

2024/25 season

Receival service and warehousing terms and conditions

1. APPLICATION OF TERMS AND CONDITIONS

- 1.1 These terms and conditions (as amended from time to time) (**Terms**) apply to the provision by Viterra Operations Pty Ltd (ABN 88 007 556 256) (**Viterra**) to a Customer of Services during the Service Year.
- 1.2 Unless otherwise expressly stated, if any inconsistency arises between these Terms and any other of Viterra's terms and conditions, these Terms prevail to the extent of that inconsistency.
- 1.3 The Customer is deemed to have unconditionally accepted and agreed to be bound by these Terms as soon as the Customer, or its Deliverer, obtains Services from Viterra in the Service Year in respect of a Load (noting that these Terms are published on the Viterra Website and can be viewed via the Viterra App).
- 1.4 These Terms do not apply to traders and marketers (including Grain Buyers) who have signed or are otherwise deemed to be bound by Viterra's Storage & Handling, Port Terminal Services Agreement and/or any other agreement allowing access to Viterra's Sites for the Service Year.

2. SERVICES AND CHARGES

- 2.1 Viterra agrees to perform the Services, and the Customer agrees to accept the Services and pay the Charges, on these Terms.
- 2.2 Viterra does not represent, warrant or guarantee (expressly or impliedly) that:
 - A. it will provide any minimum or maximum quantity or quality of Services to the Customer during the Service Year; and
 - B. all or any portion of the Services will be offered at each Site, but Viterra agrees to take all reasonable steps to keep the Customer informed of all Services offered at a Site during the Service Year.

3. LOAD QUALITY OBLIGATIONS AND WARRANTIES

- 3.1 The Customer must provide or submit to Viterra a Delivery Declaration signed by the Customer or its Deliverer, or a Digital Delivery Declaration Electronically Executed by the Customer or its Deliverer, which is completed and provides all information required by that form.
- 3.2 By agreement to these Terms and delivery of a Load, the Customer additionally warrants that none of the Grain in that Load:
 - A. has been treated with any:
 - (i) insecticide, pesticide or other chemical or seed treatment contrary to any label requirements or instructions or otherwise that results or could result in the Customer's Grain exceeding any applicable Maximum Residue Limit (unless declared otherwise in writing to, and approved in writing by, Viterra before the Load enters the Site); or
 - (ii) pickling compound;
 - B. has any other inherent vice or feature that would affect the ability of Viterra to outturn the Grain at the Grade in respect of which the Grain is received by Viterra;

- C. has been manipulated or loaded in any way to prevent the making of an accurate assessment by Viterra of the Grade, quality of the Grain and/or weight of a Load using Viterra's standard operating procedures;
- D. contains any foreign materials (including any physical, chemical contaminants, insect or vermin); and
- E. will be the subject of any security interest (as that term is used in the PPSA).

- 3.3 The Customer acknowledges that Viterra is entitled to rely on the warranties made by the Delivery Declaration or Digital Delivery Declaration, and by agreement to these Terms, and that Viterra will be entitled to deal with the Customer's Load in accordance with these Terms, including pursuant to section 27.4, where that Load is in contravention of any of these warranties.

