

2020/21 Season Storage & Handling Agreement

DATED: _____ 2020

VITERRA OPERATIONS PTY LTD (ABN 88 007 556 256) ("**Viterra**")

and

CLIENT NAME

ABN/ACN/ARBN

("Client")

2020/21 Season Storage & Handling Agreement

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Details

Parties	Viterra and Client	
Viterra	Name	Viterra Operations Pty Ltd
	ABN	88 007 556 256
	Address	Level 1, 186 Greenhill Road Parkside, SA 5063
	Telephone	(08) 8304 5000
	Email	CustomerServicesAustralia@viterra.com
	Attention	Commercial Relations Manager
	<hr/>	
Client	Name	
	ABN/ACN/ARBN	
	Address	
	Telephone	
	Email	
	Attention	
	<hr/>	
Commencement Date	1 October 2020	
<hr/>		
Expiry Date	30 September 2021	
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Recitals	A	Viterra is the operator of Viterra Facilities and the provider of Services.
	B	The Client wishes to acquire, and Viterra wishes to provide, the Services on the terms and conditions set out in this Agreement.

General terms

1 DEFINED TERMS & INTERPRETATION

1.1 Defined terms

In this Agreement:

Accidental Loss or Damage means Loss to the Client's Grain caused or occasioned by events not reasonably within Viterra's control.

Additional Amount has the meaning given in clause 8.5(c).

Affected Obligations has the meaning given in clause 15.4(b).

Affected Party has the meaning given in clause 15.2.

Agreement means this agreement, including the Pricing, Procedures and Protocols Manual and all schedules, annexures and attachments.

Associated Entity has the meaning given by the Corporations Act.

Binned Grade means the Grade of Grain stored in a Cell.

Blending means the mixing of originally segregated Binned Grades held at a Viterra Facility and it may occur either during storage or during Outturn.

Booking has the meaning given in the Port Loading Protocols.

Bulk Wheat has the meaning given to that term in the Port Loading Protocols.

Business Conduct Law means any and all laws relating to sanctions, anti-bribery, anti-corruption, anti-money laundering and tax.

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

Capacity has the meaning given in the Port Loading Protocols.

Capped Agreements has the meaning given in clause 13.5.

Cell means a single unit of storage of Grain.

Charges has the meaning given in clause 8.1(a).

Client's Grain means that quantity of Grain held by Viterra on behalf of the Client within Viterra's storage system, as adjusted for Shrinkage and other matters allowed or required under this 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.

Commencement Date has the meaning given in the Details.

Common Stock has the meaning given to that term in clause 6.2.

Composite Sampling means a representative sample of Grain prepared by mixing together samples drawn from the relevant Transportation Vehicle or Cells.

Confidential Information means information exchanged between Viterra and the Client in relation to the business of those persons that:

- (a) is by its nature confidential;
- (b) is specified to be confidential by the person who supplied it; or
- (c) is known, or ought to be known, by a person using or supplying it to be confidential or commercially valuable;

but excludes information that:

- (d) is comprised solely of the name, address and contact details of a person; or
- (e) was in the public domain at the time when it was supplied; or
- (f) subsequently becomes available other than through a breach of confidence or breach of this Agreement; or
- (g) was in lawful possession of the Party prior to being provided by the Party; or
- (h) must be disclosed in accordance with the Code or in order to comply with other legal requirements; or
- (i) ceases to be confidential in nature by any other lawful means.

Contaminated Delivery has the meaning given in clause 5.7(c).

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

Credit Risk has the meaning given in clause 8.2(b).

Credit Support has the meaning given in the Port Loading Protocols.

Crisis Event means any circumstance which is not otherwise a Force Majeure Event and in which it is reasonably determined by Viterra that there is at a Viterra Facility an immediate risk or potential threat to the health or safety of or damage to:

- (a) An employee, agent or subcontractor of Viterra, or any visitor to the Viterra Facility (including risk of accident, injury, or death); or
- (b) Any asset of Viterra or a Viterra employee, agent or subcontractor, located at the Viterra Facility (whether in the control or possession of Viterra or otherwise),

or where there has been any crisis including, but not limited to, an accident, injury, fatality, damage to any asset, explosion, labour dispute, evacuation or recall at the Viterra Facility.

Damaged Grain means Grain that has been damaged to such an extent that it can no longer be classified by any Receival (Classification) Standards and is only of salvage value or suitable for disposal.

Defaulting Party has the meaning given in clause 28.2(b).

Details means the section of this Agreement headed "Details".

Dispute means a bona fide dispute between the Client and Viterra arising under this Agreement.

Dispute Notice has the meaning given in clause 16.1(a).

Dust means Grain dust attributable to the Client's Grain extracted from dust collection plants in any Viterra Facility, but excluding Damaged Grain.

Excess Outturn Entitlement Amount means the amount calculated by multiplying the volume (in tonnes) by which the Grain Outturned to the Client is more than the Client's Outturn Entitlement by the Fair Market Value Price.

Expiry Date has the meaning given in the Details.

Export Select means the system operated by Viterra (and described in Schedule B of the Pricing, Procedures and Protocols Manual) under which the Client elects to buy Grain at, or deliver Grain to, a Viterra Facility in a Port Zone and to have equivalent Grain (but not necessarily the same Grain) Outturned by Viterra to the Client at a Viterra Facility for that Port Zone.

Export Select Grain means, at any time, Grain that is the subject of a written election by the Client to participate in Export Select that has not been revoked by notice in writing to Viterra at that time.

Fair Market Value Price means in respect of a Client's Grain, the fair market value (on a per tonne basis) of Grain that is:

- (a) of the same type, Grade and Service Year as the Client's Grain; and
- (b) calculated at the time Viterra or the Client pays the Excess Outturn Entitlement Amount or the Shortfall Outturn Entitlement Amount (as the case requires).

Force Majeure Event has the meaning given to that term in clause 15.1.

Grade means a grade of Grain of a given Service Year specified in the Receival (Classification) Standards and Outturn Standards of that same Service Year, or any other grade agreed by the Parties.

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

Grower means any person involved in the growing of Grain, the contact details for whom have been registered with Viterra or a national grower register.

GST has the meaning given in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or any replacement or other relevant legislation or regulations.

GST Legislation means the GST Act and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such Acts.

Indirect or Consequential Loss means indirect, consequential or remote loss or any loss in the nature of compensation for loss of production, loss of profit, loss of opportunity, loss of markets, loss of use of money, goods or other property, loss of goodwill or business reputation, any shipping/demurrage costs or fees, damages or penalties payable under the Client's customer or charter party's contract (whether direct or indirect) including any losses that the Client may suffer in the event that the ability to resell Grain is adversely affected or delayed.

Insolvency Event means, in relation to a Party:

- (a) a receiver, receiver and manager, administrator, trustee or similar official is appointed over the whole or a substantial part of the assets or undertaking of the Party and is not removed within 30 days;
- (b) the Party suspends payment of its debts generally;
- (c) the Party is insolvent within the meaning of the Corporations Act;
- (d) the Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application (other than a vexatious application) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the Party or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the Party otherwise than for the purpose of an amalgamation or reconstruction which has the prior written consent of the other Party and, in the case of an application, the application is not withdrawn or dismissed within 60 days; or
- (f) an administrator is appointed under Division 2 of Part 5.3A of the Corporations Act and, except in the case of an appointment by the Party or its directors, is not withdrawn or removed within 14 days.

In Store Transfer means the transfer of ownership of Grain held at a Viterra Facility from the Client to another person, or vice versa, as recorded in Viterra's stock systems.

Long Term Agreement has the meaning given in the Port Loading Protocols.

Loss means any damage, payment, charge, loss, cost, liability (whether actual, contingent or prospective), claim or expense (including legal costs and expenses).

Mediation Notice has the meaning given in clause 16.3.

Non-Defaulting Party has the meaning given in clause 28.2(b).

Other Client means a person that is provided with a storage service at a Viterra Facility (other than the Client or a Grower). For avoidance of doubt, Viterra, or an Associated Entity of Viterra, both in its own capacity and as the custodian of Export Select Grain, may be an Other Client.

Outturn means to cause Grain physically to leave the custody of Viterra at a Viterra Facility, and, in the case of Outturn to a shipping vessel, is taken to occur when the Grain exits the delivery spout into a Transportation Vehicle at which point physical custody of the Grain passes from Viterra to the Client or a third party authorised by the Client.

Outturn Entitlement has the meaning given to that term in clause 7.2(a).

Outturn Services means the Outturn of Grain to a Transportation Vehicle from a Viterra Facility and involves:

- (a) monitoring quality against the Outturn Standards;
- (b) Blending;
- (c) weighing;
- (d) in the case of Outturn to a shipping vessel, outward elevation to the ship loader; and
- (e) recording of relevant information.

Outturn Standards means the standards published in Schedule G (Register of Outturn Standards) of the Pricing, Procedures and Protocols Manual, as amended by Viterra from time to time.

Party means, depending on the context, Viterra or the Client and **Parties** means both of them.

Port Loading Protocols means the document of that name as published by Viterra on its website as amended from time to time by Viterra in accordance with its terms.

Port Terminal means, depending on the context, Viterra's seaboard terminal 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;
- (f) Thevenard, South Australia; or
- (g) any other port terminal operated by Viterra for the handling of Grain.

Port Terminal Facility means a ship loader that is:

- (a) at a Port Terminal; and
- (b) capable of handling Grain;

and includes any of the following facilities:

- (c) an intake/receival facility;
- (d) a grain storage facility;
- (e) a weighing facility; or
- (f) a shipping belt;

that is:

- (g) at the Port Terminal; and
- (h) associated with the ship loader.

Port Terminal Services has the meaning given to that term in the Code and includes, in relation to a Port Terminal, those of the Receival Services, Storage Services and Outturn Services that Viterra provides by using one or more of the Port Terminal Facilities at that Port Terminal.

Port Terminal Services Agreement means the form of agreement for the time being published by Viterra on its website for the provision by Viterra of Port Terminal Services for Bulk Wheat at its Port Terminal Facilities.

Port Zone means a geographical grouping of Viterra Facilities that includes a Viterra Facility at a port as nominated and published by Viterra for each Service Year. For clarification the Port Zone may, at Viterra's discretion, include Viterra Facilities that are not freight advantaged to a Viterra Facility in that Port Zone and a Viterra Facility (other than a Port Terminal Facility) may be included in more than one Port Zone.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations made under that Act.

