

Packing & processing agreement

2024/25 season

DATED: _____ 2024

VITERRA OPERATIONS PTY LTD (ABN 88 007 556 256) (“VITERRA”)

and

CLIENT NAME ABN/ACN/ARBN (“CLIENT”)

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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	+61 3 9864 2000
	Email	all_vpp_marketing@viterra.com
	Attention	Urgent: Manager - Packing and Processing
Client	Name	
	ABN/ACN/ARBN	
	Address	
	Telephone	
	Email	
	Attention	
Commencement Date	1 October 2024	
Expiry Date	30 September 2025	
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 and Interpretation

1.1 Defined terms

In this Agreement:

ACCC means the Australian Competition and Consumer Commission.

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 6.6.

Affected Obligations has the meaning given in clause 13.3.

Affected Party has the meaning given in clause 13.2.

Agreement means this agreement and all schedules, annexures and attachments, including Schedule 1.

Associated Entity has the meaning given by the Corporations Act.

Binned Grade means the Grade 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.

Bulk Handler means a provider of bulk grain handling and storage services to the Client as part of the loading of Grain to facilitate Viterra providing the Services.

Bulk Wheat has the meaning given to that term in the Code.

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

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

Capped Agreements has the meaning given in clause 11.5.

Cell means a single unit of storage of Grain segregated at a Viterra Facility.

Charges has the meaning given in clause 6.1.

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 7.2.

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:

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

Contaminated Delivery has the meaning given in clause 5.4(f).

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

Credit Risk has the meaning given in clause 6.4.

Credit Support means either:

- (a) a guarantee given by a Related Body Corporate, director and/or shareholder of the Client that is acceptable to Viterra (acting reasonably); or
- (b) an unconditional and irrevocable bank guarantee, letter of credit, performance or insurance bond issued by a bank holding an Australian banking licence or such other reputable person or institution accepted by Viterra and which is in a form reasonably satisfactory to Viterra.

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 26.2.

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 14.1

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.

Facility Specific Terms has the meaning given in clause 4.3.

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 13.1.

Fuel Surcharge is the Charge specified under that name in Schedule 1, except as otherwise notified by Viterra from time to time.

Grade means a grade of Grain of a given Service Year specified in the Receival (Classification) 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.

Grain Movement Order has the meaning given in clause 5.1.

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.

Infrastructure Surcharge means an operational landside levy issued by the receiving terminal.

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.

Law includes:

- (a) all legislation and subordinate legislation;
- (b) all documents, instruments, requirements and prescriptions of any entity made under any legislation or subordinate legislation including regulations, by-laws, ordinances, instruments, codes of practice, policy and statutory guidance;
- (c) common law; and
- (d) any licence, permit, consent, approval, determination, certification, permission, authorisation or other requirement of any person, authority, body or other organisation having authority in connection with the Services.

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 14.3.

Modern Slavery means

- (a) trafficking in persons;
- (b) slavery;
- (c) servitude;
- (d) forced marriage;
- (e) forced labour;
- (f) debt bondage;
- (g) deceptive recruiting for labour or services; or
- (h) the worst forms of child labour (meaning situations where children are subjected to slavery or similar practices, or engaged in hazardous work).

Non-Defaulting Party has the meaning given in clause 26.2.

Other Client means a person that is provided with Services by Viterra at a Viterra Facility (other than the Client). For avoidance of doubt, Viterra, or an Associated Entity of Viterra may be an Other Client.

Outturn means to cause Grain physically to leave the custody of Viterra at a Viterra Facility (including in packed containers).

Outturn Entitlement has the meaning given to that term in clause 4.5(a).

Outturn Standards means the outturn standard requested by the Client in a particular Packing Instruction accepted by Viterra.

Packing Instructions means instructions provided by the Client to Viterra to provide particular Services, to be accepted by Viterra or not in Viterra's absolute discretion.

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

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:

- (i) an intake/receival facility;

- (ii) a grain storage facility;
- (iii) a weighing facility; or
- (iv) a shipping belt;

that is:

- (v) at the Port Terminal; and
- (vi) associated with the ship loader.

Port Terminal Services has the meaning given to that term in the Code.

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.

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

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

Prudential Requirements means in respect of a Client that:

- (a) the Client is Solvent;
- (b) the Client or an Associated Entity of the Client is not currently or has not in the past 2 years been in breach of a fundamental or essential term (including financial or payment terms) or repeated breaches of any of the terms of an agreement between the Client and Viterra; and
- (c) the Client is able to demonstrate to Viterra that it has a legal ownership structure with a sufficient capital base and assets of sufficient value to meet the actual or potential liabilities under this Agreement, including timely payment of charges and payment of insurance premiums and deductibles under the required policies of insurance or otherwise provides Credit Support acceptable to Viterra acting reasonably.