4. GENERAL WARRANTIES

- 4.1 The Customer warrants that:
 - A. the Customer owns or the Deliverer has the express authority to deal with any and all Grain tendered as part of a Load at a Site by or on behalf of the Customer;
 - B. all Grain tendered as part of a Load at a Site by or on behalf of the Customer:
 - (i) was grown between May and September immediately prior to the Season in which the Services are acquired (**Prior Season**); or
 - (ii) if the Grain was grown prior to the period of the Prior Season, the requirements of section 6.2A, B and C have been met;
 - C. any declarations made by or on behalf of the Customer in respect of a Load or information provided by or on behalf of the Customer in respect of the Services are true and correct in all material respects and not misleading or deceptive or likely to mislead or deceive;
 - D. the Customer is not acquiring the Services for personal, domestic or household use;
 - E. it will (or will procure its Deliverer to) review all information provided by Viterra at a Site in respect of a Load and confirm its accuracy prior to tipping the Load and ensure that such information is consistent with the information provided on the Customer's Delivery Card, the Delivery Declaration (or Digital Delivery Declaration, as applicable) and Customer details on Ezigrain and/or the Viterra App; and
 - F. it has ensured that its Deliverer is fully aware of these Terms and any other information required by the Customer (or the Deliverer on the Customer's behalf) in order to receive the Services (including any Site restrictions, or the Viterra Policies).
- 4.2 Where assurances and warranties given by the Customer under these Terms are not otherwise specifically made on a particular date, they are deemed to be made by the Customer on the date of delivery of a Load and each subsequent request by the Customer for a particular Service.

- 4.3 Without limiting the Customer's liability under these Terms (including for any breach of warranty in section 3), the Customer must notify Viterra as soon as possible upon becoming aware of any fact or circumstance, or likely fact or circumstance, that does, may, or could potentially be expected to, give rise to a breach of the warranties made under these Terms.

5. VITERRA'S RIGHTS

- 5.1 Viterra may refuse to provide, or impose additional conditions on the provision of, Services in respect of any Load of any Customer on any reasonable grounds, including reasonable grounds relating to:
- A. contamination, quality, hygiene, misleading information or safety (whether in respect of the relevant Load or any previous Load delivered by the Customer or a Deliverer and regardless of whether the Load is or was delivered by the Deliverer as agent for that particular Customer or otherwise);
 - B. Viterra's Road Vehicle Hygiene Requirements;
 - C. the capacity allocated by Viterra to a particular type of Grain at the Site being full;
 - D. the efficiency or capacity of the Site or any of Viterra's plant and equipment or systems and procedures or otherwise general restrictions placed on a Site by Viterra from time to time (including general operating hours);
 - E. the failure of the Customer or its Deliverer to produce a Delivery Card, and Delivery Declaration signed by the Customer or Deliverer (or a Digital Delivery Declaration Electronically Executed by the Customer or Deliverer);
 - F. the failure of the Customer to comply with these Terms or any Viterra Policy at any time and in any material respect;
 - G. material failure of the Customer to pay any Charges relating to or in connection with the Services;
 - H. a Force Majeure Event;
 - I. the credit risk of the Customer; or
 - J. any material inaccuracy in warranties made by the Customer (or on behalf of the Customer) by agreement to these Terms or by Delivery Declaration or Digital Delivery Declaration.
- 5.2 Viterra will take reasonable steps to inform the Customer of the reasons for the refusal to provide Services or imposing of additional conditions on the provision of Services.

6. POSTHARVEST GROWER RECEIVAL

- 6.1 The Customer acknowledges that any request for Receival Services in respect of current Season Grain from 1 February in that Service Year (or such other date notified by Viterra from time to time for all or any particular Sites) will be received as a postharvest delivery.
- 6.2 Without limiting the requirements of postharvest delivery, the Customer acknowledges that:
- A. A Postharvest Declaration Form is required to be completed and signed by the Customer and/or Deliverer for each parcel of the Customer's Grain intending to be delivered;
 - B. Each Load is required to be presented with a Delivery Declaration signed by the Customer and/or Deliverer, or be subject of a Digital Delivery Declaration Electronically Executed by the Customer and/or Deliverer;
 - C. At the reasonable request of Viterra, a composite sample may be required for the purpose of chemical residue testing prior to delivery; and
 - D. Viterra may (acting reasonably) amend the postharvest delivery date in the Service Year for all or any sites at any by publishing a new date through any one or more of the Viterra Communication Tools.

