Plan as required under clause 12.1(a), or fails to execute any of these plans, Viterra may re-prioritise the Client's vessel on the Shipping Stem.

PART F: Dispute Resolution, Variation of Protocols and Other

13 Dispute Resolution

13.1 Resolution of disputes between parties

In the event that the Client disputes Viterra's adherence to these Protocols, or there is a dispute on the proposed terms of a Service Agreement, the following procedures will apply:

- (a) the Client must notify Viterra in writing of the dispute, the reasons for the dispute and the resolution which the Client requests ("**Dispute Notice**");
- (b) where the dispute relates to Viterra's adherence to these Protocols in relation to the allocation of Long Term Capacity or Short Term Capacity to the Client, the Dispute Notice must be received by Viterra by 5pm on the Business Day immediately following receipt of the notice from Viterra specifying the allocation that will be made available for contracting by the Client;
- (c) Viterra must use its reasonable endeavours to respond to the Client within 2 Business Days following receipt of the Dispute Notice ("**Viterra's Response**"). Viterra's Response must notify the Client whether Viterra will change its decision and, if not, it must provide an explanation or basis for Viterra's decision;
- (d) if the Client is not satisfied by Viterra's Response, or if Viterra fails to respond to the Dispute Notice within the time specified in clause 13.1(c), the Client may serve written notice on Viterra within one Business Day of receipt of Viterra's Response, or within one Business Day of when Viterra's Response was due ("**Escalation Notice**");
- (e) upon receipt of the Escalation Notice, Viterra must use its reasonable endeavours to arrange a meeting between Viterra's General Counsel and the Client within 2 Business Days of receipt of the Escalation Notice. Where Viterra's General Counsel is unavailable for such a meeting within the timeframe specified, Viterra will make available a suitable alternative authorised representative ("**Alternate**") to meet with the Client within 2 Business Days of receipt of the Escalation Notice. To facilitate the expeditious resolution of disputes, the meeting can take place either face-to-face or by telephone;
- (f) at the meeting, Viterra's General Counsel (or Alternate) and the Client will discuss the subject of the Dispute Notice and Viterra's Response and use its reasonable endeavours to reach an agreed outcome. Where such agreed outcome cannot be achieved, given the need for clarity, efficiency and certainty in this dispute resolution process, Viterra's General Counsel (or Alternate) will make a final decision in relation to the Dispute Notice and notify that decision and the reasons for that decision in writing to the Client within one Business Day of the meeting ("**Decision Notice**");
- (g) in reaching the final decision set out in the Decision Notice, Viterra's General Counsel (or Alternate), acting on behalf of Viterra, must take into account the circumstances of the dispute and details set out in the Dispute Notice and, acting reasonably and in good faith, reach a decision that is consistent with the wording, or if that is unclear, the intent of these Protocols. In addition, Viterra's General Counsel (or Alternate) may also have regard to the objectives of:
 - (i) maximising the efficient operation of the Port Terminal;
 - (ii) minimising the adverse impact on port users;
 - (iii) maximising export throughput at the Port Terminal and through Viterra's Grain export supply chain; and

- (iv) ensuring consistency of decisions.

13.2 Alternative dispute resolution

- (a) Subject to clause 13.2(b) at any time a party may refer a dispute in relation to the negotiation of the terms of a Service Agreement to a mediator (if agreed with Viterra) or to an arbitrator, in each case in accordance with the Code.
- (b) Clause 13.2(a) does not apply to disputes relating to the allocation of Long Term Capacity or Short Term Capacity in accordance with these Protocols.

13.3 Non-discriminatory access

- (a) The ACCC may by notice in writing require Viterra to appoint an Auditor to provide a report in relation to Viterra's compliance with clause 10 of the Code in undertaking the Capacity allocation processes set out in Parts B and C of these Protocols. If the ACCC requires Viterra to appoint an Auditor, the provisions set out in Attachment 3 will apply.
- (b) The ACCC may authorise any powers under this clause 13.3 on behalf of the ACCC.

14 Varying these Protocols

14.1 Variation of Protocols

- (a) If Viterra is not an "exempt service provider" (as defined in the Code) in respect of Port Terminal Services provided at any Port Terminal Facility, any variations to these Protocols will be made in accordance with the Code.
- (b) If Viterra is an "exempt service provider" (as defined in the Code) in respect of Port Terminal Services provided at any Port Terminal Facility, Viterra may vary these Protocols in respect of those Port Terminal Services by publishing on the Viterra Website and notifying Clients with an existing Services Agreement of:
 - (i) the proposed variations;
 - (ii) the reasons for the variations;
 - (iii) the proposed effective date of the variations; and
 - (iv) that Clients may make submissions on the variations within 10 Business Days,

at least 20 Business Days before the proposed variations are to take effect.
- (c) If Viterra decides to change the proposed variation in response to submissions received from Clients under clause 14.1(b), Viterra will, at least 3 Business Days before the commencement of the proposed variation, notify Clients of the changes on the Viterra Website, but will not be required to consult further.
- (d) Notwithstanding any other provision of these Protocols, Viterra may unilaterally amend these Protocols on a temporary basis during any period of Force Majeure without complying with clause 14.1(a) or 14.1(b).