Pricing, Procedures and Protocols Manual means the document of that name published by Viterra on its website, as varied by Viterra from time to time.

Privacy Policy is Viterra's internal Privacy Policy document, a copy of which can be found on viterra.com.au.

Prudential Requirements has the meaning given in the Port Loading Protocols.

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

Purchase Options means the various alternative products offered or to be offered to Growers by the Client for the purchase of Grain as submitted to Viterra for display at a Viterra Facility, on the Client's behalf, subject to and in accordance with such procedures and requirements as Viterra may, in its sole discretion, produce and publish from time to time.

Receival (Classification) Standards means standards that either:

- (a) accord with the industry benchmarks established for Grain (as varied from time to time by Viterra) and published on Viterra's website prior to the receival of that Grain into a Viterra Facility; or
- (b) are otherwise agreed with the Client.

Receival Services means the receival of Grain at a Viterra Facility, and involves:

- (a) sampling, testing and classification on delivery;
- (b) weighing on delivery;
- (c) tipping and inward elevation;
- (d) Segregation;
- (e) placing into storage; and
- (f) recording of relevant information.

Received Quantity has the meaning given to that term in clause 7.2(a).

Regulatory Change Event means when one or more of the following events occurs:

- (a) the price or prices for the supply by Viterra of Services to any person is the subject of a binding decision by any regulator or arbitrator under the Code or in accordance with any other access regime;
- (b) a scheme is introduced by any Governmental agency requiring or providing for Viterra to gain or hold any licence, permit, authorisation or requiring or providing for Viterra to hold or surrender any certificate, permit or instrument or any such scheme being varied;
- (c) the provision of access to services provided by means of a Viterra Facility becomes subject to any access regime which it was not subject to at the date of this Agreement;
- (d) the Code is repealed, varied or replaced; or
- (e) Viterra becomes an "exempt service provider" (as defined in the Code) in respect of a Port Terminal Facility under the Code.

Sanctioned Country means a country or territory that is the subject of a comprehensive sanction.

Sanctioned Entity means an entity (or entities) which has, other than as disclosed prior to the Commencement Date:

- (a) breached any Business Conduct Law;
- (b) admitted or been found by a court in any jurisdiction to have breached any Business Conduct Law; and/or
- (c) been subject to any investigation (or pending or threatened investigation) pursuant to any Business Conduct Law by any law enforcement, regulatory agency, or authority,

and/or an entity (or entities) based, organised or resident in a Sanctioned Country.

Security Interest has the meaning given in the PPSA.

Segregation means the physical separation of the storage of Grain by type, Grade, variety or such other distinguishing quality as may be determined by Viterra.

Service Year means each period from 1 October to the following 30 September during the Term.

Services means:

- (a) Receival Services;
- (b) Storage Services;
- (c) Outturn Services;
- (d) Transport Services;
- (e) the Export Select service;
- (f) the Purchase Options service; and
- (g) any other Grain handling services that Viterra agrees to provide to the Client under this Agreement.

Shortfall Outturn Entitlement Amount means the amount calculated by multiplying the volume (in tonnes) by which the Grain Outturned to the Client is less than the Client's Outturn Entitlement by the Fair Market Value Price.

Shrinkage means loss in the normal storage and handling process, including loss of mass through changes in moisture content, loss in handling, and Waste. Shrinkage does not include Grain lost as Dust.

Storage Services means the storage of Grain at a Viterra Facility and involves:

- (a) storage;
- (b) Blending;
- (c) standard Grain protection and maintenance;
- (d) dis-infestation; and
- (e) recording of relevant information.

Suspension Notice has the meaning given in clause 17.1(a).

Term commences on the Commencement Date and ends on the Expiry Date (unless terminated earlier in accordance with this Agreement).

Termination Notice has the meaning given in clause 17.1(b).

Transport Services means the transportation of Grain or the arrangement or coordination of the transportation of Grain.

Transportation Vehicle means a truck, train or shipping vessel to which the Client requests Grain to be Outturned.

Up-Country Receival Facility has the meaning given to that term in clause 3(b).

Viterra Facility means any facility owned or operated by Viterra or any Viterra Group Company for the receival and storage of Grain, and may include a Port Terminal Facility.

Viterra Group Company means Viterra Pty Ltd and any Associated Entity of Viterra Pty Ltd.

Viterra Road Vehicle Hygiene Requirements means the requirements published by Viterra from time to time on viterra.com.au or otherwise displayed or available at a Viterra Facility or required by law (as amended, varied or substituted by Viterra from time to time).

Waste means Grain that, as a result of the normal handling process, has been downgraded to Grain of no commercial value (for example mouldy Grain, or Grain mixed with dirt and stones) and includes Damaged Grain.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause is a reference to a clause of this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced. Further, a reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (h) A reference to a Party to this Agreement or a party to another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to any Government agency in this Agreement, including to Department of Agriculture, includes that agency's successors.
- (j) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (k) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (l) A reference to *dollars* and \$ is to Australian currency.
- (m) Mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.
- (n) A reference to time is a reference to the local time in Adelaide, South Australia (unless otherwise stated).
- (o) Where any matter or thing is required to be attended to or done on a day which is not a Business Day, it will be attended to or done on the next Business Day.
- (p) Measurements of physical quantities are in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth).
- (q) Nothing in this Agreement is to be interpreted against a Party solely on the ground that the Party prepared or put forward this Agreement or a relevant part of it.

2 TERM AND APPLICATION OF AGREEMENT

2.1 Commencement, duration and application

- (a) This Agreement:
 - (i) commences on the Commencement Date;
 - (ii) unless terminated earlier under this Agreement, ends on the Expiry Date; and
 - (iii) applies to all Services provided, or deemed to have been provided, by Viterra under this Agreement.
- (b) Subject to clause 2.1(e) and clause 3, if the Client:
 - (i) uses any Services provided by Viterra on or after the Commencement Date; or makes a Booking for the Service Year to which this Agreement applies; and
 - (ii) has not executed this Agreement,the Client's Booking or use of those Services will be taken to constitute acceptance by the Client of, and the acquisition of Services by the Client on, the terms and conditions set out in this Agreement (including the Pricing, Procedures and Protocols Manual).

- (c) Subject to clause 3, this Agreement (including the Pricing, Procedures and Protocols Manual and Port Loading Protocols as varied from time to time) applies to all Grain held in Viterra's storage facilities at a Viterra Facility on and from the Commencement Date, regardless of when it was delivered to the Viterra Facility.
- (d) Subject to clause 2.1(e), this Agreement supersedes any previous agreement between Viterra and the Client for the provision of Services, and any such previous agreement is expressly terminated.
- (e) Notwithstanding any other provision of this Agreement, if Viterra and the Client enter into a Long Term Agreement, either before or after the Commencement Date, for the supply of Port Terminal Services in respect of any period during the Term:
 - (i) the Long Term Agreement will supersede and replace this Agreement in respect of Port Terminal Services provided by Viterra to the Client at a Port Terminal Facility; and
 - (ii) this Agreement will continue to apply to any Services provided by Viterra to the Client that are not Port Terminal Services provided at a Port Terminal Facility.

2.2 Continued provision of Services

Unless agreed otherwise in writing by Viterra and the Client, if the Client:

- (a) acquires any Services from Viterra after the Expiry Date; and
- (b) has not executed a new agreement with Viterra in respect of those Services,

the Parties agree that Viterra will provide (if the Client meets the Prudential Requirements), and the Client will acquire, those Services after the Expiry Date on the terms and conditions set out in Viterra's then current Storage & Handling Agreement.

3 ACKNOWLEDGEMENT OF LIMITED APPLICATION

The Client acknowledges and agrees that:

- (a) this Agreement does not apply to Port Terminal Services provided by Viterra to the Client in respect of Bulk Wheat;
- (b) where Bulk Wheat for export is received by Viterra at a Viterra Facility that is not a Port Terminal Facility (**Up-Country Receival Facility**), the Services provided by Viterra in respect of that Bulk Wheat before it reaches a Port Terminal Facility will be governed by this Agreement; and
- (c) if, for any Service Year, the Client engages Viterra to provide Port Terminal Services at a Port Terminal Facility in respect of Bulk Wheat, then those Port Terminal Services will be provided either:
 - (i) under any separate agreement that Viterra and the Client enter into for the provision of the Port Terminal Services; or
 - (ii) otherwise, under a separate agreement that will be taken, by the operation of this clause, to have been entered into between the Client and Viterra on the standard terms and conditions contained in the Port Terminal Services Agreement published by Viterra for that Service Year.

4 SERVICES

4.1 Supply of Services

Viterra will provide, and the Client agrees to acquire and pay for, any:

- (a) Capacity allocated to the Client in accordance with the Port Loading Protocols; and
- (b) Services provided under this Agreement,

in each case, on and subject to the terms of this Agreement.

4.2 Availability

Subject to clause 4.3, Viterra's obligation to provide a particular Service at a Viterra Facility is at all times subject to the availability of a relevant Viterra Facility required for that Service at that time.

4.3 Capacity management

The Client acknowledges that:

- (a) notwithstanding any other clause in this Agreement, Viterra will provide the Services on a non-exclusive basis;

- (b) nothing in this Agreement prevents Viterra from permitting third parties to use Viterra's Facilities for any purpose;
- (c) certain rights have been granted to Other Clients to use Viterra's Facilities; and
- (d) there may be capacity constraints in relation to the provision of Services at particular times and, in managing demand for and in making operational decisions in the course of providing Services, Viterra will comply with the capacity management arrangements set out in this Agreement, including the Port Loading Protocols and in the Code.

4.4 Port Loading Protocols

- (a) The Port Loading Protocols set out the requirements for:
 - (i) Bookings for, and contracting of, all Capacity at the Port Terminals; and
 - (ii) all Outturns of Grain.
- (b) The Client agrees to comply with the Port Loading Protocols which the Parties agree form part of this Agreement.
- (c) The Client:
 - (i) acknowledges that it has been provided with a copy of the Port Loading Protocols;
 - (ii) agrees that the Port Loading Protocols may be varied from time to time in accordance with their terms; and
 - (iii) acknowledges that the Port Loading Protocols as varied from time to time are available at viterra.com.au.
- (d) The Client and Viterra agree that in the case of any inconsistency between the terms of this Agreement and the Port Loading Protocols, the Port Loading Protocols will apply to the extent of the inconsistency.

5 RECEIVAL SERVICES

5.1 Application of clause

This clause 5 applies in relation to the provision of Receival Services.