7. CONTAMINATION

- 7.1 The Customer must not deliver or attempt to deliver a Load that contains any Contaminant, including any Load (whether delivered by the Customer, its Deliverer or any other person including previous owner) that has previously been rejected by Viterra at a Site.
- 7.2 Without limiting section 31, if any Contaminant is discovered by Viterra in a Customer's Load (whether on receipt, during sampling or unloading or in storage):
- A. the Customer must compensate Viterra for any Loss suffered or incurred by Viterra (or any third party users of the applicable Site) arising from or in connection with the contaminated Load. The Customer acknowledges that this could include Loss relating to: stock loss (at Fair Market Value at the time of breach of section 7.1), receipt costs, cleaning or vacuuming costs, transportation costs, segregation costs, storage costs, outturn costs, tramping, labour dumping, administration expenses and any other associated costs and expenses;
 - B. the Customer must as soon as possible provide to Viterra details of the Customer's insurer and the insurance policy or policies the Customer has in place to cover any Loss;
 - C. Viterra may deal with the Customer's Load in accordance with these Terms, including pursuant to section 27.4;
 - D. The Customer must comply with any procedures Viterra (acting reasonably) deems appropriate to recover its Loss, mitigate any imminent risk, and resolve issues caused by the Customer's delivery in breach of section 7.1;
- 7.3 The Customer acknowledges that in the event the Customer has insurance to cover Loss, Viterra may engage with the Customer's insurer and put forward to the Customer's insurer any Loss Viterra has suffered.

8. POSSESSION, RISK AND TITLE

- 8.1 Subject to sections 8.2 and 8.3, Viterra will be deemed to take legal possession as bailee of a Load from the Customer as bailor subject to these Terms at that point in time at which the Load is tipped into Viterra's receival grid.
- 8.2 Subject to section 8.3, a Load will be at the risk of the Customer in all respects until the Customer or its Deliverer has been presented with, and has signed or Electronically Executed (as applicable), a completed Delivery Declaration or Digital Delivery Declaration and a completed Weighnote in respect of that Load directing whether the Load is sold to a nominated Grain Buyer or is being warehoused under these Terms.
- 8.3 If the Customer warehouses the whole or part of a Load:
- A. the risk of loss of such whole or part of a Load occasioned by theft, fire, flood and contamination not caused or contributed by an act or omission of the Customer, will be assumed by Viterra; and
 - B. the risk of loss of such whole or part of a Load or contamination, caused by or attributable to the Customer or its Deliverer, and all other risks, will be assumed by the Customer, and should be insured against by the Customer.
- 8.4 Viterra does not acquire title to the whole or any part of a Load by virtue of receipt of Load subject to these Terms.
- 8.5 The Customer represents that prior to tipping a Load it has reviewed and considered (or has procured its Deliverer to review and consider) all information on a Weighnote (including Delivery Card, classification, variety, quality, weight and Recorded Price) and agrees that, in the absence of any proven error, the Weighnote is accurate and will be deemed to have been accepted by the Customer (including on receipt and/or acceptance by a Customer's Deliverer).
- 8.6 The Customer agrees that the tonnage held and described in Ezigrain is to the value specified to three decimal places (.000), but that the tonnage will only be calculated to two decimal places (rounded up or down) when transferred. The Customer further agrees that, when outturned, the tonnage will only be calculated to two decimal places and rounded down on the basis that outturn cannot exceed ownership.

9. SEGREGATIONS

The Customer acknowledges and agrees that:

- 9.1 Viterra is entitled to change the Segregations of Grain open at each Site at any time.
- 9.2 Viterra has no obligation to make any or all Segregations available at any one or more Sites.
- 9.3 It is the Customer's responsibility to be aware of Segregations available at a Site. Viterra will take reasonable steps to notify any change to Segregations open at each Site via Viterra Communication Tools during the Season.
- 9.4 The Customer has independently accepted the classification into the available Segregation at a Site at any given time.