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

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

Reserve a Cell means, for a fixed agreed period, prohibiting Viterra, without the Client's consent, from:

- (a) moving the quantity of Grain owned by the Client and stored in a Reserved Cell; or
- (b) using a Reserved Cell for the storage of Other Client's Grain,
- (c) unless contemplated by this Agreement and otherwise provided all applicable charges have been paid by the Client.
- (d) Receival (Classification) Standards means standards that either:
 - (i) 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
 - (ii) are otherwise agreed with the Client.

Received Quantity has the meaning given to that term in clause 4.5(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.

Reserved Cell means a Cell specified by the Client.

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

Sanctioned Entity means an Australian 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
- (d) been based, organised or resident in a Sanctioned Country.

Schedule 1 means the document of that name published by Viterra on its website, as varied by Viterra from time to time.

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.

Services means those packing and processing services set out in Schedule 1 and includes any transportation or other associated services if applicable, but does not include Port Terminal Services.

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

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, handling and packing process including loss of mass through changes in moisture content, loss in handling, Dust and Waste.

SOLAS has the meaning given in clause 4.6.

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

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

Suspension Notice has the meaning given in clause 15.1.

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 15.1.

Third Party means a party other than a Vitterra Group Company or the Client.

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

Up-Country Receival Facility means a Vitterra Facility that is not a Port Terminal Facility.

Vitterra means Vitterra Operations Pty Ltd (ABN 88 007 556 256)

Vitterra Facility means any facility owned or operated by Vitterra or any Vitterra Group Company where Vitterra provides the Services, and may include a Port Terminal Facility.

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

Vitterra Pty Ltd means Vitterra Pty Ltd (ABN 59 084 962 130)

Vitterra Road Vehicle Hygiene Requirements means the requirements published by Vitterra from on vitterra.com.au as at the date of this Agreement or otherwise displayed or available at a Vitterra Facility or required by law (as amended, varied or substituted 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, Fisheries and Forestry, 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 clause 15, but subject to clause 2.2, 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 3, if the Client:
 - (i) uses any Services provided by Viterra on or after the Commencement Date, or provides Viterra with Packing Instructions for the Service Year to which this Agreement applies; and
 - (ii) has not executed this Agreement,the Client's Packing Instructions 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.
- (c) Subject to clause 3, this Agreement (including Schedule 1 as varied from time to time) applies to all Grain subject to Services provided as described under this Agreement 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) This Agreement supersedes any previous agreement between Viterra and the Client for the provision of Services as and from the Commencement Date and any such previous agreement is expressly terminated.

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 Packing and Processing 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 is received by Viterra at an Up-Country Receival Facility for the provision of Services, 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 enters 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 Primary obligation of Viterra

- (a) Viterra will provide, and the Client agrees to acquire and pay for, such of the Services described under this Agreement as the Client may request and Viterra may accept, in each case, on and subject to the terms of this Agreement.
- (b) Containerisation rates include the following services:
 - (i) movement of empty containers from nominated container depots to the nominated packing site;
 - (ii) movement of loaded containers from the nominated packing site to wharf receiving the nominated vessel as per the Client's Packing Instruction;
 - (iii) supply and fit false bulkheads for bulk commodity packing;
 - (iv) wharf documentation and time slotting;
 - (v) full weighbridge documentation;
 - (vi) full shipment and inventory recording and reporting;
 - (vii) receipt of commodity;
 - (viii) Department of Agriculture, Fisheries and Forestry Commodity Inspection;
 - (ix) Department of Agriculture, Fisheries and Forestry Empty Container Inspection.

4.2 Required Services

In acquiring Services, the Client must acquire such storage and handling services as Viterra, acting reasonably and to the extent reasonably necessary to protect its legitimate business interests, requires in order to protect the integrity of Grain (including 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 Schedule 1.

4.3 Facility Specific Terms and Conditions

- (a) The Client acknowledges that, in addition to the general terms and conditions set out in this Agreement, each Viterra Facility has specific terms and conditions set out in Schedule 1 (**Facility Specific Terms**).
- (b) If any inconsistency arises between the general terms and conditions set out in this Agreement and the Facility Specific Terms, the Facility Specific Terms prevail to the extent of the inconsistency.

4.4 Fuel and Infrastructure Surcharge

- (a) The Fuel Surcharge component will be:
 - (i) oncharged; and
 - (ii) adjusted on a monthly basis.
- (b) The Infrastructure Surcharge component will be:
 - (i) oncharged; and
 - (ii) adjusted by the wharf operators.

Viterra will advise the Client at the earliest possible opportunity of the actual Fuel Surcharge for the following month payable by the Client.

