

2013/2014 Season Storage & Handling Agreement

Viterra Operations Ltd

(Company)

(Client)

Important Note: This Agreement does not apply to Grain that is, for the time being, Bulk Wheat in respect of which Port Terminal Services are being provided under the Company's Port Terminal Services Agreement. (See clause 3 within.)

2013/2014 Season Storage & Handling Agreement

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Details

Date _____ 2013

Parties

Name **Viterra Operations Ltd**

ABN 88 007 556 256

Short form name **Company**

Address 124 – 130 South Terrace, Adelaide, SA 5000

Name _____

ABN _____

Short form name **Client**

Address _____

Background

- A The Company is:
- (i) the operator of the Company Facilities;
 - (ii) the provider of Services; and
 - (iii) an Associated Entity of Viterra.
- B Following the introduction of the Auction system in accordance with the Access Undertaking, Capacity at the Port Terminal Facilities will primarily be allocated by Auction in accordance with the Port Loading Protocols (including the Auction Rules).
- C The Client wishes to be provided by the Company with Services and the Parties have accordingly entered into this Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Agreement:

ACCC means the Australian Competition and Consumer Commission.

Access Undertaking means the Port Terminal Services Access Undertaking provided by the Company to the ACCC pursuant to the WEMA and Part IIIA of the CCA, as in force from time to time and available on the ACCC website at www.accc.gov.au.

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

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

AQIS means Australian Quarantine Inspection Services.

Associated Entity has the meaning given to that term by the Corporations Act.

Auction means the sale by auction of Capacity.

Auction Premium Rebate means the rebate calculated in accordance with the Port Loading Protocols (once they have been amended to introduce an Auction system in accordance with the Access Undertaking).

Auction Rules means the rules of that name set out in Schedule 1 to the Port Loading Protocols (once they have been amended to introduce an Auction system in accordance with the Access Undertaking).

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

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

Bulk Wheat has the meaning given to that term in the Access Undertaking.

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

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

CCA means the *Competition and Consumer Act 2010* (Cth).

Cell means a single unit of storage of Grain.

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

Commencement Date has the meaning given to that term in clause 2.1.

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

Company Facility means any facility owned or operated by the Company or any Viterra Group Company for any one or more of the receipt, storage or Outturn of Grain.

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

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

Dust means Grain dust attributable to the Client's Grain extracted from dust collection plants in the Company's Facilities, but excluding Damaged Grain. Dust is not included as part of Shrinkage.

Expiry Date has the meaning given to that term in clause 2.1.

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

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

Export Standard means all other Grain that is not Export Select Grain.

Fair Market Value means the price per tonne calculated to either purchase Grain by the Company or replace shortfall of grain by the Client and:

- (a) in the case where the Company needs to facilitate the purchase of Grain from the Client the price will be the highest bid price of buyers; and
- (b) in the case where the Client is required to compensate the Company the price will be the lowest price offered by sellers.

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

Grade means a grade of Grain of a given Season specified in the Receipt (Classification) Standards and Outturn Standards of that same Season, 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 removal of doubt) includes Pulses but excludes minerals and processed or value added products such as malt.

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

GST has the meaning given in the GST Act.

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

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

Indirect or Consequential Loss means indirect, consequential or remote loss or any loss in the nature of compensation for loss of production, loss of profit, loss of

opportunity, loss of markets, loss of use of money, goods or other property or loss of goodwill or business reputation, including any losses that the Client may suffer in the event that the ability to resell Grain is adversely affected.

Insolvency Event means, in relation to a Party:

- (c) 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;
- (d) the Party suspends payment of its debts generally;
- (e) the Party is insolvent within the meaning of the Corporations Act;
- (f) 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;
- (g) 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
- (h) an administrator is appointed under Division 2 of Part 5.3A of the Corporations Act and, except in the case of an appointment by the Party or its directors, is not withdrawn or removed within 14 days.

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

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

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

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

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

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

Outturn Standards means the Reveal (Classification) Standards (subject to any allowable tolerances for export and domestic Grain as published in Schedule G).

Party means, depending on the context, the Company or the Client.

Port Loading Protocols means the document of that name as published and amended from time to time by the Company and, for the avoidance of doubt includes the Auction Rules (once they have been amended to introduce an Auction system in accordance with the Access Undertaking).

Port Terminal means, depending on the context, the Company'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) Ardrossan, South Australia;
- (f) Port Pirie, South Australia;
- (g) Port Lincoln, South Australia;
- (h) Thevenard, South Australia; or
- (i) any other port terminal operated by the Company for the handling of Grain.

Port Terminal Facility, in respect of a Port Terminal, means those facilities listed and described in the applicable Port Schedule in the Access Undertaking as being the 'Port Terminal Facility' for that Port Terminal.

Port Terminal Services means services that are provided at a Port Terminal Facility in respect of Bulk Wheat and which are regulated by the Access Undertaking.

Port Terminal Services Agreement means the form of agreement for the time being published by the Company on its website (in compliance with the Access Undertaking) for the provision by the Company of Port Terminal Services for Bulk Wheat at its Port Terminal Facilities.

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

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

Pricing, Procedures and Protocols Manual means the document by that name published by the Company on its website for the current Season and consisting of a number of Schedules that contain the Company's prices for that Season and the rules, protocols, policies, procedures and induction requirements according to which the Company provides the Services and operates the Company Facilities, as that document may be amended from time to time during the Season.

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

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

Receival (Classification) Standards means standards that either:

- (a) accord with the industry benchmarks established for Grain and published by the Company prior to the receival of that Grain into a Company Facility; or
- (b) are otherwise agreed with the Client.