5.2 Acceptance of Grain

- (a) The Client must ensure that all Grain that is delivered to a Viterra Facility for storage and/or export by Viterra complies with the Receival (Classification) Standards. If Grain has characteristics for which a receival standard is neither published nor agreed, Viterra may refuse to receive that Grain.
- (b) Without limiting anything else in this Agreement, Viterra may (when it has reasonable grounds for doing so):
 - (i) refuse to accept a request for a Receival Service for all or any portion of a Client's Grain; or
 - (ii) place conditions on the receipt of a Client's Grain.

5.3 Acceptance of Grain from third parties on behalf of the Client

- (a) Before accepting Grain at a Viterra Facility from a third party for sale to the Client and subsequent storage on the Client's behalf, Viterra will assess and classify the Grain and require the person who has tendered the Grain to sign a receival docket setting out the origin, weight, variety, quality, payment grade and the Purchase Option selected by the person.
- (b) Viterra is entitled to treat Grain to which clause 5.3(a) applies as the property of the person who tendered it and Viterra has no obligation to the Client in respect of that Grain until the person who has tendered the Grain has signed or otherwise signified acceptance of the receival docket and has complied with clause 5.4.

5.4 Client to be nominated as the owner

- (a) The Client must ensure that, whenever Grain is delivered to a Viterra Facility by a third party on behalf of the Client, the third party nominates the Client as the owner of the Grain and acknowledges that all the third party's right, title and interest to and in the Grain is transferred to the Client. The nomination and acknowledgement must be made in writing at the time of the delivery.
- (b) On receiving the original of the acknowledgment set out in clause 5.4(a), Viterra will enter the name of the Client in its records as owner of the Grain without any further obligation as to enquire as to the title of the Client and will hold the Grain for the Client subject to the terms of this Agreement.

5.5 Weighing

- (a) The Client authorises Viterra to use weighing systems, equipment and any other processes nominated by Viterra to determine the receival tonnage.
- (b) For receival from rail transport at a Port Terminal Facility, the Client authorises Viterra to use Viterra's or the rail service provider's nominated weighing equipment (if available) (to be determined by Viterra in its sole discretion), to determine the receival tonnage.
- (c) Viterra will use the receival weights of site to site movements within the Viterra Facility on all stock records of the Client.
- (d) The Client is bound by the determinations made under clauses 5.5(a) and 5.5(b), and the records of those determinations (including maximum permissible errors) in the absence of manifest error. The Client agrees that it is not a manifest error if the relevant determination is within the maximum permissible error as permitted by law or through generally accepted industry practice.

5.6 Quality

- (a) The Client authorises Viterra to use systems, equipment and any processes (including Composite Sampling) nominated by Viterra to determine the receival quality.
- (b) The Client is bound by the determinations made under clause 5.6(a) and the records of those determinations (including maximum permissible errors) in the absence of manifest error. The Client agrees that it is not a manifest error if the relevant determination is within the maximum permissible error as permitted by law or through generally accepted industry practice.

5.7 Contaminants

- (a) The Client must not deliver to a Viterra Facility (either itself or through its suppliers) any Grain that is known or suspected to contain contaminants (chemical, physical or otherwise), residues or a combination of both.
- (b) If a load of Grain is found to be contaminated, the Client will not be permitted to deliver Grain to any Viterra Facility until the Client has provided Viterra with evidence that is satisfactory to Viterra (acting reasonably) that there is no further risk of contamination arising from deliveries by the Client to a Viterra Facility. This evidence may involve, but is not limited to:
 - (i) further sample inspections and verification of Grain produced or owned by the Client by an independent expert; or
 - (ii) an inspection by an independent expert of the vehicles or wagons used by the Client to deliver Grain to the Viterra Facility.

The independent expert must certify to Viterra that the contaminant is manageable and has been removed prior to Viterra accepting new deliveries.

- (c) Where Grain of any person other than the Client is affected by a contaminant or residue but is nevertheless delivered to a Viterra Facility (**Contaminated Delivery**), Viterra will not be liable to the Client or to any other person for any Loss (including Indirect or Consequential Loss) suffered or incurred directly or indirectly as a result of that Contaminated Delivery.

5.8 No capacity

Without limiting clause 5.2(b) or clause 5.7, Viterra may decline to receive Grain for storage on behalf of the Client at a Viterra Facility if:

- (a) the export storage capacity in that Viterra Facility allocated to a particular Binned Grade at that Viterra Facility is already full; and
- (b) Viterra is unable to make additional space available for that Binned Grade by either movement of the Grain to another Viterra Facility or by Outturn of the Grain. Nothing in this clause 5.8 requires Viterra to move any Other Client's Grain which is in an export position at that time.

5.9 Reservation of Cell

- (a) The Client may at any time request Viterra to reserve a Cell for use by the Client.
- (b) Viterra has no obligation to agree to a request by the Client to reserve a Cell for the Client. However, if Viterra agrees to reserve a Cell, that agreement may be subject to:
 - (i) the Client paying the Cell reservation fee specified by Viterra; and
 - (ii) any time limits on the Cell reservation specified by Viterra.
- (c) If Viterra agrees to reserve a Cell (and the Client pays the Cell reservation fee), Viterra will not, during the reservation period, move the quantity of Grain owned by the Client from the relevant Cell without the Client's consent.

5.10 Required Services

In acquiring Receival Services, the Client must acquire such storage and handling services as Viterra, acting reasonably, requires in order to protect the integrity of Grain to be Common Stocked with the Client's Grain and/or to reduce the risk of quality, safety, health, environmental or hygiene claims. The costs of such services and their applicability will be identified in the Pricing, Procedures and Protocols Manual.

6 STORAGE SERVICES

6.1 Application of clause

This clause 6 applies in relation to the provision of Storage Services.

6.2 Common stock

Subject to clause 5.9, unless specifically agreed otherwise, Viterra reserves the right to mix the whole or any part of the Client's Grain with Grain of the same specification stored on behalf of Other Clients or other users at a Viterra Facility (**Common Stock**).

6.3 Title

- (a) Subject to clause 6.3(b), where the Client's Grain is Common Stocked, title to the Common Stocked Grain is held in common and in undivided shares by the Client and the Other Clients or users whose Grain forms part of the Common Stocked Grain at the applicable Viterra Facility.
- (b) If and to the extent that the Client has committed Grain to Export Select, title to the Export Select Grain in a Port Zone is held jointly by the Client and Other Clients and users whose Grain forms part of the Export Select Grain in that Port Zone.

6.4 Client's interest

- (a) For the purposes of clause 6.3(a), at any time the Client's share of the Common Stocked Grain will be equal to that proportion which the quantity of the Client's Grain at the time bears to the quantity of that Common Stocked Grain at that time.
- (b) For the purposes of clause 6.3(b), at any time the Client's share of the Export Select Grain will be equal to that proportion which the quantity of the Client's Export Select Grain at the time bears to the quantity of all Export Select Grain in the relevant Port Zone.
- (c) Subject to clause 9.3, the Client does not have the right to nominate any particular parcel or Cell of Grain that is Common Stocked as being owned by the Client.

6.5 Possession

While Viterra has possession of the Client's Grain:

- (a) the relationship between Viterra and the Client in respect of the possession of the Client's Grain is one of bailment only;
- (b) that relationship will continue to exist despite the Client's Grain losing its identity by being part of Common Stock, or despite the inability of Viterra to redeliver to the Client the same Grain that is the subject of the bailment; and
- (c) unless specifically agreed otherwise, Viterra as bailee may manage, use, deal with or otherwise control the Grain in its possession in any manner consistent with the Client Outturn Entitlement.

6.6 Right to Outturn or move Grain at another site

- (a) Subject to clause 5.9, Viterra reserves the right to Outturn, or move or swap, the Client's Grain at a Viterra Facility other than the Viterra Facility at which the Client acquired the Grain if:
 - (i) Viterra reasonably considers that the quality of the Grain or the operation of the Viterra Facility may be adversely affected if the Grain remains in any particular location;
 - (ii) the Viterra Facility fills, or is expected to fill, during the Service Year; or
 - (iii) Viterra determines (in its reasonable opinion) that it is operationally efficient to move the Grain.
- (b) Unless otherwise agreed between the Parties, any movements described in clause 6.6(a) will be at the expense of the Client. Viterra will use the then current freight rates published by Viterra (as varied from time to time) in order to charge the Client for the movement.

- (c) Without limiting the operation of any other clauses of this Agreement, Viterra may, at its discretion, overflow Grain from any Viterra Facility, or swap Grain to an alternative Viterra Facility provided that the Client is compensated for any freight differential.

7 OUTTURN SERVICES

7.1 Application of clause

This clause 7 applies in relation to the provision of Outturn Services and other services relevant to the handling and Outturn of Grain.

7.2 Shrinkage, Dust & Outturn Entitlement

- (a) The Client acknowledges and agrees that Viterra is entitled to deduct from the Outturn a percentage of Grain initially received on behalf of the Client (**Received Quantity**) on account of Shrinkage and Dust. The net quantity of the Outturn remaining after such deductions is called the Outturn Entitlement (**Outturn Entitlement**).
- (b) Viterra will specify the method of calculation of the deductions for Shrinkage and Dust in the Pricing, Procedures and Protocols Manual.
- (c) Viterra will own and be entitled to deal in the quantity of Grain deducted from the Outturn for Shrinkage and Dust at any time following receipt of Grain at a Viterra Facility.

7.3 Outturn

- (a) Despite anything else in this Agreement, Viterra may refuse to accept an Outturn request or nomination (or place conditions on acceptance of an Outturn request or nomination) for all or any portion of the Outturn Entitlement if, in Viterra's reasonable opinion, the Outturn:
 - (i) may contravene or may otherwise be aimed at circumventing any laws (including any prohibitions or restrictions by domestic or foreign laws, regulations or policies, quarantine or custom restrictions or prohibitions on export); or
 - (ii) could be detrimental to the Grain industry in general.
- (b) Viterra is not liable for any loss, cost, damage or expense (including Indirect or Consequential Loss) caused as a result of a rejection of an Outturn request or nomination.