14.2 Code no longer applicable to a Port Terminal

- (a) If Viterra becomes an "exempt service provider" (as defined in the Code) in respect of Port Terminal Services provided at any Port Terminal Facility (an "**Exempt Port Terminal Facility**"), Viterra may:
 - (i) by publishing a notice on the Viterra Website:

- (A) exclude the operation of these Protocols in whole or in part to that Exempt Port Terminal Facility; or
 - (B) if it chooses, publish different protocols for that Exempt Port Terminal Facility,
- in each case subject to compliance with the Code; and
- (ii) elect to reduce the minimum amount of Short Term Capacity required to be provided under clause 3.12 by the amount of Short Term Capacity offered at that Exempt Port Terminal Facility in the Year immediately preceding the Year in which the Exempt Port Terminal Facility became an “exempt service provider” (as defined in the Code). For the avoidance of doubt, this will not affect the way that available Short Term Capacity is spread across the other Port Terminals (if any) in accordance with clause 3.12.
- (b) Where the amount of Short Term Capacity required to be provided under clause 3.12 is varied by application of this clause 14.2, Viterra will publish details of the variation on the Viterra Website.

15 Viterra Website

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

16 Use of Information

The Client acknowledges and agrees that Viterra may publish information about the Client, including the identity of the Client, details of any application for Capacity and any Capacity allocated to the Client.

17 Subsequent Allocation Periods

17.1 Objection Notice process

- (a) Unless the ACCC issues an Objection Notice by 1 February 2017, Viterra may at any time after the Allocation Start Date commence the Initial Application Process for Slots occurring in the relevant Subsequent Allocation Period in accordance with Part B of these Protocols.
- (b) The ACCC has agreed with Viterra that it may issue an Objection Notice provided that:
 - (i) the ACCC considers (acting reasonably) that the Initial Application Process in respect of the First Allocation Period did not operate efficiently, fairly and consistently with clause 10 of the Code; and
 - (ii) at least 10 Business Days before issuing the Objection Notice, the ACCC provided Viterra with a draft notice stating its intention to object and the reasons for that intended objection.
- (c) The ACCC may withdraw a draft notice or an Objection Notice issued under clause 17.1(b) if, in all the circumstances, it becomes aware that the reasons specified in the draft notice or the Objection Notice no longer exist.

17.2 If the ACCC issues an Objection Notice

Unless agreed otherwise between Viterra and the ACCC, if the ACCC issues an Objection Notice under clause 17.1(b), and does not withdraw it within 40 Business Days:

- (a) these Protocols will continue to apply to all Bookings relating to Slots in the First Allocation Period; and
- (b) subject to clause 17.3, the Previous Protocols will apply in respect of Bookings for Slots occurring after the end of the First Allocation Period. For the avoidance of doubt:
 - (i) Vitterra may allocate Capacity for any period after the end of the First Allocation Period in accordance with the Previous Protocols before the end of the First Allocation Period;
 - (ii) these Protocols will be replaced by the Previous Protocols except to the extent set out in clause 17.2(a); and
 - (iii) Clients will not be permitted to move any Booking in respect of the First Allocation Period to any Slot occurring after the end of the First Allocation Period.

17.3 Changes to the Previous Protocols

If these Protocols are replaced by the Previous Protocols in accordance with clause 17.2(b), the Previous Protocols will be amended by inserting the following new clause 14.3:

“If Vitterra Operations excludes the operation of these Protocols in whole or in part in relation to an Exempt Port Terminal Facility, Vitterra Operations may make any changes to these Protocols necessary to exclude Capacity at that Exempt Port Terminal Facility from any Auctions (and the application, operation or calculation of any Auction Premium Rebate) in accordance with clause 14.1(b) of these Protocols”.