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

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

Reserve a Cell means reservation of a Cell by a Client on terms agreed with the Company.

Season means the period in which most of the Grain is harvested and delivered to Company Facilities, typically commencing in November in one year and going through to the February of the following year.

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

Services means:

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

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

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

- (a) storage;
- (b) Blending;
- (c) standard Grain protection and maintenance;

- (d) dis-infestation; and
- (e) recording of relevant information.

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

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

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

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

Viterra means Viterra Ltd (ABN 59 084 962 130).

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

Viterra Road Vehicle Hygiene Requirements means the requirements published by the Company from time to time on www.viterra.com.au or otherwise displayed or available at a Company 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).

WEMA means the *Wheat Export Marketing Act 2008* (Cth).

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.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (h) A reference to a party to this Agreement or 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 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.

- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) 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.
- (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 put forward this Agreement or a relevant part of it.

1.3 Discretions and Approvals

- (a) 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.
- (b) In making any decision pursuant to this Agreement, the Company will have regard to the efficient operation of the relevant Company Facility and the balancing of the interests of all users of that Company Facility or otherwise the Grain industry generally.
- (c) Any refusal by the Company to accept a request for a Service will not be a breach of this Agreement if in its reasonable opinion it is in the best interests of the efficient operation of the Company Facility or otherwise the Grain industry generally.

2. Term and application of Agreement

2.1 Commencement, duration and application

- (a) This Agreement:
 - (i) commences on 1 October 2013 (**Commencement Date**);
 - (ii) unless terminated earlier under clause 17, but subject to clause 2.2, ends on 30 September 2014 (**Expiry Date**); and
 - (iii) applies to all Services provided, or deemed to have been provided, by the Company under this Agreement.
- (b) If the Client:
 - (i) is provided with any Services on or after the Commencement Date; but
 - (ii) has not executed this Agreement,

the Client will be deemed to have:

- (iii) accepted the terms and conditions set out in this Agreement; and
- (iv) agreed that all such Services have been provided by the Company under this Agreement.

2.2 Continued application

- (a) If the Company continues to provide Services to the Client after the Expiry Date, then the terms and conditions of this Agreement will continue to apply until this Agreement is cancelled by either Party. If the Company issues the Client with a new agreement for the provision of Services for the Season following the Expiry Date, then the date of issuing the new agreement will be the effective date of the Company's notice of cancellation of this Agreement. Further, any such new agreement issued by the Company after the Expiry Date will also apply to Grain of prior Seasons remaining within the Company Facilities.
- (b) For the avoidance of doubt, if Grain of Seasons prior to the 2013/2014 Season is held in a Company Facility as at the Commencement Date, the terms and conditions in this Agreement will apply to the prior Seasons' Grain unless the context requires otherwise or until these terms and conditions are replaced in accordance with clause 2.2(a).
- (c) This Agreement supersedes any previous agreement between the Company and the Client for the provision of Services.

3. Acknowledgement of limited application

Despite anything to the contrary contained in, or which in the absence of this clause 3 may be implied into, this Agreement:

- (a) does not apply to the provision of Port Terminal Services in respect of Bulk Wheat;
- (b) where Bulk Wheat for export is received by the Company at a Company Facility that is not a Port Terminal Facility (**Up-Country Receival Facility**), the Services provided by the Company in respect of that Bulk Wheat before it reaches a Port Terminal Facility will be governed by this Agreement; and
- (c) if, for any Season, the Client engages the Company 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 the Company and the Client make 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 made between the Client and the Company on the standard terms and conditions contained in the Port Terminal Services Agreement published by the Company for that Season.

4. Services

4.1 Primary obligation of the Company

The Company will provide such of the Services as the Client may request and the Company may accept, on and subject to:

- (a) the terms and conditions of this Agreement, including those contained in the Pricing, Procedures and Protocols Manual;
- (b) the Port Loading Protocols; and
- (c) the Shipping Stem.

4.2 Availability

The Company's obligation to provide a particular Service at a Company Facility at a point in time is subject to the availability of the Company Facility required for that Service at that time.

5. Receival Services

5.1 Application of clause

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

5.2 Receival standards and classification

All Grain that is to be received and stored by the Company for the Client must comply with the Receival (Classification) Standards. If Grain has characteristics for which a receival standard is neither published nor agreed, the Company may refuse to receive that Grain. The Company will make available the 2013/2014 Commodity Classification Manual and Receival Standards to the Client via www.ezigrain.abb.com.au.

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

- (a) Before accepting Grain at a Company Facility from a third party for sale to the Client and subsequent storage on the Client's behalf, the Company will assess and classify the Grain and require the person who has tendered the Grain to sign a receival docket setting out, amongst other things, the origin, weight, variety, quality, payment grade, the Purchase Option selected by the person and (if applicable) the price payable by the Client.
- (b) The Company is entitled to treat Grain to which clause 5.3(a) applies, as the property of the person who tendered it and has no obligation to the Client in respect of it until the person who has tendered the Grain has signed or otherwise signified acceptance of the receival docket.
- (c) Without limiting anything else in this Agreement, the Company may refuse to accept a request for a Receival Service for all or any portion of a Client's Grain (or place conditions on the receipt of Client's Grain) if, in the Company's reasonable opinion, receiving the Grain:
 - (i) 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
 - (ii) could be detrimental to other users of the Company Facility or the Grain industry in general.
- (d) The Company is not liable for any loss, cost, damage or expense (including Indirect or Consequential Loss) caused as a result of a rejection of a request for a Receival Service.