7.4 Outturn Standards

- (a) Subject to clause 7.4, Viterra will Outturn Grain to the standards set out in the Outturn Standards.
- (b) If requested by the Client, Viterra may, but is not obliged to, agree to Outturn to a more stringent standard than the applicable Outturn Standard, but a charge may be applied for this service. Any agreement by Viterra under this clause 7.4(b) can only be made in writing by a person authorised to act on behalf of Viterra. Unless otherwise agreed under this clause 7.4(b), at no time will Viterra be required to meet any standards which are not measured by Viterra at the time of receipt or are an inherent component of the Grain which deteriorates with time based storage.
- (c) Viterra:
 - (i) does not make any warranty or representation that Grain Outturned in accordance with either clause 7.4(a) or 7.4(b) will meet any export standards imposed by Department of Agriculture or standards imposed by an importing country;
 - (ii) does not make any warranty or representation that malting barley will germinate after Outturn; and
 - (iii) reserves the right, at its reasonable discretion but on not less than 20 Business Days' prior notice to the Client, to regrade to Barley1 Grade, any malting Grade barley that remains in Viterra's Facilities after 31 March of the year following the year in which the Service Year of delivery ended; and
 - (iv) after a regrade in accordance with 7.4(c)(iii), Viterra can commingle the regraded stocks with other barley grades and varieties.
- (d) Without limiting clause 18, the Client indemnifies Viterra against any and all Losses Viterra incurs or sustains, and agrees that Viterra is not liable for Losses the Client incurs or sustains, as a direct or indirect result of Grain being Outturned by Viterra which is of a more stringent standard than the applicable Outturn Standard, yet fails to meet any export standards imposed by Department of Agriculture or standards imposed by an importing country.
- (e) If, at the request of the Client, Viterra undertakes any classification testing at the time of Outturn which is over and above that normally conducted by Viterra to ensure Outturned Grain meets the minimum standard for the Binned Grade stored, Viterra may charge the Client for that classification testing.

7.5 Weighing

- (a) The Client authorises Viterra to use weighing systems, equipment and any other processes nominated by Viterra to determine the outturn tonnages.
- (b) Viterra will use the receival weights of site to site movements within the Viterra Facility on all stock records of the Client.
- (c) The Client is bound by the determinations made under clause 7.5(a) and (b) and the records of those determinations (including maximum permissible errors), in the absence of manifest error. The Client agrees that it is not a manifest error if the relevant determination is within the maximum permissible error as permitted by law or through generally accepted industry practice.

7.6 Quality

- (a) The Client authorises Viterra to use systems, equipment and any processes (including Composite Sampling) nominated by Viterra to determine the outturn quality.
- (b) The Client is bound by the determinations made under clause 7.6(a) and the records of those determinations (including maximum permissible errors), in the absence of manifest error. The Client agrees that it is not a manifest error if the relevant determination is within the maximum permissible error as permitted by law or through generally accepted industry practice.

7.7 Department of Agriculture sampling

- (a) The Client acknowledges that Viterra will make Grain available for inspection by authorised officers of Department of Agriculture at the Client's cost prior to Outturning Grain onto a nominated Transportation Vehicle.
- (b) The Client acknowledges that the Department of Agriculture may disallow the loading of some portion of the Client's Grain at a Port Terminal for reasons of non-conformance to Department of Agriculture export conditions as outlined in the *Export Control Act 1982* (Cth) (including, but not limited to, the detection of live insects, rodents and rattlepod). Viterra is not liable for any Loss incurred by the Client in relation to any failure to load any Grain in these circumstances.

7.8 Delays

The Client acknowledges and agrees that Viterra cannot guarantee that all of the Client's Grain will be available for loading when the Transportation Vehicle berths or is ready to commence loading due to the potential occurrence of factors outside of Viterra's control including:

- (a) a variation in Transportation Vehicle arrival times;
- (b) failure of Transportation Vehicle to pass quarantine, stability and ship worthiness inspections;
- (c) vessel congestion;
- (d) variation in cargo requirements;
- (e) lack of performance of freight providers, or
- (f) the occurrence of a Force Majeure Event.

Viterra will make reasonable efforts to advise the Client of likely delays.

7.9 Cleanliness

- (a) The Client is responsible for ensuring that all of its nominated road Transportation Vehicles comply with the Viterra Road Vehicle Hygiene Requirements and arrive at a Viterra Facility in a clean, empty and well maintained state free from any contaminants or residue.
- (b) Viterra has no obligation to inspect any Transportation Vehicle for cleanliness. However, if Viterra does inspect a Transportation Vehicle (which it may do, in its absolute discretion), then Viterra (acting reasonably) is entitled to reject the Transportation Vehicle as unfit for the transportation of Grain and to refuse to load or unload the Transportation Vehicle.
- (c) Viterra is not liable for any Loss (including Indirect or Consequential Loss) which arises as a result of a rejection of a Transportation Vehicle (whether by Viterra, Department of Agriculture or a marine surveyor).
- (d) The Client agrees to pay Viterra for any costs incurred by Viterra as a result of the rejection of a Transportation Vehicle by Viterra, Department of Agriculture or a marine surveyor.
- (e) Transportation Vehicles are not permitted to be cleaned at any Viterra Facility without Viterra's prior written consent. If a Transportation Vehicle fails inspection, Viterra may require that a Transportation Vehicle is removed from the Viterra Facility or berth and the Client must comply with that requirement.

7.10 Non-shipment

If Grain is not Outturned from a Viterra Facility as detailed in an accepted Booking (and this is not due to any fault on the part of Viterra), the Client must pay:

- (a) all costs incurred by Viterra to reposition Grain within the Viterra Facility or to remove the Grain from the Viterra Facility; and
- (b) all Transportation Vehicle variation, cancellation, lost capacity and Transportation Vehicle re-positioning fees. Viterra will not refund any booking fees paid or payable in respect of the relevant Booking.

7.11 Viterra's right to move Grain

Notwithstanding anything to the contrary contained in, or which in the absence of this clause would be implied into, this Agreement, Viterra reserves the right to move any Export Select Grain within a Port Zone to any Viterra Facility within that Port Zone at any time and without the requirement for authorisation from the Client.

7.12 Transfers of title

- (a) The Client may elect, by prior written (or electronic) notice to Viterra, to effect an In Store Transfer of all or part of its Outturn Entitlement.
- (b) The Client agrees that the tonnage will only be calculated to two decimal places (rounded up/down) when an In Store Transfer is effected.
- (c) Subject to this clause 7.12, the transferee under an In Store Transfer will be entitled to an Outturn without any further reduction for Shrinkage.
- (d) The transferor under an In Store Transfer will remain responsible for payment of all fees and charges in respect of Services provided up until the effective date of transfer.
- (e) Viterra may require In Store Transfers to take place at an individual weighnote level, in order to allow calculations of the value of the Grain to be ascertained between the transferor and transferee.
- (f) Viterra may refuse to process an In Store Transfer if the In Store Transfer results in the transferor's Outturn Entitlement going into a negative position at any particular Viterra Facility.
- (g) For the purposes of accepting or rejecting an In Store Transfer, Viterra is entitled to rely on orders or instructions:
 - (i) issued by email from the Client's domain address and purporting to have been sent by an authorised representative of the Client (or such authorised representatives as the Client may from time to time advise Viterra in writing); or
 - (ii) executed via the Ezigrain web site as accessed through entry of the Client's security setting.
- (h) If Viterra has acted in accordance with this clause 7.12, the Client releases and holds Viterra harmless against any claim that a communication was not issued by the Client either at all or without authority and indemnifies Viterra against any Losses arising from such claims.

7.13 Security Interests

- (a) If Viterra receives notice from a person claiming to hold a Security Interest over the Client's Grain, then provided that the person provides reasonable evidence to substantiate the existence of that Security Interest, Viterra is not required to Outturn that Grain until:
 - (i) the person claiming to hold the Security Interest has consented to that Outturn; or
 - (ii) Viterra receives a court order requiring it to Outturn that affected Grain.
- (b) Viterra reserves the right to charge the Client all reasonable costs associated with tracking and maintaining records related to Security Interests held (or claimed) over Grain.
- (c) The Client will indemnify Viterra against any and all Losses (including without limitation legal costs) Viterra incurs or sustains as a result of a claim made against Viterra by any person holding a Security Interest over Grain held by Viterra on behalf of the Client relating to that Grain.

7.14 Non-Grain commodities

- (a) The Client acknowledges and agrees that Viterra may load non-Grain commodities at a Viterra Facility using the same loading facilities as it uses to provide Outturn Services.
- (b) Viterra will use reasonable endeavours to ensure that contamination of Grain does not occur.
- (c) The Client must liaise with Viterra to nominate Transportation Vehicles to arrange for commodities to load sequentially.

7.15 Reconciliation and adjustment

- (a) This clause 7.15 applies if, after the Outturn of all Grain of a Service Year from all Viterra Facilities, there is a difference between the Client's Outturn Entitlement and the tonnage actually Outturned to the Client.
- (b) If the actual tonnage Outturned to the Client exceeds the Client's Outturn Entitlement, the Client must pay to Viterra the Excess Outturn Entitlement Amount within 15 days of receiving an invoice for that amount from Viterra.
- (c) If the actual tonnage Outturned to the Client is less than the Client's Outturn Entitlement, Viterra may, at its discretion, either:
 - (i) replace the physical Grain shortfall in the Client's Outturn Entitlement; or
 - (ii) pay to the Client the Shortfall Outturn Entitlement Amount.
- (d) If the actual tonnage to be Outturned to the Client is less than one tonne of a particular Grade of Grain at any Viterra Facility, Viterra may, at its discretion:
 - (i) write off the Client's Outturn Entitlement; and
 - (ii) not pay to the Client the Shortfall Outturn Entitlement Amount.

Viterra does not require the Client's consent to write off the Client's Outturn Entitlement under this clause 7.15(d).

8 CHARGES AND PAYMENT

8.1 Charges

- (a) The charges and fees payable by the Client for the Services provided by Viterra under this Agreement will be as set out in, or as determined in the manner described in the Pricing, Procedures and Protocols Manual (particularly but not exclusively, in Schedule A of that Manual) (**Charges**).
- (b) The Client must pay all Charges to Viterra at the times specified in the Port Loading Protocols, the Pricing, Procedures and Protocols Manual and otherwise in accordance with this Agreement. The Client must pay all other amounts due and payable under this Agreement.
- (c) Notwithstanding anything to the contrary contained in the Pricing, Procedures and Protocols Manual, Viterra may vary the Charges (including the Charges set out in the Pricing, Procedures and Protocols Manual) at any time on 20 Business Days' written notice to the Client.