- (c) Viterra will provide the Client with reasonable notice should the Infrastructure Surcharge require adjusting.

4.5 Shrinkage, Dust and 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. 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 in Schedule 1.
- (c) Viterra will own and be entitled to deal in the quantity of Grain deducted from the Outturn for Shrinkage at any time following receipt of Grain at a Viterra Facility.

4.6 Weighing

- (a) The Client authorises Viterra to use weighing and measuring equipment and any processes nominated by Viterra to determine the receipt and Outturned tonnage of Grain (including Viterra's or Third Party service provider weighbridges).
- (b) Viterra:
 - (i) will provide all information and assistance reasonably required by the Client to obtain and document the verified gross mass of any container and otherwise required to comply with the International Convention for the Safety of Life at Sea (**SOLAS**);
 - (ii) will ensure that containers are not packed more than the maximum gross mass indicated on the safety approval plate on the applicable container; and

- (iii) acknowledges that it has read and understood SOLAS including its application to the packing of containers destined for stowage aboard ships.
- (c) In performing the Services, Viterra warrants that the weighing and measuring equipment used is:
 - (i) calibrated and certified;
 - (ii) capable of determining the actual gross mass of a packed container; and
 - (iii) compliant with all applicable laws, standards and requirements (including, without limitation, the *National Measurement Act 1960* (Cth)).
- (d) The Client is bound by the determinations made under clause 4.6), and the records of those determinations 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.

4.7 Quality

- (a) The Client authorises Viterra to use systems, equipment and any processes (including Composite Sampling) nominated by Viterra to determine the quality of Grain.
- (b) The Client is bound by the determinations made under this clause 4.7, and the records of those determinations 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.

4.8 Outturn Standards

- (a) Subject to this clause, 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 4.8 can only be made in writing by a person authorised to act on behalf of Viterra. Unless otherwise agreed under this clause 4.8, 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 this clause 4.8 will meet any export standards imposed by Department of Agriculture, Fisheries and Forestry 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 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 clause 4.8, Viterra can commingle the regraded stocks with other barley grades and varieties.
- (d) Without limiting clause 17, 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, Fisheries and Forestry or standards imposed by an importing country, except to the extent such Loss is caused by the gross negligence or wilful default of Viterra or its employees, contractors or agents.
- (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.

4.9 Fumigation

- (a) If Viterra provides fumigation services as part of the Services, the Client acknowledges that those Services may be provided by Viterra or a contractor of Viterra.
- (b) Viterra is only obliged to provide a fumigation certificate if:
 - (i) Viterra fumigates the Grain as part of the Services provided under this Agreement; or
 - (ii) a Third Party treatment certificate is provided prior to Viterra performing the Services.
- (c) If clause 4.9(b)(ii) applies, the Client acknowledges and agrees that Viterra does not warrant, guarantee, make any representations in relation to, or assume any duty of care with respect to, the completeness, accuracy or adequacy of any information contained in the Third Party treatment certificate.
- (d) If requested by the Client, Viterra may, but is not obliged to, provide fumigation services in addition to those specifically required by Australian law.
- (e) The Customer unconditionally and irrevocably releases Viterra from any liability whatsoever in respect of Viterra failing to provide any fumigation services which Viterra reasonably determines would constitute a contravention of any applicable law.

4.10 Department of Agriculture Sampling and Container inspection

- (a) The Client acknowledges that:

- (i) Viterra will make Grain and containers available for inspection by authorised officers of Department of Agriculture, Fisheries and Forestry prior to performing Services in respect of a Packing Instruction; and
 - (ii) in performing any inspection, the authorised officers are acting as officials of Department of Agriculture, Fisheries and Forestry and not employees, agents or contractors of Viterra.
 - (iii) The costs of any inspection under this clause 4.10 are incorporated in the charges.
- (b) The Client acknowledges that Department of Agriculture, Fisheries and Forestry may disallow the loading of all or some portion of the Client's Grain into a container for reasons of non-conformance to Department of Agriculture, Fisheries and Forestry export conditions as outlined in the *Export Control Act 2020* (Cth) (including detection of live insects, rodents and rattlepod).
- (c) The Client releases Viterra, and must not make a claim, in respect of any Loss suffered or incurred by the Client in relation to or in connection with any failure or delay in loading any Grain in the circumstances set out in this clause or any act or omission of the authorised officer when performing any inspection service, except to the extent such Loss is caused by the gross negligence or wilful default of Viterra or its employees, contractors or agents.

4.11 Availability

- (a) Viterra's obligation to provide a particular Service at a Viterra Facility is at all times subject to the availability of the relevant Viterra Facility required for that Service at that time.
- (b) The Client acknowledges that, notwithstanding any other clause in this Agreement, Viterra will provide the Services on a non-exclusive basis.

