

Approved Operator Conditions 2018/2019

1. INTRODUCTION

In accordance with the 2018/19 Season Storage and Handling Agreement (**Agreement**), Viterra Operations Pty Ltd (**Viterra**) will provide a Receival at Port Service to its Clients for approved third party storage facilities on the terms and conditions of this document.

2. APPLICATION

- A. An Operator may apply to Viterra in writing to become an Approved Operator in respect of a specified Third Party Storage Facility for the Season.
- B. An Operator will not be approved by Viterra, and Viterra will be under no obligation to accept Grain from a third party storage facility, until:
- (a) the Operator has signed this document;
 - (b) Viterra has signed this document and returned it the Approved Operator;
 - (c) the Operator has provided Viterra with all information required under this document and otherwise requested by Viterra (in its sole discretion); and
 - (d) Viterra has confirmed in writing to the Operator that it is an Approved Operator and the relevant Third Party Storage Facilities that apply to that approval.
- C. Any approval of an Approved Operator or a Third Party Storage Facility is for the Service Year only and relates only to the specified Third Party Storage Facility (unless otherwise revoked or suspended in accordance with this document).

- D. For the purposes of this document:

Unless the context otherwise requires, capitalised terms in this document have the same meaning as in the Agreement.

Approved Operator is an operator of a Third Party Storage Facility approved by Viterra in accordance with this document.

Insurance Policy has the same meaning as in section 8A.

Key Elements of a Third Party Storage Facility means the elements set out in section 4.

Key Requirements of an Approved Operator means the requirements set out in section 5.

Operational Requirements means the requirements set out in section 6.

Operator means an operator of a third party storage facility that has not yet been approved by Viterra in accordance with this document.

Service Year means the period commencing 1 October 2018 until 30 September 2019.

Third Party Storage Facility means a third party storage facility approved by Viterra in respect of an Approved Operator.

3. ACCEPTANCE OR REJECTION OF AN APPLICATION OR REVOCATION OF AUTHORITY

- A. Viterra may accept or reject an application, impose conditions on its acceptance or otherwise revoke or suspend authority of an Approved Operator in its sole and absolute discretion.

- B. Without limiting section 3A, Viterra will reject any application made by an Operator if:
- (a) the Key Elements of a Third Party Storage Facility are not satisfied in all respects;
 - (b) the Key Requirements of an Approved Operator are not satisfied in all respects;
 - (c) the Operator does not obtain or maintain the insurances required by section 9.
- C. Without limiting section 3A, Viterra may reject or revoke the authority of an Approved Operator if:
- (a) Viterra considers that the Key Elements of a Third Party Storage Facility or the Key Requirements of an Approved Operator are no longer satisfied in all respects;
 - (b) Viterra considers the Operational Requirements are not satisfied or will not be satisfied in all respects;
 - (c) the Approved Operator does not pay any applicable fees under this document or under any other agreement between Viterra and the Approved Operator.

4. KEY ELEMENTS OF AN APPROVED THIRD PARTY STORAGE FACILITY

- A. The following sets out the **Key Elements of a Third Party Storage Facility**:
- (a) storage facility is operated as a commercial distinct registered entity and offers services with defined fees and receipt, storage and outturn conditions and guarantees;
 - (b) the storage facility has multiple buyers buying and selling Grain within its facility;
 - (c) minimum storage capacity of 10,000 metric tonnes;
 - (d) storage facility must be clean and dry;
 - (e) storage facility must be capable of providing air-tight phosphine fumigation;
 - (f) storage facility must not allow water ingress;
 - (g) storage facility must not be in a condition so as to permit Grain egress.
- B. To assist an Operator obtain approval of a facility as a Third Party Storage Facility Viterra has provided a checklist of minimum requirements attached as "Attachment B".