10. COMMON STOCKING

- 10.1 Viterra may Common Stock Grain of a Customer.
- 10.2 Title to Common Stocked Grain is held jointly by the relevant Customer in the proportions that each Customer's quantity of the Grain bears to the total Common Stocked Grain.
- 10.3 While Viterra has possession of the Customer's Grain:
 - A. the relationship between Viterra and the Customer in respect of the possession of the Customer's Grain is one of bailment subject to these Terms; and
 - B. that relationship will continue to exist despite the Customer's Grain losing its identity by being Common Stocked, or the inability of Viterra to redeliver to the Customer the particular Customer's Grain the subject of the bailment; and
 - C. Subject to the Customer's Outturn Right, Viterra may at its reasonable discretion manage, use, move, transfer, borrow, deal and/or control the Customer's Grain including deal in any such manner that Viterra reasonably considers necessary for the efficient operation of the relevant Site and the balancing of the interests of all users of that Site and the Grain industry generally.

11. SITE POLICIES & PROCEDURES

- 11.1 The Customer must comply (and must ensure that its Deliverer complies) with all safety, health and environmental, access and security policies and procedures, including Viterra safety inductions and procedures, the requirement to obtain a Safety Card or Site Pass, and the Viterra Road Vehicle Hygiene Requirements and otherwise any operating conditions or restrictions applicable to a Site as published at the Site or as otherwise notified by Viterra from time to time including through publication through Viterra Communication Tools (**Viterra Policies**).
- 11.2 Without limiting section 11.1, the Customer must (and must ensure that its Deliverer does):
 - A. comply with any reasonable directions of Viterra or its personnel; and
 - B. avoid or minimise unreasonable interference with the passage of people and vehicles and the operations or activities carried out at the Site.
- 11.3 The Customer acknowledges that:
 - A. it, or its Deliverer, may be prevented from entering all or any specific Site if Viterra has reasonable grounds to believe that a Customer (or its Deliverer) has breached, or is likely to breach any Viterra Policy or any Laws in any material respect and Viterra will take reasonable steps to inform the Customer or the Deliverer of the reason(s) for doing so;
 - B. it, or its Deliverer, agrees to comply with all reasonable directions of Viterra in respect of the breach or likely breach; and
 - C. Viterra may provide the details of the Customer, the Deliverer, the breach, or likely breach, to any Government authority responsible for the enforcement of any relevant Laws.

12. RECORDS

- 12.1 In the absence of any proven error, Viterra's records (including any Weighnote) concerning the quantity or quality of Grain that is, or has been, the subject of Services and the receipt of that Grain will be deemed to be accurate, final and conclusive.
- 12.2 Notwithstanding that Viterra may provide hard copies of records (including Weighnotes) to the Customer, the Customer acknowledges that Viterra has no responsibility for ensuring that such records continue to exist in a legible state after providing them to the Customer.