5.4 Nomination

- (a) The Client must ensure that, whenever Grain is delivered 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 and, once made, it binds the Client and the third party.
- (b) Thereafter, on production of the original of the weighnotes upon which is entered the name of the Client, the Company will enter the name of the Client in its records as owner of the Grain without any enquiry as to the title of the Client and will hold the Grain for the Client subject to the terms of this Agreement.

5.5 Weighing

- (a) The Client authorises the Company to use such weighing systems and equipment as the Company considers appropriate at a Company Facility to determine the receival tonnages.
- (b) The Company will use the receival weights of site to site movements on all stock records of the Client.
- (c) The Client is bound by the determinations made under clause 5.5(a), and the records of those determinations.

5.6 Contaminants

- (a) The Client must ensure that all of its suppliers are advised and ensure that Grain known or suspected to contain chemical contaminants or residues or both must not be delivered to any Company Facility.
- (b) If any load of Grain is found to be contaminated, the Client will not be permitted to deliver to the Company Facility until the Client has provided the Company with evidence in the form of independent expert verification that there is no further risk of contamination. If the contaminant is manageable and removed then the Client must produce a new sample for testing prior to any further deliveries.
- (c) Where Grain of any person other than the Client is affected by a contaminant or residue but is nevertheless delivered to a Company Facility (**Contaminated Delivery**), the Company will not be liable to the Client or to any other person for any loss (including Indirect or Consequential loss), cost, damage or expense suffered or incurred directly or indirectly as a result of that Contaminated Delivery.

5.7 No capacity

The Company may decline to receive Grain for storage on behalf of the Client in a Company Facility if:

- (a) the capacity in that Company Facility allocated to a particular Binned Grade fills; and
- (b) the Client is unable to make additional space available for that Binned Grade by either movement of the Grain to another Company Facility or by Outturn of the Grain.

5.8 Reservation of Cell

- (a) Subject to prior Company approval, the Client may request the Company to Reserve a Cell.

- (b) The Company has no obligation to accept a request to Reserve a Cell for the Client, but if it does, then the Company is entitled to charge the Client a Cell reservation fee (with price on application).

6. Storage Services

6.1 Application of clause

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

6.2 Common stock

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

6.3 Title

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

6.4 Client's interest

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

6.5 Possession

While the Company has possession of the Client's Grain:

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

6.6 Right to outturn at another site

- (a) The Company reserves the right to Outturn the Client's Grain at a Company Facility other than the Company Facility at which the Client acquired the Grain if:

- (i) sufficient evidence exists to indicate the quality of the Grain or Company Facility may be adversely affected if the Grain remains in any particular location;
 - (ii) the Company Facility fills (or is expected to fill during the Season); or
 - (iii) the Company determines (in the Company's reasonable opinion) that it is operationally efficient to move the Grain.
- (b) Any movements described in clause (a) will be at the expense of the Client. The Company will use freight rates published by the Company (as varied from time to time) prior to the commencement of the Season in order to charge the Client for the movement.
- (c) Without limiting the operation of any other clauses of this agreement, the Company may, at its discretion, overflow Grain from any Company Facility, or swap Grain to an alternative Company Facility provided that the Client is compensated for any freight differential.

6.7 Treated Grain

The Company will advise the Client, in writing, by the last day of January 2014 of all Cells storing the Client's Grain that have been treated with a contact insecticide and that cannot be subsequently fumigated in situ. The Company reserves the right to charge the Client for all costs incurred in undertaking either an intra or inter site movement of such Grain, after 30 June 2013 in order to place that Grain into a position for fumigation. If Grain so notified by the Company is included in an In-Store Transfer, the Client agrees to advise the Other Client that purchases the Grain that the Grain may be subject to the additional intra or inter site movement charges.

7. Outturn Services

7.1 Application of clause

This clause 7 applies in relation to the provision of Outturn Services.

7.2 Shrinkage, Dust & Outturn Entitlement

- (a) The Client acknowledges and agrees that:
- (i) Grain will always suffer Shrinkage and
 - (ii) in addition, it will suffer loss from Dust during Outturn to a shipping vessel.
- (b) Subject to clause 13, the Client will be entitled to an Outturn from a Company Facility (**Outturn Facility**) expressed by weight of the quantity and Grade of Grain initially received on behalf of the Client (**Received Quantity**) after a deduction:
- (i) for Shrinkage of a percentage, as set out in Schedule A of the Pricing, Procedures and Protocols Manual, of that Received Quantity; and
 - (ii) where the Grain is Outturned to a shipping vessel, for Dust, of a percentage, as set out in Schedule A of the Pricing, Procedures and Protocols Manual, of the Received Quantity after that Received Quantity has first been adjusted for Shrinkage,

such net quantity being the **Outturn Entitlement**.

7.3 Outturn

- (a) Despite anything else in this Agreement, the Company may refuse to accept an Outturn request or nomination (or place conditions on acceptance of an Outturn request or nomination) for all or any portion of the Outturn Entitlement if, in the Company's reasonable opinion, the Outturn:
 - (i) 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
 - (ii) could be detrimental to the Grain industry in general.
- (b) The Company is not liable for any loss, cost, damage or expense (including Indirect or Consequential Loss) caused as a result of a rejection of an Outturn request or nomination.