5. KEY REQUIREMENTS OF AN APPROVED OPERATOR

- A. The following sets out the **Key Requirements of an Approved Operator**.
- B. At all times during a Service Year, an Approved Operator must:
- (a) maintain a current Hygiene Policy and associated procedures for the maintenance of Grain in storage and the loading of road trucks or rail wagons and provide written evidence to Viterra upon applying for access that the Hygiene Policy and associated procedures are currently complied with in all respects;
 - (b) keep accurate records of all chemical applications used in the treatment of Grain and provide to Viterra its post-harvest pesticide residue testing program (which must be performed by an accredited laboratory) and comply with all applicable maximum residue limits for Grain outturned to the Australian domestic or export markets. The Third Party Storage Facility must present such records prior to discharge at Viterra's Port Terminals;

- (c) hold and maintain Trade Measurement certified instruments approved by an accredited independent analyst that are otherwise compliant with all laws and, upon the reasonable request of Viterra, provide current copies of valid certification to Viterra;
- (d) ensure that its Grain classifiers are appropriately skilled and qualified to classify Grain. A training course similar to Grain Trade Australia (GTA) Accredited Classifiers will be deemed to be appropriate for the purposes of this section. The Third Party Storage Facility must provide evidence of classification accreditation / training of its classification staff to Viterra upon the reasonable request of Viterra;
- (e) have in place a current and up to date Site Safety Plan satisfactory to Viterra;
- (f) maintain a Chain of Responsibility policy that is compliant with any legislation including but not limited to:
 - i. mass load management records;
 - ii. load restraint records; and
 - iii. speeding and fatigue management records.

6. OPERATIONAL REQUIREMENTS

A. Application

This section sets out the **Operational Requirements** required of an Approved Operator and a Third Party Storage Facility.

B. Requirements relating to Delivery to a Viterra Port Terminal

The Approved Operator must:

- (a) take all necessary precautions to ensure Grain delivered to a Viterra Port Terminal does not contain any contaminants that could adversely affect the quality of Grain in storage at the Port Terminal or any plant and equipment operated by Viterra. The Approved Operator must provide evidence of the precautions being undertaken to Viterra's reasonable satisfaction;
- (b) provide Viterra with quality results for each parcel of Grain to be presented to Viterra. The quality results will include all major specification parameters as outlined in Viterra grade specifications (refer to Viterra's Commodity Classification manual) which will be provided for each movement;
- (c) keep 200mt running samples for Grain delivered to a Viterra Port Terminal. The running sample is only a subjective assessment of the quality of the Grain at loading and may not be representative of the Grain delivered to Viterra. The Approved Operator and its client accept full responsibility and liability for any direct or indirect losses caused by the contamination or quality impact to other client's Grain (where commingled) at Viterra Port Terminals.

C. Delivery by Rail

- (a) The Approved Operator will permit Viterra to carry out an inspection of the intended throughput Grain prior to delivery to the Viterra Terminal. Any inspection by Viterra does not limit or otherwise remove the Approved Operator's storage facilities obligations and liabilities under this document.
- (b) The Approved Operator will provide Viterra with any technical and specific details and drawings (if required) of the rolling stock it intends to present at Viterra's sidings.
- (c) The Approved Operator will provide a minimum of 2,500mt on average for every 8 hour block when delivering by rail to a Viterra Port Terminal.

- (d) The Approved Operator agrees to accept all weights as recorded by Viterra at its Port Terminals.
- (e) The Approved Operator will provide the rolling stock in a manner that will allow the tare weight to be recorded.

D. Delivery by Road

- (a) The Approved Operator must ensure that, in respect of a Third Party Storage Facility, it:
 - i. agrees to a delivery schedule with Viterra; and
 - ii. delivers a minimum daily road intake as per the table below. Failure to meet the rate will lead to additional costs payable by the Approved Operators client or Viterra's right to cancel the movement:

Port Terminal	Minimum Daily tonnage (wheat equivalent)
Port Adelaide	2200 mt
Walleroo	2000 mt
Port Giles	2300 mt
Outer Harbor	2200 mt
Port Lincoln	2200 mt

- (b) The Approved Operator must comply with all legal requirements in regards to mass management, load restraint, speeding and fatigue management in compliance with Chain of Responsibility legislation as it relates to road transport and be able to provide any records as described in section 5 of this document.