18 Transitional Provisions

18.1 Transition from Auction

- (a) Notwithstanding any other provision of these Protocols, to effect the transition from the Auction system to the allocation system set out in these Protocols, the following transitional provisions will apply:
 - (i) Vitterra will continue to offer and allocate Capacity to clients on a first-in-first-served basis for Slots occurring on or before 30 September 2016;
 - (ii) in relation to Port Terminal Capacity that has been allocated to a Client by Auction in accordance with the Previous Protocols:
 - (A) a Client may transfer or move a Booking of that Capacity allocated by Auction;
 - (B) an Auction Premium Rebate (if any) will be calculated and payable by Vitterra to an individual Client in respect of that Capacity, or paid to a Transferee in respect of a transferred Booking of Capacity allocated by Auction (as applicable); and
 - (C) the Auction Provider may disclose information about the Client to Vitterra and Vitterra may publish this information,

in each case in accordance with, and subject to the rules and procedures, contained in, the Previous Protocols.
- (b) To give effect to clause 18.1(a), the Previous Protocols will continue to apply to all Bookings that are both made and executed on or prior to 30 September 2016.

Schedules

Schedule 1 - Port Terminal, Inner Harbour, Berth 27, South Australia

Schedule 2 - Port Adelaide, Outer Harbor, Berth 8, South Australia

Schedule 3 – Port Giles, South Australia

Schedule 4 – Wallaroo, South Australia

Schedule 5 – Port Lincoln, South Australia

Schedule 6 – Thevenard, South Australia

Attachment 1: Table A - Operational requirements

	Timeline	Vessel	Contract /Load Details	Stock Entitlement
1	No later than 60 days prior to the opening of the Slot	TBN	<p>Clients must advise:</p> <ul style="list-style-type: none"> • load Port; • tonnage; • commodity (by Shipping Parcel); • grade (by Shipping Parcel); • tonnage (by Shipping Parcel (min/max)); • destination (if known); • contact insecticide treatment allowance; • fumigation requirements; and • phytosanitary requirements. 	Information not required at this point.
2	No later than 30 days prior to the first day of the Slot commencing	TBN	As per section 1 of this table	As per section 1 of this table
3	No later than 18 days prior to the opening of the first day of the booked Slot	TBN	<p>In addition to the obligations in section 1 of this Table, Clients must advise:</p> <ul style="list-style-type: none"> • required quality specifications (by Shipping Parcel); and • blend details by grade, Season, tonnage and Shipping Parcel. 	Clients must provide details of stock entitlement
4	On Naming of vessel (Refer to clause 10.1(b))	Clients must advise details of the Named vessel and the vessel's last three cargoes	<p>Client must provide the vessel ETA</p> <p>In addition to the requirements in</p>	As per section 3 of this table A Transport Plan (Third Party Sites and Export Standard cargoes only) must be provided

	Timeline	Vessel	Contract /Load Details	Stock Entitlement
			section 3 of this Table, Clients must advise destination (if not already provided) and request any, or all, of the following as required: <ul style="list-style-type: none"> • blending operations on loading; • pre shipment and shipping samples; and • fumigation certificate. 	14 days prior to vessel ETA in accordance with clause 12.1(a).

Notes to Table A:

- (1) In the event that the Client requests a Booking Slot later than that required in accordance with Table A, the Client must satisfy all of its cumulative obligations owing and required under Table A for Viterra to accept the Booking.
- (2) Changes, alterations and modifications to Table A information (other than the matters set out in clause 4 of these Protocols) provided by a Client in support of the Booking can be requested in writing by the Client. Viterra will respond to the request change within 5 Business Days of receipt. The Booking will be deemed to be varied as of the date of Viterra's written acceptance of the change and, subject to the other provisions of these Protocols, will not be deemed a new Booking. Please note:
 - Viterra is not obliged to accept any requested variation and acceptance will depend on whether the requested change would be likely to compromise Viterra's operational efficiencies taking into account operational constraints (such as grain under fumigation), or unreasonably impact on other Clients. **Charges may be applicable to cover the additional cost (if any) of accommodating requests.**
 - If a Client does not comply with Table A requirements (as may be varied from time to time by Viterra's acceptance of information changes), this will be addressed in accordance with clause 10.1(a) of the Protocols. The booking fee is not refundable in these circumstances.

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

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

Attachment 2: Transfer Notice

Name of Transferor:

Name of Transferee:

Date of notice:

Original Booking date and SCNO:

Date of Booking:

SCNO number (if applicable) :
.....

Original Booking details:

Port Terminal:

Commodity type:

Total Tonnage:.....

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

Treatment details:.....

Load Grades:.....

Shipment period:.....

(the “**Booking Details**”)

The Transferor wishes to transfer, and the Transferee wishes to accept the transfer of, the above Booking or part Booking (“**Booking**”) in accordance with clause 5 of the Port Loading Protocols.

The Transferor and Transferee acknowledge and agree that:

1. the Transferee is responsible to Viterra Operations Ltd (“**Viterra**”) for all fees payable in respect of the Booking.
2. The Transferee’s relevant Services Agreement and the Port Loading Protocols will apply to the execution of the Booking by the Transferee.
3. Viterra is not responsible for, and has no liability in connection with, the arrangements between the Transferor and Transferee in respect of the transfer of the Booking.
4. This notice cannot be revoked once signed by the Transferor and Transferee and provided to Viterra.
5. Words used in this notice have the same meaning as in the Port Loading Protocols.
6. Within 7 days of both parties signing this form, the Transferee must submit a replacement Booking Form to Viterra.