7.4 Outturn Standards

- (a) Subject to clauses 7.3(b), 7.4(c) and 7.4(d), Grain will be Outturned to the standards prescribed by the Outturn Standards.
- (b) The Company may agree to Outturn to a more stringent standard than the applicable Outturn Standard, but a charge may be applied for this service. The Company will not warrant that either Grain Outturned to a more stringent standard than the applicable Outturn Standard or Grain Outturned to the specifications of the Outturn Standards will meet any export standards imposed by AQIS or standards imposed by an importing country. At no time will the Company be required to meet any standards which are not measured by the Company at the time of receipt or are an inherent component of the Grain which deteriorates with time based storage.
- (c) The Company:
 - (i) does not make any warranty or representation that malting barley will germinate after Outturn; and
 - (ii) reserves the right, at its discretion but on not less than 20 Business Days' prior notice to the Client, to regrade to feed Grade, any malting Grade barley that remains in the Company's Facilities after the 31st July of the year following the year in which the Season of delivery ended.
- (d) Without limiting clause 18, the Client indemnifies the Company against all costs, losses, damages and expenses the Company or the Client incurs or sustains as a direct or indirect result of Grain being Outturned by the Company which is a more stringent standard than the applicable Outturn Standard, yet fails to meet any export standards imposed by AQIS or standards imposed by an importing country.
- (e) If, at the request of the Client, the Company undertakes any classification testing at the time of Outturn which is over and above that normally conducted by the Company to ensure Outturned Grain meets the minimum standard for the Binned Grade stored, the Company may charge the Client for that classification testing.

7.5 Weighing

- (a) The Client authorises the Company to use such weighing systems and equipment as the Company considers appropriate at a Company Facility to determine the Outturned tonnage of Grain.
- (b) The Client is bound by the determinations made under clause 7.5(a), and the records of those determinations.

7.6 AQIS sampling

Grain will be made available for inspection by AQIS inspectors at the Client's cost prior to Outturning Grain onto a nominated shipping vessel.

7.7 Delays

Factors outside the control of the Company (such as variation in Transportation Vehicle arrival times; failure of Transportation Vehicle to pass quarantine; stability and ship worthiness inspections; vessel congestion; variation in cargo requirements; lack of performance of freight providers) mean the Company cannot guarantee all of the Grain will be available for Outturn when the vessel berths or the truck or train arrives and is ready to commence loading. The Company will make reasonable efforts to ensure the Grain is available to load without delay and will advise the Client of any potential delays.

7.8 Cleanliness

- (a) The Client is responsible for ensuring that all of its nominated Transportation Vehicles comply with Viterra's Road Vehicle Hygiene Requirements
- (b) The Company has no obligation to inspect any Transportation Vehicle for cleanliness, but if it does inspect, then the Company, acting reasonably at all times, is entitled to reject the Transportation Vehicle which it considers as unfit for the transportation of Grain and to refuse to load the Transportation Vehicle.
- (c) The Company is not liable for any loss, cost, damage or expense (including Indirect or Consequential Loss) caused as a result of a rejection of a Transportation Vehicle.
- (d) The Client agrees to pay the Company for any costs incurred by the Company as a result of the rejection of a Transportation Vehicle by the Company, AQIS or a marine surveyor.

7.9 Port Loading Protocols

- (a) The Port Loading Protocols apply to all nominated (or requested) Outturns of Grain by ship, and contain other information in relation to shipping services and requirements in relation to shipping nominations.
- (b) The Client agrees to comply with the Port Loading Protocols.
- (c) The Port Loading Protocols are available at www.viterra.com.au and may be varied from time to time in accordance with the Access Undertaking.
- (d) The Client and the Company acknowledge that in the case of any inconsistency between the terms of this agreement and the Port Loading Protocols, the Port Loading Protocols shall apply to the extent of the inconsistency.

7.10 Non-shipment

If Grain is not Outturned from a Company Facility as detailed in an accepted nomination (or request) for Outturn due to no fault on the part of the Company, the Client must pay:

- (a) all costs incurred by the Company to reposition Grain within the Company Facility or to remove the Grain from the Company Facility; and
- (b) all Transportation Vehicle variation and cancellation fees, and all Transportation Vehicle re-positioning fees.

7.11 Company's right to move Grain

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

7.12 Transfers of title

- (a) The Client may elect, by prior written (or electronic) notice to the Company, to effect an In-Store Transfer of all or part of its Outturn Entitlement.
- (b) Subject to clause 7.12(c), the transferee under an In-Store Transfer of an Outturn Entitlement will be entitled to an Outturn without any further reduction for Shrinkage.
- (c) If an In-Store Transfer involves Grain being pre-weighed as part of the transfer terms and conditions, an additional Shrinkage amount must be agreed between the parties involved prior to the Company processing the In-Store Transfer. That additional Shrinkage amount will be transferred to the Company's ownership.
- (d) For removal of doubt, the transferor under an In-Store Transfer will remain responsible for payment of all fees and charges in respect of Services provided up until the effective date of transfer.
- (e) The Company may require In-Store Transfers to take place at an individual weighnote level, thus allowing calculations of the value of the Grain to be ascertained between the transferor and transferee.
- (f) The Company may refuse to process an In-Store Transfer if the In-Store Transfer results in the transferor's Outturn Entitlement going into a negative position at any particular Company Facility.
- (g) For the purposes of accepting or rejecting an In-Store Transfer, the Company is entitled to rely on orders/instructions:
 - (i) issued by e-mail transmitted from the Client's domain address and purporting to have been sent by an officer of the Client (or such named officers as the Client may from time to time advise the Company in writing); or
 - (ii) executed via the ezigrain™ web site as accessed through entry of the Client's security setting.
- (h) If the Company has acted in accordance with the protocols set out above in this clause 7.12, the Client releases and holds the Company harmless against any claim that a communication was not issued by the Client either at all or without authority and indemnifies the Company against any losses, costs, damages and costs arising therefrom.