13. OUTTURN RIGHT AND SHRINKAGE

- 13.1 Subject to section 13.3 and 13.4 and the Customer making all payments required under section 27, the Customer is entitled to outturn Grain up to and including the amount of Grain delivered for and on behalf of the Customer to Sites.
- 13.2 The Customer agrees that the tonnage held and described in Ezigrain is to the value specified to three decimal places (.000), but that the tonnage will only be calculated to two decimal places rounded down when outturned on the basis that outturn cannot exceed ownership.
- 13.3 The Outturn Right is subject to a weight deduction for:
 - A. shrinkage in accordance with the allowance set out in Schedule 1;
 - B. any loss, damage or destruction of Grain the risk of which is assumed by the Customer under these Terms;
 - C. the weight of any Grain previously outturned or otherwise the subject of a Transfer In-store; and
 - D. the weight of any Grain transferred, reasonably written-off or otherwise dealt with by Viterra in accordance with these Terms (including sections 17, 18, 19, 21, 27 and 28).
- 13.4 Viterra may refuse or delay acting pursuant to an outturn request where Viterra considers, acting reasonably:
 - A. the request does not provide sufficient notification and/ or details of the relevant outturn (including quality or quantity); or
 - B. the following circumstances arise or may arise:
 - (i) unavailability of Grain due to routine fumigation;
 - (ii) breakdown or unavailability of machinery;
 - (iii) unavailability of resources as a result of other Site related operations;
 - (iv) the unsuitability of the storage unit;
 - (v) the Customer owes a material amount of monies to Viterra on any account whatsoever or otherwise there exists a lien or temporary hold over the Grain the subject of the outturn request;
 - (vi) it is contrary to any Viterra Policies (including the conditions of an Export Select Only Site);
 - (vii) failure of the Customer in any material respect to pay any Charges relating to or in connection with the Services; or
 - (viii) if the outturn is prevented or delayed because of circumstances outside Viterra's control and without substantial fault or negligence of Viterra (including by reason of a Force Majeure Event); or
 - C. if Viterra has received notice from a person claiming to hold an interest in, to or over the Customer's Grain; or
 - D. the request is, in Viterra's reasonable opinion, contrary to any Laws, aimed at circumventing any Laws or otherwise will be detrimental to the Grain industry in general,
 - E. a material risk to the safety of the public, Viterra employees or Viterra property may exist at the time of the outturn or shortly thereafter or as a consequence of the outturn,and Viterra will not be liable for, and the Customer must not make any claim in respect of, any Loss suffered or incurred by the Customer arising from or in connection with such a refusal or delay by Viterra of the outturn request.

- 13.5 Without limiting section 13.4, in making any decision whether to accept an outturn request:
- A. Viterra will have regard to the efficient running operation of the relevant Site and the balancing of the interests of all users of that Site and the Grain industry generally; and
 - B. where the Customer has not caused or contributed to the circumstances giving rise to the refusal or delay, Viterra will use reasonable endeavours to mitigate any Loss suffered by the Customer.
- 13.6 The Customer acknowledges that Viterra may regrade to a non-malting Grade any malting Grade barley (and/or Common Stock any such barley, including in a manner which regrades that barley) that remains in a Viterra Site after 31 March following the end of the Season, such right being necessary having regard to the quality characteristics of any malting Grade barley remaining in storage for an extended period of time, and Viterra will not be liable for, and the Customer must not make any claim in respect of, any Loss suffered or incurred by the Customer arising from or in connection with Viterra acting under this section 13.6.

14. OUTTURN

- 14.1 Subject to anything to the contrary in these Terms, Viterra is entitled to:
- A. outturn to the Customer (or any person nominated by the Customer) Grain of the same quality and quantity to the value specified to two decimal places rounded down as warehoused by the Customer or acquired by the Customer by Transfer In-store;
 - B. outturn at any Viterra Site as reasonably determined by Viterra and not necessarily the Site of Origin at which the Customer elected to warehouse the Customer's Grain or acquired the Grain by Transfer In-store. Note costs as per section 16.2 may apply.
 - C. For the avoidance of doubt:
 - if the Customer's Grain is outturned from a site that is not the Site of Origin any of the Customer's Grain that remains at the site that is not the Site of Origin will be transferred back to the Site of Origin.
 - a Transfer In-store from a site that is not the Site of Origin, is not permitted i.e. a Customer is not permitted to Transfer In-store, for the purpose of selling Grain, if the Grain is not at the Site of Origin.
- 14.2 The Customer agrees that the tonnage held and described in Ezigrain is to the value specified to three decimal places (.000), but that the tonnage will only be calculated to two decimal places rounded down when outturned on the basis that outturn cannot exceed ownership.
- 14.3 Viterra may acting reasonably disallow domestic outturns, or if the Customer's Grain remains at the site from 1 August immediately following the Season, Viterra may declare the Customer's Grain as Export Select Only and subject to terms and conditions of Export Select.
- 14.4 Without the prior written approval or arrangement (which will not be unreasonably delayed or withheld), at an Export Select Only Site, no domestic outturning is permissible and the Customer must familiarise themselves with important conditions relating to Movements, obligations of the Customer and Viterra's rights in respect of warehoused Grain (refer section 16 Movements in these Terms).
- 14.5 In the absence of any proven error, outturn weights determined by Viterra using Viterra's weighing systems are final and binding and Viterra will have no liability whatsoever if the receival weight at the Customer's delivery or receival location is less than the outturn weight from the Site.
- 14.6 Viterra will use its reasonable endeavours to outturn the requested tonnage ordered by the Customer, however cannot guarantee the exact tonnage loaded will match the related outturn request.
- 14.7 If the circumstance described in clause 14.6 occurs and results in a smaller ownership entitlement, the remaining ownership will be subject to clauses 19, 20 or 21 (as applicable).