8.2 No obligation to extend credit

- (a) Whether the amount specified in an invoice for Outturn Services for the loading of a shipping vessel has fallen due for payment under clause 8.1 or not, the Client is not entitled to be provided with those Services until that invoice is paid in full.
- (b) Without limiting clause 8.2(a), if, in the provision of the Services, Viterra considers that it will be exposed to a risk that the Client does not pay for any of those services when due and payable (**Credit Risk**), Viterra is not obliged to provide those services unless and until Viterra, acting reasonably, is satisfied either by obtaining Credit Support or by independent credit checks or otherwise that the Client is credit-worthy in respect of the Credit Risk.

8.3 Set off

- (a) The Client is not entitled to withhold payment of any disputed amount the subject of an invoice issued by Viterra or a Viterra Group Company, or to set off against the amount of an invoice any other claim that it has against Viterra or a Viterra Group Company.
- (b) Viterra may set off any amount owing by Viterra or any Viterra Group Company to the Client (whether or not due for payment) against any amount due for payment by the Client to Viterra under this Agreement.

8.4 Transfer of liability

If the Client purchases Grain which is already warehoused or is or has been stored, handled or treated by Viterra, and there are unbilled and/or unpaid fees and charges in respect of the Grain for any period or for anything done prior to the purchase, then the Client is liable for those fees and charges and must pay them to Viterra, unless otherwise agreed with Viterra.

8.5 GST

- (a) In this clause 8.5:
 - (i) a term which has a defined meaning in the GST Act has the same meaning when used in this clause; and
 - (ii) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.
- (b) All fees and charges in this Agreement unless otherwise stated are expressed exclusive of GST.
- (c) If GST is liable to be remitted by Viterra in respect of any taxable supply made to the Client under this Agreement, the Client must pay any such GST in addition to any other amounts payable, or any other consideration to be provided, under or in connection with this Agreement (**Additional Amount**) at the same time as the consideration, or the first part of the consideration, as the case may be, for the taxable supply is to be provided.
- (d) Viterra will provide the Client with a tax invoice that complies with the GST Legislation.
- (e) If an adjustment event occurs in relation to a taxable supply referred to in this clause 8.5, and the Additional Amount differs from the amount of GST for which Viterra is liable to remit:
 - (i) the Additional Amount must be adjusted to reflect the adjustment event;
 - (ii) Viterra or the Client (as the case may be) must make any payments necessary to reflect the adjustment; and
 - (iii) Viterra will issue an adjustment note that complies with the GST Legislation.
- (f) Where the Client is required to indemnify Viterra, or is required to pay or reimburse the costs of Viterra, the Client agrees to pay the relevant amount less any input tax credits to which Viterra (or to which the representative member of the GST group of which Viterra is a member) is entitled.
- (g) If an amount payable under this agreement is to be calculated by reference to:
 - (i) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
 - (ii) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

8.6 Default in payment

If the Client fails to make payment of an invoice in accordance with this clause 8 and does not rectify that default within 10 Business Days then:

- (a) all existing invoices will become immediately due and payable; and
- (b) Viterra may suspend the provision of any or all Services until such time as all outstanding invoices have been paid.

8.7 Interest on late payments

If a Client defaults in the payment of an invoice, then regardless of whether a demand for payment is made, the amount outstanding will bear simple interest at the rate of interest being 3% higher than the Commonwealth Bank's Corporate Overdraft Reference Rate from time to time, calculated on a daily basis from the due date to the date of actual payment in full.

8.8 Security

- (a) The Client will, if required by Viterra, provide Credit Support in respect of its obligations under this Agreement.
- (b) At all times during the Term, the Client must either:
 - (i) meet the Prudential Requirements and have sufficient financial and technical capability to comply with its obligations and meet its liabilities under this Agreement, which will be determined by Viterra, acting reasonably, having regard to the likelihood of such liabilities arising; or
 - (ii) provide and maintain acceptable Credit Support for an amount determined by Viterra (acting reasonably).
- (c) If Viterra determines (acting reasonably) that a material adverse change has occurred:
 - (i) in respect of the Client which affects the Client's ability to comply with its financial and technical obligations and meets its liabilities under this Agreement; or

- (ii) which results in an increase in one or more of the Charges or the amount of Charges payable by the Client under this Agreement,

then on written request from Viterra the Client must procure for the benefit of Viterra:

- (iii) Credit Support, if Viterra does not already hold Credit Support; or
 - (iv) additional Credit Support, if Viterra already holds Credit Support, for an amount determined by Viterra (acting reasonably).
- (d) Any Credit Support required by Viterra must be established prior to Viterra outturning any further Grain for the Client and, in all cases, at least within 7 days after it has been requested by Viterra.
 - (e) If the Client defaults, Viterra may call up, draw on, use, appropriate and apply the whole or part of the Credit Support as may be necessary in the opinion of Viterra to compensate Viterra for Loss it suffers by reason of the Client's default.
 - (f) Any use or appropriation of the Credit Support by Viterra does not operate to waive the default and does not affect Viterra's other rights.
 - (g) If the Credit Support or any part of it is used or appropriated by Viterra, the Client must within 7 days from receipt of a request by Viterra pay to or deposit with Viterra new or additional Credit Support in a form and for an amount as reasonably specified by Viterra.
 - (h) On expiry or termination of this Agreement, if the Client has complied with this Agreement and there is no outstanding Dispute, Viterra will refund, return or cancel the Credit Support less any sums drawn on, used or appropriated by Viterra and not reinstated by way of further Credit Support.

8.9 Genuine assessment of loss

- (a) If a Charge is payable as a result of an act or omission of the Client or otherwise as a result of a failure by the Client to comply with its obligations under this Agreement or the Port Loading Protocols, the Client agrees that the relevant Charge is a genuine and realistic assessment of the actual or anticipated Loss that Viterra will or may suffer or incur as a result of the applicable act, omission or failure of the Client.
- (b) If, for any reason, a Charge referred to in clause 8.9(a) is held by a court of competent jurisdiction or arbitrator, or it is otherwise determined under or in connection with this Agreement, to constitute a penalty or is otherwise unenforceable for any other reason, Viterra may claim for any Loss suffered or incurred by Viterra in damages under law as a result of the applicable act, omission or failure of the Client.

9 TITLE TO GRAIN

9.1 Bailment

Unless specifically agreed otherwise, Viterra acts as a bailee of the Client's Grain and does not have any legal title or ownership in that Grain. For the avoidance of doubt, the title to the Grain remains at all times with the Client.

9.2 Nomination by Viterra

Subject to clause 9.3, where the Client's Grain is Common Stocked, Viterra may nominate and identify any particular quantity of Grain within a site comprising the Common Stocked Grain as being the Client's Grain for the purposes of this Agreement, including, for the purposes of Outturn at the direction of the Client, sale by Viterra in exercise of its lien over the Grain, and the allocation of Accidental Loss or Damage between the Client and Other Clients.

9.3 Insolvency

- (a) If Viterra suffers an Insolvency Event the Client will be entitled, upon reasonable notice and subject to the provisions of this Agreement relating to Common Stock, to re-take possession of the Client's Grain:
 - (i) if and to the extent that the Client has Grain in Export Select, from the Export Select Grain of that kind at the Viterra Facility at the port in the relevant Port Zone (Port Facility), or if there is insufficient Grain to satisfy the Client and all Other Clients of Export Select from the Export Select Grain at the Port Facility, then from Viterra Facility closest to the Port Facility and if there is insufficient Export Select Grain at that Viterra Facility then from the next closest Viterra Facility and so on until the Client's entitlement is satisfied; and
 - (ii) in all other cases, from the site at which the Client's Outturn Entitlement is located.
- (b) Nothing in this clause 9.3 will be taken as limiting the Client's rights to the Outturn of the Client's Grain in accordance with this Agreement.

10 LIEN AND SECURITY INTEREST

10.1 Viterra's lien and Security Interest

The Client:

- (a) acknowledges and agrees that Viterra will have a first and paramount lien on the Client's Grain for all monies due and payable now or hereafter to Viterra in connection with the provision of Services to the Client; and
- (b) grants a Security Interest to Viterra over the Client's Grain and proceeds of sale of that Grain as security for the payment of all monies now or subsequently due and payable (on any account whatsoever) by the Client to any Viterra Group Company.

10.2 Common stock

Where the Client's Grain is Common Stocked with other Grain, Viterra may nominate and identify any particular quantity of Grain comprising the Common Stocked Grain as being the Client's Grain for the purposes of enforcing its lien or Security Interest.

10.3 Retention of possession

- (a) Subject to any requirement of law, Viterra will be entitled, for the purpose of enforcing such lien or Security Interest, to:
 - (i) retain possession of the whole or any part of the Client's Grain until all amounts due and payable are paid; or
 - (ii) sell all or any of the Client's Grain in such manner as it thinks fit (after giving the Client at least 5 Business Days prior notice). The proceeds of any sale will be applied towards the satisfaction of the moneys due to Viterra or any other Viterra Group Company and the costs of effecting the sale, and the balance (if any) will be paid by Viterra to the Client.
- (b) If Viterra sells all or any of the Client's Grain for the purpose of enforcing its lien or Security Interest, the Client irrevocably appoints Viterra as its agent and attorney for this purpose.

10.4 Enforcement against others

In enforcing a lien or Security Interest in respect of any Other Client's Grain, Viterra will ensure that its actions do not affect the right of the Client to receive the Outturn Entitlement under this Agreement.

11 COMPLIANCE WITH RULES, DIRECTIONS, POLICIES, PROCEDURES AND PROTOCOLS MANUAL

11.1 Obligations of Client

- (a) The Client is bound by and must comply at all times with all rules, protocols, policies, procedures and induction requirements published by Viterra from time to time in the Pricing, Procedures and Protocols Manual, including those in relation to:
 - (i) the terms and conditions of the Export Select and Purchase Option services offered by Viterra;
 - (ii) health, safety and environment;
 - (iii) site rules;
 - (iv) labour ordering conditions for shipping;
 - (v) operating conditions for Viterra's rail facilities;
 - (vi) access and operating conditions for road movements at Viterra facilities,and must comply with all reasonable directions issued by Viterra.
- (b) While on any premises owned or operated by Viterra, the Client must (and must ensure that its employees, agents and contractors) comply with all reasonable directions given by Viterra's representatives, and do not create or bring on site any hazard or contamination.

11.2 Publication

For the purpose of clause 11.1, Viterra has published the Pricing, Procedures and Protocols Manual for the current Service Year on its website. Subject to the express terms set out in the Pricing, Procedures and Protocols Manual, Viterra may vary all or any part of the Pricing, Procedures and Protocols Manual at any time on 20 Business Days' written notice to the Client.