7.13 Security interests

- (a) If the Company receives notice from a person claiming to hold a security interest over the Client's Grain, the Company is not required to Outturn that Grain until:

- (i) the person claiming to hold the security interest has consented to that Outturn; or
 - (ii) the Company receives a court order requiring it to Outturn that affected Grain.
- (b) The Company 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 the Company against all costs, losses, damages and expenses (including without limitation legal costs) the Company incurs or sustains as a result of a claim made against the Company by any person holding a security interest over Grain held by the Company on behalf of the Client relating to that Grain.

7.14 Non-Grain commodities

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

7.15 Reconciliation and adjustment

- (a) This clause 7.15 applies if, after the Outturn of all Grain of a Season from all Company Facilities, there is a difference between the Client's Outturn Entitlement and the tonnage actually Outturned to the Client.
- (b) For all Grain, unless otherwise agreed, a Fair Market Value will be calculated.
- (c) If the actual tonnage Outturned to the Client exceeds the Client's Outturn Entitlement, the Client must pay the Company for the excess at Fair Market Value.
- (d) If the actual tonnage Outturned to the Client is less than the Client's Outturn Entitlement, the Company may, at its discretion, either replace the physical Grain shortfall in the Client's Outturn Entitlement, or pay the Client for the deficiency in the Outturn Entitlement at Fair Market Value.

8. Charges and payment

8.1 Charges

- (a) Subject to clause 8.1(b), the charges of the Company in connection with the provision of Services will be as set out in, or as determined in the manner described in the Pricing, Procedures and Protocols Manual (particularly but not exclusively, in Schedule A of that Manual).
- (b) The Company may vary the charges for the provision of the Services at any time on 30 days written notice to the Client.

8.2 Invoicing

The Company will invoice the Client for Services as follows:

- (a) for Outturn Services for the loading of a shipping vessel, in advance of providing those Services; and
- (b) for all other Services, in arrears.

8.3 Payment

The Client must pay the Company the full amount of an invoice by the earlier of:

- (a) the date specified in the invoice; or
- (b) the date specified in the Port Loading Protocols.

8.4 No obligation

Whether the amount of an invoice for Outturn Services for the loading of a shipping vessel has fallen due for payment under clause 8.3 or not, the Client is not entitled to be provided with those Services until that invoice is paid in full.

8.5 Set off

- (a) The Client is not entitled to withhold payment of any disputed amount the subject of an invoice issued by the Company, or to set off against the amount of an invoice any other claim that it has against the Company.
- (b) The Company may in its discretion deduct from, set-off against and/or otherwise reduce or deem satisfied any obligation the Company may have to the Client to the extent of any obligation that the Client may have to the Company (whether present or future, certain or contingent, ascertained or sounding only in damages) on any account whatsoever.

8.6 Transfer of liability

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

8.7 Auction Premium Rebate

The Company will pay the Auction Premium Rebate (if any) to the Client in accordance with the Port Loading Protocols.

8.8 GST

- (a) In this clause 8.8:
 - (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 the Company 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) The Company will provide the Client with a tax invoice that complies with the GST Legislation.
- (e) If an adjustment event occurs in relation to a taxable supply referred to in this clause 8.8, and the Additional Amount differs from the amount of GST for which the Company is liable to remit:
 - (i) the Additional Amount must be adjusted to reflect the adjustment event;
 - (ii) the Company or the Client (as the case may be) must make any payments necessary to reflect the adjustment; and
 - (iii) the Company will issue an adjustment note that complies with the GST Legislation.
- (f) Where the Client is required to indemnify the Company, or is required to pay or reimburse the costs of the Company, the Client agrees to pay the relevant amount less any input tax credits to which the Company (or to which the representative member of the GST group of which the Company is a member) is entitled.
- (g) If an amount payable under this agreement is to be calculated by reference to:
 - (i) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
 - (ii) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

8.9 Default in payment

If the Client fails to make payment of an invoice in accordance with this clause 8, then:

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

8.10 Interest on late payments

If default is made by the Client in the due payment of any monies payable under this Agreement, then although no demand for payment may have been made, the amount in respect of which such default is made or so much thereof as may from time to time remain unpaid, will bear simple interest at the rate of interest being 3% higher than the Commonwealth Bank's Corporate Overdraft Reference Rate from time to time, calculated on a daily basis from the due date to the date of actual payment in full.

8.11 Security

- (a) The Client will, if required by the Company:
 - (i) arrange for its directors and/or shareholders to personally guarantee the Client's performance under this Agreement by signing a written guarantee in a form and on conditions specified by the Company (**Guarantee**); or
 - (ii) obtain or deposit with the Company an unconditional bank guarantee or bond in a form and for an amount required, and given by a bank or insurer

approved, by the Company by way of guarantee for the performance by the Client of its obligations under this Agreement (**Security**).

- (b) Any Guarantee or Security required by the Company must be established:
 - (i) prior to the Company receiving Grain from the Client; and
 - (ii) within 7 days after it has been requested by the Company.
- (c) If the Client defaults, the Company may call up, draw on, use, appropriate and apply the whole or part of the Security as may be necessary in the opinion of the Company to compensate the Company for loss or damage suffered by the Company by reason of the Client's default, and:
 - (i) any use or appropriation of the Security by the Company does not operate to waive the default and does not affect the Company's other rights; and
 - (ii) if the Security or any part of it is used or appropriated by the Company, the Client must within 7 days from receipt of a request by the Company pay to or deposit with the Company new or additional security in a form and for an amount as specified by the Company.
- (d) On termination of this Agreement and if the Client has complied with this Agreement, the Security less any sums drawn on, used or appropriated by the Company and not reinstated by way of further security, must be refunded, returned or cancelled.