15. OUTTURN STANDARDS

Viterra's obligation to outturn is subject to such outturn standards set out in Schedule 2 and as otherwise published by Viterra from time to time on the Viterra Website (Outturn Standards).

16. MOVEMENTS

- 16.1 Viterra has the right to move the Grain from a Site including the Site of Origin (a **Movement**) if, in Viterra's reasonable opinion:
- A. the Site fills (or is expected to fill) during the Season;
 - B. consolidation of small quantities of Grain is required for the efficient operation of Viterra's Site (including where the volume of Grain stored in a cell is less than a level that requires sweeping);
 - C. the quality of the Grain that has been received threatens to contaminate other customers' Grain;
 - D. it is operationally efficient to move the Grain; or
 - E. the Customer delivers to a Viterra defined Export Select Only Site (refer to section 14.4).
- 16.2 Subject to section 16.3, if Grain is moved in accordance with section 16.1:
- A. the Customer will bear or be compensated for any additional costs or charges that may arise out of the relocation relative to the Site of Origin as determined by Viterra acting reasonably and on a case-by-case basis; and
 - B. additional charges incurred including accumulated monthly carry, outturn and port in-loading may also be applicable, but Viterra agrees to take reasonable steps to consult with the Customer if, as a result of Grain being moved, the Customer will be required to bear additional costs.
- 16.3 The Customer will not be entitled to any compensation for a movement of Grain under section 16.1C if the contamination or risk of contamination was caused or materially contributed to by an act or omission of the Customer or its Deliverer.

17. SEASON CLEARANCE

- 17.1 To enable the efficient management of Grain at a Site at any time following the Season, Viterra may (acting reasonably):
- A. For tonnage 2.0 tonnes and above in consultation with the Customer, provide written notice to the Customer requesting the Customer to either outturn or transfer any Grain (**Season Clearance Notice**), with which Notice the Customer must comply as soon as practicable;
 - B. For tonnages less than 2.0 tonnes facilitate the acquisition of the Grain at Fair Market Value by a Grain Buyer as reasonably determined by Viterra.
- 17.2 This section 17 does not limit Viterra's right to move the Grain and adjust costs in accordance with section 16.2.
- 17.3 The Season Clearance Notice will identify the relevant Grain still in Customer ownership and specify a date by which the Customer must comply with the Season Clearance Notice.
- 17.4 If the Grain remains in warehouse ownership following the specified date in the Season Clearance Notice, Viterra may:
- A. facilitate the acquisition of the Grain the subject of the Season Clearance Notice at Fair Market Value by a Grain Buyer as reasonably determined by Viterra; or
 - B. continue to store the Grain the subject of the Season Clearance Notice, charge the Customer in accordance with these Terms and reserve the right to issue another Season Clearance Notice under section 17.1A at any time in the future.
- 17.5 If Viterra exercises its rights under sections 17.1B or 17.4A, it is entitled to retain out of any sale proceeds all outstanding Charges owed by the Customer to Viterra on any account, and the reasonable costs of arranging the sale and outturn of the Grain to the Grain Buyer.
- 17.6 No delay by Viterra in exercising its rights under this section operates as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any

other right or remedy. The Customer releases Viterra and must not make any claim in respect of any Loss suffered by the Customer as a result of or in connection with Viterra exercising its rights under this section (including in respect of any delay in exercising its rights resulting in a change in Fair Market Value).