E. Quality Testing & Malting Barley

- (a) The Approved Operator acknowledges that Viterra will test and classify road receivals in accordance with its full testing program, but that it is unable to test rail receivals to the same extent it does road receivals. Viterra is entitled to rely upon the information supplied by the Approved Operator as to the quality/specifications of the Grain delivered to a Viterra Port Terminal. Any failure, howsoever caused, to meet Viterra's receival specifications for a particular grade of Grain will be considered a material breach of this document.
- (b) All loads of malting barley must be tested for germination prior to acceptance by Viterra and must be found to be meeting the malting standards (refer to the Agreement and Viterra's Commodity Classification Manual). The test must be performed by an independent laboratory at the cost of the Approved Operator's client and the results must be provided to Viterra prior to discharge.

F. Guiding Principles once a Third Party Storage Facility is approved by Viterra

If an Approved Operator is approved by Viterra in accordance with this document then the following principles apply to Grain throughput movements:

- (a) Viterra has the absolute discretion to reject throughput Grain where the Grain presented for receival does not satisfy Viterra's Receival standards (refer to the Agreement and Viterra's Commodity Classification Manual) or where the throughput parcel does not meet the quality parameters for the assembly of the intended vessel or otherwise if, in Viterra's reasonable opinion, the presentation for receival is contrary to any laws, aimed at circumventing any laws, will be detrimental to the Grain industry in general or otherwise impact on the efficient operation of the relevant Viterra Facility.

- (b) Vitterra may defer the throughput service because of a lack of suitable storage (including an ability to segregate the throughput Grain, if required by Vitterra) or for other operating reasons.
- (c) Vitterra will prioritise throughput requests which relate directly to the accumulation of Grain for a booked vessel with Vitterra
- (d) Vitterra will not accept un-fumigated Grain, Grain infested with insects, Grain that has not been fumigated within a quarterly fumigation regime or Grain for which a Clearance Certificate cannot be provided
- (e) Without limiting section 3A, in the event that Vitterra believes the Approved Operator is not complying with its obligations under this document, Vitterra may cease receivals and may suspend its approval of the Approved Operator and/or a Third Party Storage Facility (in its sole and absolute discretion).
- (f) Without limiting section 3A, upon written notification from Vitterra of the failure to comply with its obligations the Approved Operator will have 7 days to rectify the non-compliance and provide written evidence of rectification. Failure to satisfy Vitterra of the rectification may result in the revocation of the Approved Operator's authority entirely or in respect of a Third Party Storage Facility.

7. ACCESS AND COMPLIANCE

At any stage during the Service Year, an Approved Operator agrees to allow Vitterra access to the Third Party Storage Facility to monitor the Approved Operator's compliance with this document and otherwise provide any documentation Vitterra reasonably requires to verify that the Approved Operator is complying with this document.

8. FEES

- A. In respect of rail delivery from a Third Party Storage Facility to Vitterra's Outer Harbor Port Terminal Facility, the Approved Operator agrees to pay Vitterra the fees as set out in Attachment A.
- B. The fees set out in this section are GST exclusive.
- C. Other fees for delivery (both road and rail) will be charged to the Approved Operator's client in accordance with the relevant agreement between Vitterra and that client.

9. PUBLIC LIABILITY INSURANCE

- A. The Approved Operator must obtain and maintain at all times a Public and Products Liability Insurance Policy (**Insurance Policy**) for a sum of not less than \$10 million in respect of any one occurrence, with an insurance company approved by Vitterra and which, at a minimum, covers legal liability to pay compensation for personal injury and /or property damage (including all economic loss flowing directly or indirectly from damage to Grain) whether at common law, contract law or statute law which may arise out of the delivery of Grain from a Third Party Storage Facility to a Vitterra Port Terminal.
- B. The Approved Operator must provide a certificate of currency to Vitterra as evidence of the currency of the Insurance Policy.
- C. The Approved Operator must immediately notify Vitterra there are any material changes to the Insurance Policy, the insurer or to the period of insurance or otherwise when an event occurs which gives rise or might give rise to a claim under the Insurance Policy or which could prejudice the Insurance Policy, or if the Insurance Policy is cancelled.