9. Title to Grain

9.1 Bailment

Unless specifically agreed otherwise, the Company acts as a bailee of the Client's Grain and does not have any legal title or ownership in that Grain.

9.2 Company's right

Subject to clause 9.3, where the Client's Grain is Common Stocked, the Company 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 the Company in exercise of its lien over the Grain, allocation of Accidental Loss or Damage between the Client and Other Clients, and the payment of compensation for Accidental Loss or Damage.

9.3 Insolvency

- (a) Where the Company suffers an Insolvency Event the Client will be entitled, upon reasonable notice and subject to the provisions of this Agreement relating to Common Stock, to re-take possession of the Client's Grain:
 - (i) if and to the extent that the Client has Grain in Export Select, from the Export Select Grain of that kind at the Company Facility at the port in the relevant Port Zone (**Port Facility**), or if there is insufficient Grain to satisfy the Client and all Other Clients of Export Select from the Export Select Grain at the Port Facility, then from the Company Facility closest to the Port Facility and if there is insufficient Export Select Grain at that Company Facility then from the next closest Company Facility and so on until the Client's entitlement is satisfied; and

- (ii) in all other cases, from the site at which the Client's Outturn Entitlement is located.
- (b) Nothing in this clause 9.3 will be taken as limiting the Client's rights to the Outturn of the Client's Grain in accordance with this Agreement.

10. Lien

10.1 Company's lien and security interest

The Client:

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

10.2 Common stock

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

10.3 Retention of possession

Subject to any requirement of law, the Company will be entitled, for the purpose of enforcing such lien or security interest, to retain possession of the whole or any part of the Client's Grain until all amounts due and payable are paid, or to sell all or any of the Client's Grain in such manner as it thinks fit (after giving the Client at least 7 days prior notice) whereupon the proceeds of such sale will be applied in or towards the satisfaction of the moneys due to the Company or any other Viterra Group Company and the costs of effecting the sale, and the balance (if any) will be paid by the Company to the Client. Where the Company sells all or any of the Client's Grain for the purpose of enforcing its lien or security interest, the Client irrevocably appoints the Company as its agent and attorney for such purpose.

10.4 Enforcement against others

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

11. Compliance with Pricing, Procedures and Protocols Manual

11.1 Obligation 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 the Company from time to time in the Pricing, Procedures and Protocols Manual, including those in relation to:
 - (i) the terms and conditions of the Export Select and Purchase Option services offered by the Company;
 - (ii) health, safety and environment;

- (iii) site rules;
 - (iv) labour ordering conditions for shipping;
 - (v) operating conditions for the Company's rail facilities; and
 - (vi) access and operating conditions for road movements at Company facilities, and must comply with all reasonable directions of the Company.
- (b) Whilst on a Company site, the Client (and its agents) must comply with all directions given by the Company's representative, and not create or bring on site any hazard or contamination.

11.2 Publication

For the purpose of clause 11.1, the Company has published the Pricing, Procedures and Protocols Manual for the current Season on its website. Subject to the express terms set out in Schedule D of the Pricing, Procedures and Protocols Manual, the Company may vary all or any part of the Pricing, Procedures and Protocols Manual at any time on 30 days written notice to the Client.

12. Information

12.1 Company's information

- (a) The Company 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 officers of the Client at any reasonable time upon request in writing. Nothing in this clause 12.1(a) will be taken as requiring the Company 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 the Company in writing within 14 days of receipt of that information that there exists a bona fide dispute concerning the correctness of that information; or
 - (ii) it is demonstrated at any time that there is a clear and manifest error in that information.

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

12.2 Client's information

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

13. Company's Liability

13.1 Acknowledgement

The Client acknowledges that the only warranties provided by the Company 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 and conditions implied by custom, general law or statute are excluded.

13.2 Non-excludable warranties

The Company's liability for breach of implied warranties or conditions not permitted at law to be excluded, will be limited to the cost of re-supplying the relevant service again.

13.3 Limitations on Company's liability

The Company's obligation to Outturn the Client's Grain is modified by the following provisions of this clause:

- (a) the Company is only liable for damage, destruction or contamination by the Company of the Client's Grain if caused by the gross negligence or wilful default of the Company or its employees, contractors or agents;
- (b) the liability of the Company to the Client for any such damage, destruction or contamination of Grain, if caused by gross negligence or wilful default or otherwise any other liability not excluded or limited under the terms of this Agreement will not exceed the sum of \$250,000 (two hundred and fifty thousand dollars) per event or per series of related events;
- (c) the Company's liability to compensate the Client for Accidental Loss or Damage to the Client's Grain (other than Export Select Grain) is limited to the Client's proportion (based on ownership of the Common Stock) of the proceeds of insurance recovered by the Company in respect of such event;
- (d) notwithstanding any other provision of this Agreement, but subject to any extraneous agreement in writing between the Parties to the contrary, the Company 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 the Company's storage system from another storage system;
 - (iii) defects that:
 - (A) are required to be examined by the responsible authority under the provisions of the *Export Control Act 1982 (Cth)*; or
 - (B) the Client has taken responsibility for testing prior to shipment, whether by road, rail or sea,
and are not discovered until after the departure of the Transportation Vehicle;
 - (iv) failure by the Company to detect toxic residues, other chemical residues, genetically modified Grain or any other contamination, the tests for detection of which are not in general use by the Company or have been advised by the Company to be unreliable relative to the required tolerances;

- (v) downgrading claims in respect of Grain blended by the Company at the request of the Client, provided the quality meets the Outturn Standards of the lowest value grade represented in the blend;
 - (vi) 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 the destination and there is no conclusive evidence that such records are incorrect or, by exception, unreliable;
- (e) the Company is entitled to the benefit of any limitation of its liability that is provided for it (whether by exclusion or cap) under a provision in the Pricing, Procedures and Protocols Manual.