11.3 Crisis Events

- (a) As soon as reasonably practicable after Viterra becomes aware of a Crisis Event, Viterra will notify affected Clients of:
 - (i) the nature of the Crisis Event;
 - (ii) how the Client may be impacted by the Crisis Event;
 - (iii) the extent to which the Crisis Event requires Viterra to shut down, delay or make changes to operations at any Viterra Facility; and
 - (iv) any reasonable directions that Viterra is giving in connection with the Crisis Event.
- (b) The Client must (and must ensure that its employees, agents and contractors) comply with all reasonable directions given by Viterra's representatives in connection with a Crisis Event.
- (c) Viterra will use all reasonable endeavours to resolve, and minimise the impact of, the Crisis Event.
- (d) Viterra will not be responsible for any Loss suffered or incurred by any Client or third party as a result of, or in connection with, the Crisis Event. However, without limiting clause 13, Viterra will consider all reasonable claims made by a Client in writing which substantiate Losses directly incurred by the Client as a result of the Crisis Event.
- (e) If, as a result of a Crisis Event, Viterra identifies that there is likely to be a shortfall in the capacity that is available to meet the Capacity entitlements held by a Client, Viterra will undertake the process described in clause 15.3.

12 INFORMATION

12.1 Viterra's information

- (a) Viterra will keep at its principal place of business proper complete and up-to-date records, books of account and documents relating to transactions in the Client's Grain, and such books of account records and documents will be available for inspection by representatives of the Client at any reasonable time upon request in writing. Nothing in this clause 12.1(a) will be taken as requiring Viterra to disclose the identity, transactions or ownership interests of Other Clients.
- (b) All information provided to the Client will be treated as conclusive evidence of the correctness of the details set out in that information unless:
 - (i) the Client notifies Viterra in writing within 14 days of receipt of that information that there exists a bona fide dispute concerning the correctness of that information; or
 - (ii) it is demonstrated at any time that there is a clear and manifest error in that information.

A notice served by the Client under clause 12.1(b)(i) above, must set out in detail the reasons why the Client believes the information is incorrect and the basis for holding that belief.

12.2 Client's information

- (a) The Client must provide Viterra with all information that Viterra reasonably requires for Viterra to properly record the receipt of Grain from, or to the account of, the Client, including information relating to:
 - (i) origin, quality, quantity, weight, type and variety; and
 - (ii) anticipated time and place of delivery.
- (b) If required by Viterra, the Client must provide the information in writing and in the form (if any) required by Viterra.
- (c) The Client hereby consents to Viterra using this information in accordance with Viterra's Privacy Policy.

13 VITERRA'S LIABILITY

13.1 Acknowledgement

The Client acknowledges that the only warranties provided by Viterra under or in respect of this Agreement are those expressly set out in this Agreement. To the maximum extent permitted by law, all other warranties or conditions implied by custom, general law or statute are excluded.

13.2 Non-excludable warranties

To the maximum extent permitted by law, Viterra's liability for breach of implied warranties or conditions not permitted at law to be excluded, will be limited to the obligation to re-supply the relevant service or cover the cost of re-supplying the relevant service (in Viterra's sole discretion).

13.3 Limitations on Viterra's liability

Notwithstanding any other provision of this Agreement, the Client agrees that Viterra's liability under or in connection with this Agreement, including Viterra's obligation to Outturn the Client's Grain, is limited by the following provisions of this clause:

- (a) Viterra is only liable for damage, destruction or contamination by Viterra of the Client's Grain if that damage, destruction or contamination arises as a result of the gross negligence or wilful default of Viterra or its employees, contractors or agents;
- (b) the liability of Viterra to the Client for any Loss including damage, destruction or contamination of Grain referred to in clause 13.3(a) will not exceed the sum of \$250,000 in each Service Year;
- (c) Viterra is not liable for Accidental Loss or Damage to the Client's Grain except to the extent covered by insurance obtained in accordance with clause 14.1;
- (d) Viterra will not be liable for any of the following:
 - (i) claims for Indirect or Consequential Loss;
 - (ii) defects that:
 - (A) are required to be examined by the responsible authority under the provisions of the Export Control Act 1982 (Cth); or
 - (B) the Client has taken responsibility for testing prior to shipment, whether by road, rail or sea,

and are not discovered until after the departure of the Transportation Vehicle;
 - (iii) claims for port or other charges relating to or in connection with the Services including vessel, stevedoring, Department of Agriculture or other Government agency fees or charges or other claims for demurrage or loss suffered as a result of delays in providing the Services;
 - (iv) claims relating to or in connection with any difference or discrepancy between the Receival (Classification) Standards, Outturn Standards and any other harvest quality information, data or statistics published by Viterra from time to time and the provision of, or the purported reliance upon, or use of, that other information, data or statistics by the Client;
 - (v) claims relating to or in connection with any difference or discrepancy in the actual quality of the Grain for the entire parcel not able to be identified through Composite Sampling;
 - (vi) quality or quantity claims in respect of a shipment by rail, road or sea arising upon Outturn at the Transportation Vehicle's destination, if the claims are inconsistent with the records of quantity and quality at loading and there is no conclusive evidence that such records are incorrect or, by exception, unreliable;
 - (vii) failure to detect toxic or other chemical residues, contamination, genetically modified Grain, germinative energy and capacity and varietal purity or any quality parameter of Grain, if these are not tested for by Viterra when receiving the Grain at a Viterra Facility; or
 - (viii) except to the extent caused or contributed to by the gross negligence or wilful default of Viterra or its employees, contractors or agents:
 - (A) quality claims arising in respect of Grain transferred into Viterra's storage system from another storage system;
 - (B) downgrading claims in respect of Grain blended by Viterra at the request of the Client, provided the quality meets the Outturn Standards of the lowest value grade represented in the blend;
- (e) Viterra is entitled to the benefit of any limitation of its liability that is provided for it (whether by exclusion or cap) under a provision in the Pricing, Procedures and Protocols Manual.

The Client unconditionally and irrevocably releases Viterra from all liability of whatsoever nature in respect of the matters set out in clauses 13.3(a) to 13.3(d) (inclusive) except to the extent expressly specified in those clauses.

13.4 Third party claims

The Client agrees to indemnify Viterra on demand against any Loss that Viterra incurs in respect of any claim by a third party in respect of the performance or non-performance of any of the Services or otherwise in connection with this Agreement or any Viterra Facility except to the extent that claim results from the gross negligence or wilful default of Viterra.

13.5 Multiple caps on liability

If Viterra is liable to the Client in relation to an event or a series of events in respect of which Viterra's liability is capped:

- (a) under this Agreement; and
- (b) under one or more other agreements made between Viterra and the Client,

then Viterra's liability in aggregate under all of the agreements described in clauses 13.5(a) and 13.5(b) above (**Capped Agreements**) is capped at the greatest amount at which liability is capped under any one of the Capped Agreements.

13.6 Mitigation

- (a) Viterra may mitigate or satisfy any liability it may have to the Client in respect of downgraded Grain (i.e. Grain that does not meet the Outturn Standard required under this Agreement) by whatever means Viterra considers reasonably appropriate, including:
 - (i) Blending (at Viterra's expense) a sufficient quantity of other Grain so as to upgrade the Client's Grain to meet the Outturn Standard; and/or
 - (ii) substituting (at Viterra's expense) other Grain of the same quality and quantity; and/or
 - (iii) retaining the downgraded Grain and providing for the claim as part of the Outturn adjustment under clause 7.15.
- (b) Nothing in this clause 13.6 in anyway restricts or limits the general obligation at law of the Client to mitigate any Loss which it may incur in consequence of any breach by Viterra of the terms of this Agreement.

14 INSURANCE AND RISK

14.1 Maintenance of insurance

Viterra will at all times during the Term maintain an insurance policy covering the common insurable risks of Accidental Loss or Damage to Grain in Viterra's care and control.

14.2 Inspection

On request by the Client, Viterra will make available for inspection a summary of the policy and certification of currency.

14.3 Risk

- (a) For Grain which is not Export Select Grain, the risk of Accidental Loss or Damage to the Client's Grain to the extent that such risks are covered by Viterra's insurance will be borne by Viterra and all other risks of Accidental Loss or Damage to the Client's Grain will be borne by the Client.
- (b) For the Client's Export Select Grain, the risk of Accidental Loss or Damage will be borne by Viterra, irrespective of whether or not such risks are covered by Viterra's insurance.

14.4 Transfer of Risk

Subject to clauses 13 and 14.3(a), the risk of loss or damage to Grain is transferred to the Client at the point in time when the Grain exits the Outturning spout of a Viterra Facility into a Transportation Vehicle.

15 FORCE MAJEURE

15.1 Definition

For the purpose of this Agreement, a "**Force Majeure Event**" affecting a Party means:

- (a) any breakdown, accidental or malicious damage or destruction of any of Viterra's Port Terminal Facilities or other Viterra Facilities; or
- (b) anything outside that Party's reasonable control including the following events or circumstances (provided they are beyond the Party'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).

15.2 Suspension of obligations

If a Party is wholly or partially precluded from complying with its obligations under this Agreement by a Force Majeure Event (in this clause 15 called the **Affected Party**), then:

- (a) subject to clause 15.7, the Affected Party's obligations to perform in accordance with the terms of this Agreement will be suspended for the duration of the Force Majeure Event but only so far and for so long as it is affected by the Force Majeure Event;
- (b) the Affected Party will not be responsible for any Loss suffered or incurred by any other Party as a result of, and to the extent that, the Affected Party is unable to perform or is delayed in performing its obligations because of the Force Majeure Event; and
- (c) each Party must use all reasonable endeavours to resolve, and minimise the impact of, the Force Majeure Event.