10. LIABILITY

- A. The Approved Operator agrees that it will be responsible for, and where applicable must compensate Viterra in respect of, the following where the throughput and /or commingled stock is not suitable to be loaded on the nominated vessel:
 - (a) the immediate clearing of all throughput and commingled stock as organised by the Approved Operator;
 - (b) the costs of immediately repositioning the entire throughput and commingled stock as organised by Viterra;
 - (c) the replacement of commingled stock if owned by another client as directed by Viterra;
 - (d) treatment of all Grain if required; and
 - (e) any other costs associated with the throughput parcel, the failure to load the throughput parcel to the vessel (including residual Grain) or other commingled stock which is affected by the throughput parcel.
- B. The Approved Operator and its client will accept full responsibility for the quality of Grain loaded onto a vessel by Viterra at a Viterra Port Terminal where that Grain has been segregated by Viterra within the Port Terminal.
- C. The Approved Operator acknowledges and agrees that Viterra will not be liable for, and the Approved Operator must not make a claim in respect of, any decision by Viterra to suspend or revoke an approval of the Approved Operator and/or a Third Party Storage Facility or otherwise any refusal, delay in Viterra performing or not performing any services or accepting Grain under this document.

11. INDEMNITY

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

- A. any breach, non-observance or non-performance by the Approved Operator of any of its obligations under this document;
- B. any delivery of Grain which damages or affects (in any form) Viterra’s Port Terminal or the Grain or other commodities of Viterra’s clients; or
- C. any negligence, recklessness or wilful act or omission by the Approved Operator.

EXECUTED as an agreement

DATED:

EXECUTED by the OPERATOR: by its authorised representative:

Witness

Authorised Representative

Name of Witness
(BLOCK LETTERS)

Name of Authorised Representative
(BLOCK LETTERS)

APPROVAL

Subject to the Operator complying with the terms of this document in all respects, Viterra approves the above Operator as an Approved Operator for the nominated Third Party Storage Facility or Facilities:

EXECUTED by VITERRA OPERATIONS PTY LTD: by its authorised representative:

Witness

Authorised Representative

Name of Witness
(BLOCK LETTERS)

Name of Authorised Representative
(BLOCK LETTERS)

Attachment A – Details

Operator		
Name of Operator		
ACN of Operator		
Contact Name and Number of Operator		
Third Party Storage Facility:	Name:	
	Address:	
	Phone Number:	
Fees	In the instance of automatic discharging wagons with responder tags (that comply with Viterra's system at the interface), at the rate of:	\$[●] per tonne
	In the instance of semi-automated wagons (without responder tags, at the rate of:	\$[●] per tonne
	In the instance of manually operated wagons (force controlled levers), at the rate of:	\$[●] per tonne

Attachment B – Third Party Storage Facility Checklist

This checklist has been designed to assist storage providers who wish to gain approval from Viterra to act as an approved third party storage facility. It is a guide only and does not in any way limit or vary the terms of the Approved Operator Conditions for the 2018/2019 Season. Successful completion of the checklist is a minimum requirement and will not result in automatic approval as a third party storage facility. Absolute discretion for approval remains with Viterra. You should also ensure you have read and understood the Approved Operator Conditions for the 2018/2019 Season.

The Third Party Storage Facility must have:

- Minimum storage capacity of 10,000 metric tonnes.
- Storage capable of applying air-tight phosphine fumigation.
- Clean and dry storage.

The Third Party Storage Facility must **not**:

- Allow water ingress.
- Be in a condition so as to permit Grain egress.

The Approved Operator must have:

- A current Hygiene Policy & Procedures for the maintenance of Grain in storage and the loading of road trucks or rail wagons.
- Trade Measurement certified instruments approved by an accredited independent analyst.
- Grain classifiers who are appropriately skilled to classify Grain (a training course similar to Grain Trade Australia (GTA) Accredited Classifiers will be deemed to be appropriate).
- A Public and Products Liability Insurance Policy for a sum of not less than \$10 million with an insurance company approved by Viterra Operations.