13.4 Multiple caps on liability

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

- (a) under this Agreement; and
- (b) under one or more other agreements made between the Company and the Client which are applicable to the event or series of events,

then the Company's total liability under all of the agreements described in paragraphs (a) and (b) above (**Capped Agreements**) shall not be aggregated but shall be capped at the greatest amount at which liability is capped under any one of the Capped Agreements.

13.5 Mitigation

The Company may, in its discretion, mitigate or satisfy any liability it may have to the Client in respect of downgraded Grain (ie Grain that does not meet the Outturn standard required under this Agreement) by whatever means the Company considers appropriate, including:

- (a) Blending (at the Company's expense) a sufficient quantity of other Grain so as to upgrade the Client's Grain to meet the Outturn standard; and/or
- (b) substituting (at the Company's expense) other Grain of the same quality and quantity; and/or
- (c) retaining the downgraded Grain and providing for the claim as part of the Outturn adjustment under clause 7.15.

14. Insurance and Risk

14.1 Maintenance of insurance

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

14.2 Inspection

A summary of the policy and certification of currency will be available for inspection by the Client upon request.

14.3 Risk

- (a) For Grain which is not Export Select Grain, the risk of Accidental Loss or Damage to the Client's Grain to the extent that such risks are covered by the Company's

insurance will be borne by the Company and all other risks of Accidental Loss or Damage to the Client's Grain will be borne by the Client.

- (b) For the Client's Export Select Grain, the risk of Accidental Loss or Damage will be borne by the Company, irrespective of whether or not such risks are covered by the Company's insurance.

14.4 Transfer of Risk

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

15. Force Majeure

15.1 Definition

For the purpose of this Agreement, a '**Force Majeure Event**' affecting a Party means anything outside that Party's reasonable control including the following events or circumstances (provided they are beyond the Party's reasonable control):

- (a) accident, fire, adverse weather conditions, flood, tidal conditions, earthquake, explosion, or like natural disasters, blockages of ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic, or declarations of a state of emergency;
- (b) strikes, stopworks, lockouts, boycotts or any other form of industrial dispute or labour shortage;
- (c) breakdown, accidental or malicious damage or destruction of any of the Company's Port Terminal Facilities or other Company Facilities;
- (d) failure, disruption or delay in transportation;
- (e) 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; and
- (f) acts or omissions of any third party (including without limitation Governments, Government agencies, subcontractors or customers).

15.2 Suspension of Obligations

If a Party is wholly or partially precluded from complying in the normal manner required by this Agreement with its obligations under this Agreement by a Force Majeure Event (in this clause 14 called the **Affected Party**), then 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. (As per clause 15.6, the payment of money is not an obligation that can be suspended by a Force Majeure Event under this Agreement).

15.3 Notice

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

- (a) the nature of the Force Majeure Event;
- (b) the cause of the Force Majeure Event;

- (c) which obligations the Affected Party believes it is wholly or partially precluded from complying with as a result of the Force Majeure Event (in this clause 15 called the **Affected Obligations**);
- (d) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations;
- (e) the expected duration of the delay arising as a result of the Force Majeure Event;
- (f) the steps that are being taken to minimise the impact of the Force Majeure Event; and
- (g) 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.

15.4 Minimisation of Impact

Upon receiving a notice under clause 15.3 the Parties will meet to discuss and agree:

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

15.5 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; and
- (b) subject to reaching agreement concerning any modifications or additions required to give effect to any proposal to minimise the effect of the Force Majeure Event:
 - (i) comply with all reasonable requests made by the other Party relating to the prevention or minimisation of the impact of the Force Majeure Event; and
 - (ii) use all reasonable endeavours to resolve, and minimise the impact of, the Force Majeure Event.

15.6 Payments

An obligation to pay money is never excused by a Force Majeure Event.

15.7 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.

16. Dispute Resolution

16.1 Disputes

- (a) Subject to clause 16.1(b), all disputes arising out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 16.
- (b) This clause 16 does not apply to any dispute under the Port Loading Protocols. Any dispute arising under the Port Loading Protocols is to be dealt with in accordance with the provisions of the Port Loading Protocols.

16.2 Endeavour to resolve

The Parties will endeavour to resolve between themselves any dispute concerning the terms of this Agreement (**Dispute**), including, where necessary, by escalating the dispute for negotiation between both Parties' chief executives. A Party must not start court proceedings in respect of the Dispute unless it has complied with this clause.

16.3 Arbitration

- (a) If the Parties cannot resolve a Dispute themselves within 30 days of one Party giving notice of the Dispute to the other Party, they will immediately:
 - (i) appoint an arbitrator to determine the dispute within the following 30 day period; or
 - (ii) if the Parties are unable to agree upon an arbitrator, either Party may refer the Dispute for arbitration by an arbitrator nominated by the then President of the Law Society of South Australia.
- (b) Any arbitration will be conducted in Adelaide in accordance with the *Commercial Arbitration Act 2011 (SA)* except that:
 - (i) the arbitrator must observe the rules of natural justice but is not required to observe the rules of evidence;
 - (ii) a Party may have legal representation; and
 - (iii) the arbitrator must apportion costs of the arbitration and each Party's costs of and incidental to the arbitration as the arbitrator sees fit.

16.4 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 in Dispute will not be taken to be an admission by that Party that it had breached, or had been in breach of, this Agreement.