15.3 Allocation of Capacity following Force Majeure Event

- (a) If, as a result of a Force Majeure Event, Viterra identifies that there is likely to be a shortfall in the capacity that is physically available to meet the Capacity entitlements held by clients, then Viterra will take reasonable efforts to make Capacity not affected by the Force Majeure Events available to clients who are affected by the shortfall in accordance with the following principles:
 - (i) to the extent practicable, Capacity not affected by the Force Majeure Event will not be reduced and clients should continue to use their unaffected Capacity entitlements; and
 - (ii) subject to complying with the Port Loading Protocols (including changes made in accordance with clause 14.1(d) of the Port Loading Protocols), Viterra will use reasonable endeavours to make any unallocated Capacity (which is not affected by the Force Majeure Event) available for allocation to clients whose Capacity entitlements are affected by the shortfall at Viterra's discretion. In exercising its discretion, Viterra will take into account:
 - (A) its contractual obligations to all users of its Services;
 - (B) its non-discrimination obligations under the Code; and
 - (C) the objective of ensuring the efficient utilisation of the relevant Port Terminal.
- (b) Any allocation made by Viterra under clause 15.3(a) does not affect the operation of clause 15.2.
- (c) The Client acknowledges that Viterra may unilaterally amend the Port Loading Protocols on a temporary basis during any period of Force Majeure in accordance with clause 14.1(d) of the Port Loading Protocols.

15.4 Notice

As soon as reasonably possible after an Affected Party becomes aware of the occurrence of a Force Majeure Event (having regard to the nature of the information that is to be notified), the Affected Party must notify the other Party of:

- (a) the nature of the Force Majeure Event;
- (b) which obligations the Affected Party believes it is wholly or partially precluded from complying with as a result of the Force Majeure Event (in this clause 15 called the **Affected Obligations**); and

- (c) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations.

15.5 Minimisation of impact

Upon receiving a notice under clause 15.4 the Parties will meet to discuss and agree:

- (a) what action can be taken to minimise the effect of the Force Majeure Event on the performance by the Affected Party of the Affected Obligation;
- (b) whether the Affected Party is able to work around the Force Majeure Event either to prevent the delay in the performance of the Affected Obligations or to minimise the impact of that delay; and
- (c) what modifications or additions to the terms of this Agreement or any other agreements between the Parties (including without limitation any modifications or additions relating to the appointment of any additional costs) are required to give effect to any proposal to minimise the effect of the Force Majeure Event.

15.6 Obligation to mitigate

The Affected Party must:

- (a) keep the other Party fully informed of its plans to minimise the effect of the Force Majeure Event, including:
 - (i) the expected duration of the delay arising as a result of the Force Majeure Event;
 - (ii) the steps that are being taken to minimise the impact of the Force Majeure Event; and
 - (iii) the steps which would be taken (subject to the Parties reaching an agreement as to the payment of any additional costs involved) to minimise the impact of the Force Majeure Event; and
- (b) subject to reaching agreement concerning any modifications or additions required to give effect to any proposal to minimise the effect of the Force Majeure Event:
 - (i) comply with all reasonable requests made by the other Party relating to the prevention or minimisation of the impact of the Force Majeure Event; and
 - (ii) use all reasonable endeavours to resolve, and minimise the impact of, the Force Majeure Event.

15.7 Payments

An obligation to pay money is not excused by a Force Majeure Event.

15.8 Labour Disputes

The requirement to use all reasonable endeavours to resolve or minimise the impact of the Force Majeure Event will not require either Party to settle any strike, lockout, boycott or other dispute or claim, or any demand by a third party, on the terms contrary to the wishes of that Party.

16 DISPUTE RESOLUTION

16.1 Disputes

- (a) Subject to clause 16.1(b), any Dispute under this Agreement will, unless otherwise expressly agreed to the contrary by both Parties, be resolved in accordance with this clause 16 and either Party may give to the other Party to the Dispute notice in writing (**Dispute Notice**) specifying the Dispute and requiring it to be dealt with in the manner set out in this clause 16. Viterra and the Client must act in good faith to seek to resolve any Dispute in accordance with this clause 16.
- (b) This clause 16 does not apply to any dispute under the Port Loading Protocols. Any dispute arising under the Port Loading Protocols is to be dealt with in accordance with the provisions of the Port Loading Protocols.

16.2 Negotiation

Within 5 Business Days of a Party giving the other a Dispute Notice, senior representatives from each Party will meet and use reasonable endeavours acting in good faith to resolve the Dispute by joint discussions. A Party must not start court proceedings in respect of the Dispute unless it has complied with this clause.

16.3 Referral to mediation

If, within 20 Business Days of the Dispute Notice being given, the senior representatives fail to resolve the Dispute by joint discussions, then, a Party may, by notice in writing to the other Party (**Mediation Notice**), refer a Dispute to mediation in accordance with this clause 16.3. The Mediation Notice must specify:

- (a) the nature of the Dispute;
- (b) the matters in respect of which the Party is seeking mediation; and
- (c) the contact details of the person issuing the Dispute Notice.

16.4 Appointment of mediator

- (a) The Parties must use their best endeavours to agree on a mediator within 7 Business Days of the recipient receiving a Mediation Notice.
- (b) If the Parties fail to agree a mediator within 7 Business Days, or such longer period as may be agreed by the parties, then either party may request the President of The Institute of Arbitrators & Mediators Australia to appoint a mediator.

16.5 Mediation

- (a) Any mediation will be conducted in Adelaide in accordance with this clause 16.
- (b) The Parties may agree the time and place of the mediation in consultation with a mediator appointed under clause 16.4.
- (c) Each Party must attend the mediation and try to resolve the Dispute in good faith. Each Party must be represented by at least one person who has the authority to enter into an agreement to settle the Dispute on behalf of that Party.
- (d) Each Party must:
 - (i) attend and participate in the mediation;
 - (ii) make the Party's objective for the mediation process clear at the beginning of the mediation;
 - (iii) observe confidentiality obligations that apply (if any) during or after the mediation; and
 - (iv) not make any act or omission to act during the Dispute, where that act or omission to act would be likely to have the effect of damaging the reputation of the system of providing access to the Company's Facilities.

16.6 Termination of mediation

- (a) The Parties agree that either Party may terminate the mediation if:
 - (i) 20 Business Days have expired since the start of the mediation of the Dispute; and
 - (ii) the Dispute has not been resolved,unless the mediator (acting reasonably) is satisfied that a resolution of the Dispute is imminent.

16.7 Costs of mediation

- (a) Unless the Parties agree otherwise:
 - (i) each Party is liable for their own costs of the mediation; and
 - (ii) the Parties are jointly liable for the following costs of the mediation:
 - (iii) the cost of the mediator;
 - (iv) the cost of the room hire (if any); and
 - (v) the cost of any additional input (including expert reports) agreed by both parties to be necessary to the conduction of the mediation.

16.8 Status quo

During any Dispute resolution process, the pre-dispute status quo will continue. Accordingly:

- (a) each Party will comply with its obligations, and may exercise its rights under this Agreement; and
- (b) the fact that a Party ceases to do anything following the start of a Dispute will not be taken to be an admission by that Party that it had breached, or had been in breach of, this Agreement.

17 SUSPENSION AND TERMINATION

17.1 Right to suspend and terminate

This Agreement may be:

- (a) suspended by Viterra immediately by giving written notice in that regard to the Client in accordance with clause 17.2 (**Suspension Notice**); and
- (b) terminated immediately by either Party giving written notice in that regard in accordance with this clause 17 (**Termination Notice**).

17.2 Suspension by Viterra

- (a) Viterra may suspend this Agreement immediately upon giving a Suspension Notice to the Client if:
 - (i) the Client fails to pay any amount that is due and payable under this Agreement and does not rectify that default within 10 Business Days;
 - (ii) the Client commits a serious or persistent breach or breaches of any terms of this Agreement which are not remedied within 20 Business Days of receiving notice of the relevant breach or breaches from Viterra;
 - (iii) the Client fails to provide Credit Support in accordance with a request by Viterra under this Agreement and does not provide the Credit Support within 10 Business Days of that request; or
 - (iv) the Client fails to follow a direction of Viterra made reasonably and lawfully and a material adverse consequence arises, or is likely to arise, from the failure to follow that direction.
- (b) If Viterra elects to suspend this Agreement under clause 17.2(a), the Client is still obliged to pay the applicable Charges during the period of suspension.

17.3 Termination by Viterra

Viterra may terminate this Agreement immediately upon giving a Termination Notice to the Client if:

- (a) an Insolvency Event occurs in respect of the Client; or
- (b) the Client does not rectify the default that is the subject of a Suspension Notice issued under clause 17.2, within the time specified by Viterra (acting reasonably) in the Suspension Notice.

17.4 Termination by the Client

The Client may terminate this Agreement immediately upon giving a Termination Notice to Viterra, if:

- (a) an Insolvency Event occurs in respect of Viterra; or
- (b) Viterra commits a serious or persistent breach or breaches of any terms of this Agreement which are not remedied within 60 days of Viterra receiving notice of the relevant breach or breaches from the Client; or
- (c) Viterra varies the Charges in accordance with clause 8.1(c) and within 30 Business Days of receiving written notice of the variation, the Client does not accept the Charges as varied.

17.5 Effect of termination

- (a) Upon termination of this Agreement (and without limiting clauses 17.5(b) and 17.5(c)):
 - (i) all rights of the Client to use the Viterra Facilities will cease immediately; and
 - (ii) Viterra is entitled to payment of all amounts payable under this Agreement attributable to the period up to and including the date of termination and may retain all pre-paid booking fees.
- (b) Where a Termination Notice is given to Viterra by the Client, the Termination Notice will not take effect unless and until the Client has:
 - (i) Outturned all Grain stored by Viterra on behalf of the Client under this Agreement; and
 - (ii) paid all moneys payable by the Client to Viterra under this Agreement.
- (c) Where a Termination Notice is given by Viterra to the Client and, as at the date the Termination Notice is to take effect, the Client has not Outturned all Grain stored by Viterra on behalf of the Client under this Agreement, then Viterra will be entitled to exercise the rights conferred on it by clause 10 of this Agreement.

17.6 No prejudice

Termination of this Agreement under this clause 17 is without prejudice to the rights of either Party that have accrued prior to the date of termination.

18 INDEMNITY

18.1 By Client

The Client indemnifies Viterra and will keep it indemnified from and against all actions, claims, demands, proceedings and Losses 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 Client of any of its obligations under this Agreement;
- (b) any claim by a third party relating to the Client's Grain;
- (c) any claim by a third party relating to the operation of the Purchase Options or the involvement of Viterra in relation to the Purchase Options, including claims arising out of the failure of the Client to provide information or the inaccuracy of information supplied by the Client in relation to the Purchase Options; or
- (d) any claim in relation to the admixture of the Client's Grain with any other commodity received, stored or Outturned by Viterra at a Viterra Facility where the Client has acknowledged and accepted that Viterra will load non-Grain commodities and substances at its facilities.

This clause 18.1 does not limit any other indemnity given by the Client to Viterra under this Agreement.