4.12 Refusal of Services

- (a) Without limiting anything else in this Agreement, Viterra may refuse to accept a request for a Service for all or any portion of a Client's Grain (or place conditions on the receipt of Client's Grain) if, in Viterra's reasonable opinion, receiving the Grain or performing the Service:
 - (i) the export storage capacity in that Viterra Facility allocated to a particular Binned Grade at that Viterra Facility is already full, and 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 4.12 requires Viterra to move any Other Client's Grain which is in an export position at that time;
 - (ii) will, or is likely to, contravene or is otherwise 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
 - (iii) could be detrimental to other users of the Viterra Facility or the Grain industry in general.
- (b) Viterra is not liable for, and the Client must not make any claim in respect of, any Loss (including Indirect or Consequential Loss) suffered or incurred by the Client as a result of a rejection of a request for a Service.

4.13 Delays

- (a) 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 is ready to commence loading due to the potential occurrence of factors outside of Viterra's control including:
 - (i) a variation in Transportation Vehicle arrival times;
 - (ii) failure of Transportation Vehicle to pass inspections;
 - (iii) variation in cargo requirements;
 - (iv) lack of performance of freight providers, or
 - (v) the occurrence of a Force Majeure Event.
- (b) Viterra will make reasonable efforts to advise the Client of likely delays.

4.14 Non-Outturn

If Grain is not Outturned from a Viterra Facility as detailed in an accepted Packing Instruction (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 fees paid or payable in respect of the relevant Packing Instructions.

4.15 Reconciliation and adjustment

- (a) This clause 4.15 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 14 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 the Shrinkage cap of the particular Grade of Grain (specified in Schedule 1) 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.
- (e) Viterra does not require the Client's consent to write off the Client's Outturn Entitlement under this clause 4.15.

5 Client obligations

5.1 Acceptance of Grain

- (a) Before Viterra accepts Grain at a Viterra Facility, the Client must provide Viterra with a grain movement order setting out, amongst other things, the order number, client, contact person, delivery dates, source site, carrier, tonnage, product, Service Year, variety, Grade and any special requirements (**Grain Movement Order**).
- (b) The Client is solely responsible for ensuring the details in the Grain Movement Order are correct in all respects.
- (c) Viterra is entitled to treat Grain to which clause 5.1(a) applies, as the property of the person who tendered that Grain and has no obligation to the Client in respect of it until Viterra has received the Grain Movement Order.
- (d) 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.
- (e) On receiving the original of the acknowledgment set out in clause 5.1(d), 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.
- (f) 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.

5.2 Booking

- (a) The Client acknowledges and agrees that:
 - (i) availability of any Services at a Viterra Facility is subject to packing capacity, stock accumulation, empty container availability and transport; and
 - (ii) Packing Instructions (including any relevant vessel details) must be received in writing three (3) weeks in advance of estimated time of departure for the nominated vessel; and
 - (iii) it is the Client's obligation to ensure that Grain delivered to the relevant Viterra Facility will satisfy any specific requirements of the Packing Instructions (including specific tonnage and in respect of quality requirements of the Grain); and
 - (iv) any amendment to the Packing Instructions is subject to acceptance of Viterra (in its sole and absolute discretion).
- (b) Viterra is not liable for, and the Client must not make any claim against Viterra in respect of, any Loss (including without limitation legal costs) suffered or incurred by the Client as a result of or in connection with any errors or omissions in, or the Client providing late, incomplete or making amendments to, the Packing Instructions, except to the extent such Loss is caused by the gross negligence or wilful default of Viterra or its employees, contractors or agents.

5.3 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, then Viterra (acting reasonably) is entitled to reject any 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, and the Client must not make any claim in respect of, any Loss (including Indirect or Consequential Loss) which arises as a result of a rejection of a Transportation Vehicle.
- (d) The Client agrees to pay Viterra for any costs incurred by Viterra as a result of the rejection of a Transportation Vehicle.
- (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 and the Client must comply with that requirement.

5.4 Contaminants

- (a) The Client must not deliver to a Viterra Facility (either itself or by its suppliers) any Grain that is known or suspected to contain any contaminant (chemical, physical or otherwise), residues or a combination of both.