17. Termination

17.1 Right to terminate

This Agreement may be terminated by either Party giving to the other at least 3 months prior written notice (**Notice**) of termination.

17.2 Effect

- (a) Where a Notice is given by the Client, the Notice will not take effect unless and until the Client has:
 - (i) Outturned all Grain stored by the Company on behalf of the Client under this Agreement; and
 - (ii) paid all moneys payable by the Client to the Company under this Agreement.
- (b) Where a Notice is given by the Company and, as at that date the Notice is to take effect, the Client has not Outturned all Grain stored by the Company on behalf of the Client under this Agreement, then the Company will be entitled to exercise the rights conferred on it by clause 10 of this Agreement.

17.3 By Company

- (a) The Company may terminate this Agreement immediately upon giving written notice in that regard to the Client if the Client causes or suffers an Insolvency Event to occur.
- (b) If the Client commits a serious or persistent breach or breaches of any terms of this Agreement, and the Company presents the Client with a written notice specifying the breach or breaches and requires the Client to remedy it within a period of not less than 30 days, and if the Client does not remedy the breach or breaches within the time period stipulated in this clause, then the Company may terminate this Agreement at any time by notice in writing to the Client.

17.4 No prejudice

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

18. Indemnity

18.1 By Client

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

- (a) any breach, non-observance or non-performance by the Client of any of its obligations under this Agreement;
- (b) any claim by a third party relating to the Grain;
- (c) any claim by a third party relating to the operation of the Purchase Options or the involvement of the Company in relation to the Purchase Options, including claims arising out of the failure of the Client to provide information or the inaccuracy of information supplied by the Client in relation to the Purchase Options; or
- (d) any claim in relation to the admixture of Grain with any other commodity received, stored or Outturned by the Company at a Company Facility where the Client has acknowledged and accepted that the Company will load non-Grain commodities at its facilities.

18.2 Application

Clause 18.1 will not apply where and to the extent that explicit written service guarantees have been given by the Company to the Client, or the losses or damages arose as a

direct result of any negligence on the part of the Company or any wilful or deliberate failure by the Company to comply with its obligations under this Agreement.

19. Notices

19.1 How to Give a Notice

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

- (a) in writing, signed by or on behalf of the Party giving it;
- (b) addressed to the Party to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that Party's address specified in clause 19.3;
 - (ii) sent by fax to that Party's fax number specified in clause 19.3 and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) by e-mail to that Party's email address specified in clause 19.3.

19.2 When a Notice is Given

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

- (a) if it is sent by mail, on the third Business Day after posting;
- (b) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day, on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day, on the next Business Day; and
- (c) if it is sent by e-mail, on the day of receipt by the recipient and, if the recipient is absent from his or her usual place of work for more than one day after the date of transmission, the day that the recipient returns to work.

19.3 Address for Notices

A Party's address and fax number are those set out below, or as amended at any time by notice given in accordance with this clause 19:

Company

Address: Grain House 124 –130 South Terrace, Adelaide, SA 5000

Postal: GPO Box 1169, Adelaide, SA 5001

Email Address: CustomerServicesAustralia@viterra.com.au

Fax Number: (08) 8410 3105

Attention: Urgent: General Manager – Logistics & Commercial Relations

Client

Address: _____
Postal: _____
Email Address: _____
Fax Number: _____
Attention: _____

20. No endorsement

20.1 Prohibition

The Client must not, without the prior written consent of the Company:

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

20.2 Acknowledgements

The Client acknowledges that:

- (a) the Company will treat the obligation of the Client under clause 20.1 as a serious undertaking; and
- (b) it is aware that any breach of this serious undertaking may result in the Company suffering damage.

21. No assignment

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

22. Reliance

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

- (a) via the Company'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,

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

23. Waiver

23.1 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.

23.2 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.

24. No Partnership

24.1 Relationship

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

24.2 No liability

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

25. Governing Law and Jurisdiction

25.1 Governing law

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

25.2 Jurisdiction

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

26. Sub-Contracting

The Company 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 the Company's behalf,

without notice to the Client.

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. PPS law

- (a) On delivery of Grain to the Company, the Client acknowledges and agrees that the Company has control of the Client's Grain for the purposes of the PPSA and for the exercise of the Company's rights under clause 10.
- (b) The Client agrees, at its cost in all things, to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company asks and considers required for the purposes of:

- (i) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the Company to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the Company has the priority it requires; or
 - (iii) enabling the Company to exercise rights in connection with the security interest.
- (c) The Client agrees to pay or reimburse the reasonable costs of the Company in connection with anything done by the Company 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) The Company 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) The Company 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 the Company'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. Entire agreement

29.1 Entire agreement

This Agreement constitutes the entire Agreement between the Parties.

29.2 No representations, etc

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.

29.3 Variations

This Agreement may only be amended or varied by agreement in writing signed by both Parties expressly amending this Agreement and unless the context otherwise requires, a reference to this Agreement will include a reference to this Agreement as amended or varied from time to time.

29.4 Guidelines, etc

Notwithstanding that the Company 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.

Signing page

EXECUTED as an agreement.

Signed for and on behalf of
Viterra Operations Ltd by its authorised
representative in the presence of:

Witness ←

Authorised Representative ←

Name of witness (print)

Name of authorised representative (print)

Executed by Client:

ACN:

Signature of witness ←

Authorised Representative ←

Name of witness (print)

Name of Authorised Representative

Once duly executed please return to:

Grain: Logistics & Commercial Relations
Address: 124-130 South Terrace, Adelaide, SA, 5000
Email: CustomerServicesAustralia@viterra.com.au
Facsimile: +61 8 8385 8226