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

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

SIGNED BY

.....
(Signature)
.....
(Name)
On behalf of the Transferor

.....
(Signature)
.....
(Name)
On behalf of the Transferee

Attachment 3: Auditor

1. Audit on outcome of capacity allocation

- (a) **(Proposed Auditor)** If the ACCC issues a notice under clause 13.3(a) of the Protocols, Viterra will, 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 Proposed Auditor.
- (b) **(Independence of Auditor)** The Proposed Auditor must be a person who has the relevant skill to perform the role of Auditor and is independent of Viterra. Without limitation, an Auditor is not independent if they:
 - (i) are a current employee or officer of Viterra;
 - (ii) have been an employee or officer of Viterra in the past 36 months;
 - (ii) in the opinion of the ACCC, hold an interest in Viterra;
 - (iii) have been a professional adviser to Viterra within the past 36 months;
 - (iv) have a contractual relationship, or are an employee or contractor of a firm or company that has a contractual relationship, with Viterra;
 - (v) are a supplier, or are an employee or contractor of a firm or company that is a supplier, of Viterra; or
 - (vi) are a customer, or are an employee or contractor of a firm or company that is a customer, of Viterra.
- (c) **(Appointment of Auditor)** If, within 5 Business Days of receipt by the ACCC of the information or documents from Viterra referred to in clause 1(a) of this Attachment 3, or such further period as required by the ACCC and notified to Viterra:
 - (i) the ACCC does not object to the Proposed Auditor, Viterra will 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 as set out in these Protocols (including a requirement for the Auditor to consider the matters set out in clause 1(d) below), and forward to the ACCC a copy of the executed terms of appointment of the Auditor; or
 - (ii) the ACCC does object to a Proposed Auditor, Viterra will 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 these Protocols (including a requirement for the Auditor to consider the matters set out in clause 1(d) below).
- (d) **(Matters to be considered by Auditor)** The terms of appointment for the Auditor must require the Auditor, in preparing its written report, to have regard to the following matters:
 - (i) the requirements in clause 10 of the Code;
 - (ii) whether Viterra has complied with the terms of these Protocols;

- (iii) if the matter under consideration by the Auditor relates to the allocation of Long Term Capacity, whether that allocation is reasonable in all the circumstances, having regard to:
 - (A) the size and significance of Viterra as a Client that exports Grain through the Port Terminals;
 - (B) whether any allocation of Long Term Capacity may involve a systemic, material or unreasonable outcome in favour of Viterra as a Client (noting that Viterra is entitled to use its own infrastructure and, as a significant Client, there are circumstances in which highly demanded Long Term Capacity will justifiably be allocated to Viterra);
 - (C) the reasonableness of efforts made by Viterra to accommodate initial demand for Long Term Capacity and to negotiate satisfactory Long Term Capacity outcomes for both Viterra and other Clients; and
 - (D) Viterra's reasons for allocating Long Term Capacity in the manner that it did. Viterra will document its reasons for any allocation of Long Term Capacity under clause 3.6(g) of the Protocols at the time of such allocation, and will make those written reasons available to the Auditor.
- (e) **(Provide report to ACCC)** Viterra will, within 30 Business Days of the date on which the Auditor is appointed in accordance with clause 1(c) of this Attachment 3, provide to the ACCC a written report from the Auditor in relation to Viterra's compliance with its obligations under clause 10 of the Code. This date may be extended by agreement with the ACCC, in particular noting that Viterra must have at least 5 Business Days to review and comment on the draft report prepared by the Auditor.
- (f) **(Information to Auditor)** Viterra will 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 Viterra with its obligations under clause 10 of the Code or for reporting to or otherwise advising the ACCC.
- (g) **(Viterra's obligations)** Viterra will:
 - (i) procure the Auditor to provide information or documents or access to the ACCC, as required by the ACCC to ensure compliance with this Attachment 3;
 - (ii) direct its personnel, including directors, managers, officers, employees and agents to act in accordance with the obligations set out in this Attachment 3 and ensure such personnel are aware of the Auditor and its role; and
 - (iii) provide access, information and/or documents required by the Auditor.
- (h) **(Cost of Auditor)** Viterra will maintain and fund the Auditor and will 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 these Protocols.
- (i) **(Limit on audits)** The ACCC must not require Viterra to appoint an Auditor to undertake an audit under clause 13.3 of the Protocols more often than once in each 12 month period.