- (b) The Client is solely responsible to ensure any Grain and residue on all Grain tendered at a Viterra Facility are compliant with any applicable maximum residue limits for the importing country or domestic market; and must ensure that all of its suppliers or service providers (including any Bulk Handler) are advised and ensure that Grain known or suspected to contain chemical or physical contaminants or residues or both must not be delivered to any Viterra Facility.
- (c) The Client acknowledges that Viterra is not responsible to obtain vendor declarations or other treatment information relating to or in connection with any Grain delivered to a Viterra Facility.
- (d) 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 (or its suppliers) to deliver Grain to the Viterra Facility.
- (e) The independent expert must certify to Viterra that the contaminant is manageable OR removed prior to Viterra accepting new deliveries.
- (f) Where Grain of any person other than the Client is affected by a contaminant or residue but is nevertheless delivered to a Viterra Facility (whether discovered before or after delivery or after the provision of the Services) (**Contaminated Delivery**):
 - (i) the Client is solely responsible for dealing with any Third Party claim relating to or in connection with or arising from the Contaminated Delivery; and
 - (ii) Viterra will not be liable to the Client or to any other person in respect of the Contaminated Delivery; and
 - (iii) the Client indemnifies Viterra and will keep it indemnified from, and held harmless against, all actions, claims, demands proceedings and for any Loss (including Indirect or Consequential Loss) suffered or incurred directly or indirectly as a result of that Contaminated Delivery.

5.5 Accumulation

- (a) The Client is solely responsible for:
 - (i) ensuring that all Grain necessary for Viterra to comply with its obligations under this Agreement (including any Packing Instructions) is provided to the Viterra Facility (or otherwise made available to Viterra) in a timely and efficient manner; and
 - (ii) any act or omission of the Bulk Handler in connection with or relating to the provision of Services by Viterra to the Client (including in respect of quality of Grain and any delays relating to the accumulation of Grain or the loading of the Transportation Vehicle notwithstanding that the provision of the Transportation Vehicle by Viterra may form part of the Services).
- (b) The Client agrees that Viterra is not liable for, and the Client will indemnify and hold Viterra harmless in respect of, any Loss (including without limitation legal costs) Viterra incurs or sustains as a result of or in connection with any act or omission of the Client that relates to or is in connection with:
 - (i) any delays in the Grain:
 - (A) being delivered to the Viterra Facility; or
 - (B) being made available at the designated load point (to the extent Viterra is responsible for the Transportation Vehicle); and
 - (ii) any act or omission of the Bulk Handler caused or contributed to by the Client.

6 Charges and payment

6.1 Charges

- (a) Subject to this clause 6.1, the charges and fees payable by the Client for the Services provided by Viterra under this Agreement will be as set out in Schedule 1 (**Charges**).
- (b) The Client must pay all Charges to Viterra at the times specified in Schedule 1 and otherwise in accordance with this Agreement. The Client must pay all other amounts due and payable under this Agreement.
- (c) Without limiting the circumstances in which Viterra may vary the Charges, Viterra may vary the charges which apply under this Agreement at any time by providing 20 days' notice in writing to the Client if:
 - (i) there is a change to any Commonwealth, State or local laws; or
 - (ii) any new laws come into effect (including, without limitation, in relation to any potential carbon tax, Carbon Pollution Reduction Scheme or any similar emissions trading scheme); or
 - (iii) after the date of this Agreement which results in a direct or indirect increase in Viterra's costs in providing the Services under this Agreement.
- (d) Viterra will be entitled to increase the charges payable by the Client for Services provided under this Agreement to recover the full amount of the increased direct or indirect costs referable to the provision of the Services to the Client.

6.2 Invoicing

Viterra will invoice the Client for Services in arrears.

6.3 Payment

The Client must pay Viterra the full amount of an invoice within fourteen (14) days after receipt of that invoice.

6.4 Credit Risk

Without limiting clause 6.7, 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.

6.5 Set off

- (a) 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 or any Viterra Group Company.
- (b) The Client may set off any amount owing by it to Viterra against any amount due for payment by Viterra to the Client.

6.6 GST

- (a) In this clause 6.6:
 - (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 6.6, 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.

6.7 Default in payment

If the Client fails to make payment of an invoice in accordance with this clause 6 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.

6.8 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.

6.9 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.

6.10 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, 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 6.10(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.

7 Title to Grain

7.1 Bailment

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.

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.

7.2 Common stock

- (a) Subject to clause 7.6, 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**).
- (b) Where the Client's Grain forms part of the Common Stock, title to the Common Stock is held in common and in undivided shares by the Client and the Other Clients or users whose Grain forms part of the Common Stock at the applicable Viterra Facility.

7.3 Client's interest

- (a) For the purposes of clause 7.2(b), at any time the Client's share of the Common Stock will be equal to that proportion which the quantity of the Client's Grain at the time bears to the quantity of that Common Stock at that time.
- (b) 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.

7.4 Nomination by Viterra

Where the Client's Grain forms part of the Common Stock, 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.

7.5 Right to Outturn or move Grain at another site

- (a) Subject to clause 7.6, 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 7.5(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.