19 NOTICES

19.1 How to give a notice

A notice, consent or other communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the Party giving it;
- (b) addressed to the Party to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by prepaid mail (by airmail, if the addressee is overseas) to that Party's address;
 - (ii) sent by email addressed to the person for the time being occupying the position with the receiving Party.

19.2 When a notice is given

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

- (a) if it is sent by mail; on the third Business Day after posting;
- (b) if it is sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

19.3 Address for notices

A Party's address and email address are those set out in the Details to this Agreement, or as amended at any time by notice given in accordance with this clause 19.

20 CONFIDENTIALITY

20.1 Treatment of Confidential Information

- (a) Subject to clause 20.1(b), if a Party provides Confidential Information to another Party either:
 - (i) during the course of negotiations in relation to or in the performance of this Agreement; or

- (ii) for the purpose of resolving any Dispute,

the recipient of that Confidential Information will treat that Confidential Information as confidential, the property of the provider of that information, and will use that information solely for the purpose of negotiating this Agreement or resolving any Dispute in accordance with this Agreement, or taking any other action permitted by and in accordance with the terms of this Agreement.

- (b) A Party is permitted to disclose Confidential Information:
 - (i) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, provided they are under a legal obligation not to disclose the Confidential Information to any third party;
 - (ii) to any mediator appointed in accordance with clause 16.4 of this Agreement for the purposes of that mediation;
 - (iii) to the ACCC to the extent necessary for a Party to comply with any written request by the ACCC (subject to the ACCC's standard confidentiality protocols and procedures); or
 - (iv) if and to the extent required by law, provided that it first consults with the Party that provided the Confidential Information in relation to the manner and timing of that disclosure.

20.2 Dispute resolution

- (a) If Confidential Information is provided to a mediator for the purpose of assisting in the resolution of any Dispute in accordance with clause 16.5, the mediator must (and the terms of appointment of the mediator must require them to) take all reasonable steps to protect the confidentiality of information that any Party to the Dispute has identified as confidential or commercially sensitive.
- (b) For the purposes of this clause 20.2, any mediator appointed in accordance with clause 16.4 may require the Parties to a Dispute to comply with rules and orders aimed at protecting the confidentiality of information provided by the Parties, including:
 - (i) requiring each Party and their advisers to give confidentiality undertakings to each other Party; and
 - (ii) limiting access to Confidential Information to specified individuals subject to confidentiality undertakings provided by those individuals.
- (c) Any mediator appointed in accordance with clause 16.4 will, on request by both parties, make confidential and non-confidential versions of its determination and limit access to the confidential versions to specific individuals as nominated and agreed by both parties.

21 NO ENDORSEMENT

21.1 Prohibition

The Client must not, without Viterra's prior written consent:

- (a) make any reference, comment or statement either written or oral, that could be construed as an endorsement by Viterra of the Client or of the Client's products or services; or
- (b) refer to Viterra or the Services provided by Viterra to the Client in any publication, promotional or advertising material.

21.2 Acknowledgements

The Client acknowledges that:

- (a) Viterra will treat the obligation of the Client under clause 21.1 as a serious undertaking; and
- (b) it is aware that any breach of this serious undertaking may result in Viterra suffering damage and Loss.

22 NO ASSIGNMENT

The Client may not assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement without Viterra's prior written consent which, if given, may be given on such conditions as Viterra considers to be appropriate.

23 RELIANCE

If Viterra receives a submission or any other communication that purports to come from the Client either:

- (a) via Viterra's website from a person using the Client's password or a password issued to that person with the Client's authority or consent; or
- (b) by email from an address in the Client's domain,

Viterra is entitled to treat the communication as having come from the Client with the Client's authority.

24 WAIVER

24.1 No impact

The failure by either Party at any time to exercise or enforce any of its powers, remedies or rights under this Agreement will not constitute a waiver of those powers, remedies or rights or affect that Party's rights to exercise or enforce those powers, remedies or rights at any time.

24.2 Further exercise

Any single or partial exercise of any power, remedy or right does not preclude any other or further exercise or partial exercise of any other power, remedy or right under this Agreement.

25 NO PARTNERSHIP

25.1 Relationship

This Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the Parties.

25.2 Approvals and consents

By giving its approval or consent a Party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

25.3 No liability

No Party is liable for an act or omission of another Party, except to the extent set out in this Agreement.

26 GOVERNING LAW AND JURISDICTION

26.1 Governing law

This Agreement and the rights and liabilities of the Parties under this Agreement will be governed by the law of South Australia.

26.2 Jurisdiction

The courts of South Australia will possess territorial jurisdiction to hear and determine any cause of action arising under this Agreement.

27 SUB-CONTRACTING

Viterra may in its sole and absolute discretion:

- (a) sub-contract the provision of the whole or any part of the Services; or
- (b) otherwise engage any person to undertake the provision of any part of the Services on Viterra's behalf, without notice to the Client.

28 COMPLIANCE AND SANCTIONS

28.1 Compliance

Each party warrants, represents and undertakes to the other that it will comply with all applicable laws, rules and regulations including without limitation Business Conduct Laws in performing this Agreement.

28.2 Sanctions

- (a) Both parties represent, warrant and undertake that:
 - (i) neither it nor any of its subsidiaries, senior executives or officers, or to the knowledge of that party, any person on who behalf that party is acting in connection with this Agreement, or any entity with 50% or more ownership or control of any of the aforementioned, is a Sanctioned Entity;
 - (ii) no Sanctioned Entity has any beneficial or other property interest in this Agreement nor will have any participation in or derive any other financial or economic benefit from this Agreement; and
 - (iii) it will not use, or make available, the funds, goods and/or services relating to this Agreement to fund or facilitate any activities or business or, with or related to any Sanctioned Country or Sanctioned Entity, or in any manner which would result in a breach of one or more Business Conduct Laws.
- (b) If either Party (the **Non-Defaulting Party** in this clause) is of the reasonable opinion that the other Party (the **Defaulting Party** in this clause) has breached this clause 28.2, the Non-Defaulting Party may (without incurring any liability of any nature to the Defaulting Party whatsoever) terminate or suspend all or any part of this Agreement with immediate effect by notice to the Defaulting Party, and/or take any other action it deems necessary in order for the Non-Defaulting Party to comply with applicable Business Conduct Laws. The Defaulting Party shall be liable for any direct costs, liabilities and expenses whatsoever incurred by the Non-Defaulting Party due to the Non-Defaulting Party's exercise of its rights under this clause. Any exercise by the Non-Defaulting Party of its rights under this clause shall be without prejudice to any other rights or remedies of the Non-Defaulting Party under this Agreement.

29 SEVERANCE

Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

30 PPS LAW

- (a) On delivery of Grain to Viterra, the Client acknowledges and agrees that Viterra has control of the Client's Grain for the purposes of the PPSA and for the exercise of Viterra's rights under clause 10.
- (b) The Client agrees, at its cost in all things, to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Viterra asks and considers required for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling Viterra to apply for any registration, complete any financing statement or give any notification, in connection with the Security Interest so that Viterra has the priority it requires; or
 - (iii) enabling Viterra to exercise rights in connection with the Security Interest.
- (c) The Client agrees to pay or reimburse Viterra's reasonable costs in connection with anything done by Viterra in connection with the registration of any Security Interest created under this Agreement and the enforcement of any such Security Interest or of any lien over the Client's Grain.
- (d) Viterra need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and the requirement to give it cannot be excluded.
- (e) Viterra and the Client agree that the parties are not required to disclose any information of the kind referred to in section 275(1) of the PPSA.
- (f) If there is any inconsistency between Viterra's rights under this clause and its rights under Chapter 4 of the PPSA, this clause prevails.
- (g) Terms used in this clause 30 have the same meaning as in the PPSA.

31 GENERAL

31.1 Entire agreement

This Agreement constitutes the entire agreement between the Parties.

31.2 Counterparts

This Agreement may be signed in any number of separate counterparts, which taken together will comprise one instrument.

31.3 No representations

Each Party warrants and covenants to the other that there are no written or oral statements, representations, undertakings, covenants or agreements between the Parties, express or implied, except as provided for in this Agreement.

31.4 Exercising rights

- (a) Viterra may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.
- (b) Whenever the Client is required to form an opinion, give approval, exercise a discretion or perform any act under this Agreement, it must be done reasonably in the circumstances and based on reasonable grounds, and not capriciously, or arbitrarily refused or unduly delayed.
- (c) In making any decision pursuant to this Agreement, Viterra will have regard to the efficient running of the relevant Viterra Facility and the balancing of the interests of all users of that Viterra Facility, and the efficient operation of the South Australian Grain export supply chain.
- (d) A Party is not liable for any Loss to the extent such Loss is caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this Agreement.

31.5 Variations

- (a) Subject to clause 31.5(b), this Agreement may only be amended or varied by agreement in writing signed by both Parties.
- (b) Viterra may vary this Agreement by providing the Client with not less than 20 Business Days' notice if any Regulatory Change Event occurs so that:
 - (i) if the Regulatory Change Event involves a variation to or replacement of the Code, Viterra can comply with, implement or ensure consistency with the Code (as varied or replaced); and
 - (ii) in any case, Viterra is not financially, commercially or operationally disadvantaged as a result of the Regulatory Change Event occurring.
- (c) Clauses 31.5(a) and 31.5(b) do not in any way limit the operation of clause 14 of the Port Loading Protocols and, for the purpose of clause 14 of the Port Loading Protocols, if the Code is repealed (and not replaced), Viterra will be taken to be an "exempt service provider" in respect of each of its Port Terminal Facilities.

31.6 Guidelines

Notwithstanding that Viterra may from time to time produce operational guidelines to assist clients, nothing in those guidelines will be deemed to impliedly or expressly amend anything in this Agreement and if there is any inconsistency between any guidelines and a term of this Agreement, the terms of this Agreement will prevail.

EXECUTED as an agreement

Signing page

DATED: _____ 2020

SIGNED for and on behalf of **VITERRA OPERATIONS PTY LTD** by its authorised representative:

Signature of Authorised Representative

Name of Authorised Representative (block letters)

in the presence of:

Signature of Witness

Name of Witness (block letters)

EXECUTED by _____
CLIENT NAME **ABN/ACN/ARBN**

in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Signature of Director

Name of Director (block letters)

Signature of Director/Company Secretary*

*delete whichever is not applicable

Name of Director/Company Secretary (block letters)

*delete whichever is not applicable