7.6 Reservation of a Cell

- (a) The Client may at any time request Viterra to Reserve a Cell.
- (b) Viterra has no obligation to agree to a request 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 (with price on application); and
 - (ii) any time limits on the Reserved Cell specified by Viterra.
- (c) If the Client Reserves a Cell (and the Client pays the Cell reservation fee if applicable), Viterra may not during the reservation period deal with the Client's Grain or otherwise store Other Client's Grain in that Cell, or move the quantity of Grain owned by the Client from the relevant Cell without the Client's written permission unless Viterra considers it reasonably necessary for the protection of Grain of the Client or an Other Client.

8 Lien and Security Interest

8.1 Viterra's lien and Security Interest

- (a) The Client:
 - (i) 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
 - (ii) 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.
- (b) Where the Client's Grain comprises the Common Stock, Viterra may nominate and identify any particular quantity of Grain comprising the Common Stock as being the Client's Grain for the purposes of enforcing its lien or Security Interest.

8.2 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.

8.3 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.

8.4 Other 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.

9 Compliance with rules, directions, procedures and protocols

9.1 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 (and amended from time to time to the extent reasonably necessary to protect Viterra's legitimate business interests) in relation to:
 - (i) health, safety and environment;
 - (ii) site rules;
 - (iii) labour ordering conditions for shipping;
 - (iv) operating conditions for Viterra's rail facilities;
 - (v) 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.

9.2 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.
- (a) 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.
- (b) Viterra will use all reasonable endeavours to resolve, and minimise the impact of, the Crisis Event.
- (c) 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 11, 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.

10 Information

10.1 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 10.1(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.
- (c) A notice served by the Client under clause 10.1(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.

10.2 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.

or any such other information reasonably required by Viterra in order to perform the Services (including in respect of the requirements of SOLAS) to comply with any information requests relating to or in connection with any haulage services or terminal services undertaken by third parties at the Viterra Facility.

- (b) If reasonably required by Viterra, the Client must provide the information in writing and in the form (if any) reasonably required by Viterra.
- (c) The Client hereby consents to Viterra using this information in accordance with Viterra's Privacy Policy.

11 Liability

11.1 Acknowledgement

Each Party acknowledges that the only warranties provided 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.

11.2 Non-excludable warranties

To the maximum extent permitted by law, a Party'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 a liable Party's sole discretion).

11.3 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 provide the Services, 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 (for whatever reason, including the reasons referred to in clause 11.3(a)) will not exceed the sum of \$20,000 (twenty thousand dollars) per event or per series of related events;
- (c) Viterra is not liable for Accidental Loss or Damage to the Client's Grain;
- (d) Viterra will not be liable for any of the following:
 - (i) claims for Indirect or Consequential Loss;
 - (ii) quality claims arising in respect of Grain transferred into a Viterra Facility or otherwise that have not been subject to independent quality inspection and verification prior to delivery to the relevant Viterra Facility, whether by road or rail;
 - (iii) claims for port or related charges relating to or in connection with the Services including vessel, stevedoring, Department of Agriculture, Fisheries and Forestry or other government agency fees or charges or otherwise claims for demurrage or loss suffered as a result of delays in providing the Services;
 - (iv) defects that:
 - (A) are required to be examined by the responsible authority under the provisions of the Export Control Act 2020 (Cth); or
 - (B) the Client has taken responsibility for testing (prior to delivery to the relevant Viterra Facility, whether by road or rail, and are not discovered until after the departure of the Transportation Vehicle;
 - (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 Client's Grain arising upon outturn at a Transportation Vehicle's destination, if the claims are inconsistent with the records of quantity and quality at outturn from the Viterra Facility and there is no conclusive evidence that such records at outturn from the Viterra Facility are incorrect or 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) quality or quantity claims in respect of a shipment by road, rail or sea arising upon Outturn at the shipment's destination, if the claims are inconsistent with the records of quantity and quality at loading (including any records of Department of Agriculture, Fisheries and Forestry) and there is no conclusive evidence that such records are incorrect or, by exception, unreliable or otherwise if Grain has not been subject to an independent quality inspection and verification prior to shipment,
 - (ix) 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; or
 - (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) The Client unconditionally and irrevocably releases Viterra from all liability of whatsoever nature in respect of the matters set out in clauses 11.3(a) to 11.3(d) (inclusive) except to the extent expressly specified in those clauses.

11.4 Third Party claims

Each Party agrees to indemnify the other Party on demand against any Loss incurred by that other Party 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 the other Party.

11.5 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 this clause 11.5 above (**Capped Agreements**) is capped at the greatest amount at which liability is capped under any one of the Capped Agreements.

11.6 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 4.15.
- (b) Nothing in this clause 11.6 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.

12 Insurance and risk

12.1 Maintenance of insurance

The Client must at all times during the Term maintain with a reputable insurer all insurance policies on appropriate terms that a prudent owner of Grain would maintain including such policies covering the common insurable risks to Grain in respect of the Services.

12.2 Inspection

On request by the Client, Viterra will make available for inspection the certificate of currency.

12.3 Risk

- (a) The risk to the Client's Grain will at all times be assumed by the Client (including during transit to, transit from and while at a Viterra Facility) where the Client or a Third Party has procured or otherwise arranged the Transportation Vehicle.
- (b) The risk to the Client's Grain will at all times also be assumed by the Client (including during transit to, transit from and while at a Viterra Facility) where Viterra has procured or otherwise arranged the Transportation Vehicle.

13 Force Majeure

13.1 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 the 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, pandemic, or declarations of a state of emergency;
 - (ii) strikes, stop works, 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 including in respect of haulage services (including by rail) or terminal services provided to Viterra at the Viterra Facility by a Third Party that directly or indirectly affect the provision of the Services;
- (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, customers or bulk handlers).

13.2 Suspension of obligations

If a Party is wholly or partially precluded or delayed from complying with its obligations under this Agreement by a Force Majeure Event (in this clause 13 called the **Affected Party**), then:

- (a) subject to clause 13.6, 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.

13.3 Notice

- (a) 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:
 - (i) the nature of the Force Majeure Event;
 - (ii) 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 13 called the **Affected Obligations**); and
 - (iii) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations.

13.4 Minimisation of impact

Upon receiving a notice under clause 13.3, the Parties will meet to discuss and agree:

- (b) 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;
- (c) 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
- (d) 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.

13.5 Obligation to mitigate

The Affected Party must:

- (a) keep the other Party fully informed of its plans to minimise the effect of the Force Majeure Event, 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.

13.6 Payments

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

13.7 Labour Disputes

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

14 Dispute Resolution

14.1 Disputes

Any Dispute under this Agreement will, unless otherwise expressly agreed to the contrary by both Parties, be resolved in accordance with this clause 14 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 14. Viterra and the Client must act in good faith to seek to resolve any Dispute in accordance with this clause 14.

14.2 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.

14.3 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 14.3. 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.

14.4 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 and Mediators Australia to appoint a mediator.

14.5 Mediation

- (a) Any mediation will be conducted in accordance with this clause 14.
- (b) The Parties may agree the time and place of the mediation in consultation with a mediator appointed under clause 14.4.
- (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 Viterra's Facilities.

14.6 Termination of mediation

The Parties agree that either Party may terminate the mediation if:

- (a) 20 Business Days have expired since the start of the mediation of the Dispute; and
- (b) the Dispute has not been resolved,

unless the mediator (acting reasonably) is satisfied that a resolution of the Dispute is imminent.

14.7 Costs of mediation

Unless the Parties agree otherwise:

- (a) each Party is liable for their own costs of the mediation; and
- (b) the Parties are jointly liable for the following costs of the mediation:
 - (c) the cost of the mediator;
 - (d) the cost of the room hire (if any); and
 - (e) the cost of any additional input (including expert reports) agreed by both parties to be necessary to the conduction of the mediation.

14.8 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.

15 Suspension and termination

15.1 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 15.2 (**Suspension Notice**); and
- (b) terminated immediately by either Party giving written notice in that regard in accordance with this clause 15 (**Termination Notice**).

15.2 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 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 15.2(a), the Client is still obliged to pay the applicable Charges during the period of suspension.

15.3 Termination by Viterra

Viterra may terminate this Agreement immediately upon giving a Termination Notice to the Client if: an Insolvency Event occurs in respect of the Client; or the Client does not rectify the default that is the subject of a Suspension Notice issued under clause 15.2, within the time specified by Viterra (acting reasonably) in the Suspension Notice.

15.4 Termination by the Client

The Client may terminate this Agreement immediately upon giving a Termination Notice to Viterra, if: an Insolvency Event occurs in respect of Viterra; or 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 Viterra varies the Charges in accordance with clause 6.1 and within 20 Business Days of receiving written notice of the variation, the Client does not accept the Charges as varied.

15.5 Effect of termination

- (a) Upon termination of this Agreement (and without limiting clauses 15.5(b) and 15.5(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 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 8 of this Agreement.

15.6 No prejudice

Termination of this Agreement under this clause 15 is without prejudice to the rights of either Party that have accrued prior to the date of termination.

16 Release and indemnity

16.1 Release

Notwithstanding anything expressed or implied to the contrary the Client shall not have or make any claim against Viterra in respect of the non-provision of Services (or any part of the Services) or in relation to any delay in performance of the Services (or any part of the Services) or in relation to any breach of this Agreement by Viterra if such non-provision, delay or breach is caused by or contributed to by: an act or omission of the network operator of any part of a rail network over which portion of the Services is to be provided; a direction given by any network operator or train control authority having responsibility for train control over any portion of a railway network; any act or omission of a network operator or train control authority affecting train

movements or the operation of rolling stock on a rail network or any train movement or rolling stock operation on a rail network; the relevant rail network being unavailable to run a train service or rolling stock for any reason (including as a result of any derailment, accident, collision or any other analogous incident); and a direction or notification given by a network operator or train control authority in relation to the operation of any train or rolling stock on a relevant rail network.

16.2 Indemnity

- (a) Each Party indemnifies the other Party and will keep it indemnified from and against all actions, claims, demands, proceedings and Losses suffered or incurred by that other Party arising directly or indirectly out of or in relation to: any breach, non-observance or non-performance by the first Party of any of its obligations under this Agreement; any act or omission of the Bulk Handler caused or contributed to by the first Party; or any claim by a Third Party relating to the Grain; any act or omission of the first Party; any act or omission of any other contractor or subcontractor engaged by the first Party caused or contributed to by the first Party.
- (b) This clause 16.2 does not limit any other indemnity given under this Agreement.

17 Notices

17.1 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; or
 - (ii) sent by email addressed to the person for the time being occupying the position with the receiving Party specified from time to time.

17.2 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.

17.3 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 17.

18 Confidentiality

18.1 Treatment of Confidential Information

- (a) Subject to clause 18.1(b), if a Party provides Confidential Information to another Party either:
 - (i) during the course of negotiations in relation to this Agreement; or
 - (ii) during the course of performing obligations under or receiving the benefit of this Agreement; or
 - (iii) 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 14.4 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.

18.2 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 14.5, 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 18.2, any mediator appointed in accordance with clause 14.4 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 14.4 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.

19 No endorsement

19.1 Prohibition

The Client must not, without Viterra's prior written consent: 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 refer to Viterra or the Services provided by Viterra to the Client in any publication, promotional or advertising material.

19.2 Acknowledgements

The Client acknowledges that: Viterra will treat the obligation of the Client under clause 19.1 as a serious undertaking; and it is aware that any breach of this serious undertaking may result in Viterra suffering damage and Loss.

20 No assignment

- (a) A Party may not assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed.

21 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.

22 Waiver

22.1 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.

22.2 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.

23 No partnership

23.1 Relationship

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

23.2 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.

23.3 No liability

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

24 Governing law and jurisdiction

24.1 Governing law

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

24.2 Jurisdiction

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

25 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,
- (c) without notice to the Client.

26 Compliance and sanctions

26.1 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.

26.2 Sanctions

- (a) Both parties represent, warrant and undertake that:
 - (i) neither it nor any of its Australian subsidiaries, senior executives or officers, or to the knowledge of that party, any Australian person on whose behalf that party is acting in connection with this Agreement, or any Australian 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 26.2, 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 where the Defaulting Party has failed to remedy any breach within 60 days after receiving written notice from the Non-Defaulting Party to do so.
- (c) 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.

26.3 Modern Slavery

- (a) The Client must not permit any acts of Modern Slavery in its operations or supply chain.
- (b) The Client warrants that:
 - (i) it is not aware of the existence of Modern Slavery in its own operations or its supply chain;
 - (ii) it has in place appropriate policies and procedures to assess and address risks of Modern Slavery in its operations and supply chain;
 - (iii) it has not previously been investigated in relation to or received complaints about Modern Slavery in its operations or supply chain.

- (c) The Client must notify Viterra immediately if it becomes aware of or has reason to suspect the existence of Modern Slavery in the Client's operations or supply chain.
- (d) Without limiting any of the other provisions in this Agreement, The Client must comply with Viterra's policies in place from time to time relating to Modern Slavery and human rights as directed by Viterra, including but not limited to Viterra's Modern Slavery Statement, Statement of values, Code of Conduct, Global anti-corruption policy and Human rights policy available on Viterra's website.
- (e) The Client must, if directed by Viterra, take reasonable steps to ensure that its suppliers comply with any of Viterra's policies referred to in clause (d) above.
- (f) Without limiting Viterra's other rights of termination under this Agreement, Viterra may terminate this Agreement immediately by providing notice in writing to the Client if Viterra has reason to believe that Modern Slavery is occurring or has previously occurred in the Client's operations or supply chain.

27 Severance

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

28 PPSA 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 8.
- (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 28 have the same meaning as in the PPSA.

29 General

29.1 Entire agreement

This Agreement constitutes the entire agreement between the Parties.

29.2 Counterparts

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

29.3 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.

29.4 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 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.

29.5 Variations

- (a) Subject to clause 29.5(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 Viterra is not financially, commercially or operationally disadvantaged as a result of the Regulatory Change Event occurring.

29.6 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: _____ 2024

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