- 17.7 At any time on the written request of a Customer, Viterra may agree (and Viterra will not unreasonably withhold or delay such agreement) to facilitate the sale of Grain on behalf of the Customer in accordance with sections 17.4 and 17.5.

18. UNCLAIMED GRAIN

- 18.1 Where Grain is deemed to be unclaimed under the *Unclaimed Goods Act 1987* (SA), or Viterra is unable to determine the correct ownership of the Grain (having regard to the NGR), then that Grain will be held by Viterra for a reasonable period of time, and for not less than 3 months.
- 18.2 Following expiry of the period referred to in section 18.1, Viterra may deal with such unclaimed Grain in such manner it deems appropriate in the circumstances (acting reasonably). This may include (but is not limited to), writing-off the Grain.

19. RECONCILIATION

Without limiting any rights under section 17.1A and 18, to enable the efficient management of Grain at a Site, up to 0.5 tonnes of any Grain still in Customer ownership nearing the end of the Season may be written-off by Viterra (acting reasonably).

20. ENTITLEMENT SHORTFALL ADJUSTMENT

If Viterra's system does not hold sufficient Grain of the type and specification of the Customer's Grain at the time the Customer exercises its Outturn Right, following good faith consultation with the Customer, Viterra will be entitled to satisfy any such Physical Shortfall by payment of compensation at Fair Market Value which shall discharge all and any claims the Customer may have in connection with the Physical Shortfall.

21. ENTITLEMENT SURPLUS ADJUSTMENT

- 21.1 Where the Customer has exercised an Outturn Right and has received an outturn quantity or quality in excess of that to which it was entitled, Viterra may issue written notice to the Customer requesting that the Customer (at Viterra's reasonable discretion):
- A. compensate Viterra by payment for that excess calculated at Fair Market Value; or
 - B. redeliver an equivalent value of Grain based on classification at the time of delivery; or
 - C. transfer other Grain of equal value (value determined by Viterra acting reasonably having regard to the quality and quantity), specifying the time period by which the Customer must comply with the request being a reasonable period in the circumstances (**Excess Outturn Notice**).
- 21.2 If the Customer fails to comply with the Excess Outturn Notice in all respects within the time periods set out in the Excess Outturn Notice, the value of the excess quantity or quality of Grain that the Customer has received calculated at Fair Market Value immediately becomes a debt due and payable by the Customer to Viterra.

22. TRANSFERS IN-STORE

- 22.1 By executing a Transfer In-store (either directly or by instructions to Viterra pursuant to sections 22.9, 22.10 and 22.11), the Customer agrees to be bound to the relevant terms of use of the relevant Transfer In-store service, and to these Terms.
- 22.2 Viterra is not obliged to recognise any Transfer In-store if the Customer has not complied in all material respects with its obligation under section 27 and unless and until the purchaser of the Outturn Right agrees or has already agreed to be bound:
- A. if the purchaser is a marketer or trader of Grain (including a Grain Buyer), by the terms and conditions contained in, where applicable, Viterra's Storage & Handling Agreement, Port Terminal Services Agreement or any other agreement allowing access to Viterra's Port Terminals for the Service Year; or
 - B. otherwise if the purchaser is another Customer, by the terms and conditions of a Title Transfer Grower to Grower form, which will include an acceptance of being bound by these Terms.
- 22.3 The Customer accepts all risk associated with execution of a Transfer In-store and dealing with a purchaser, and agrees that Viterra will not be liable for, and the Customer must not make any claim in respect of, any Loss incurred by the Customer as a result of, or in connection with, the Customer's dealings with a purchaser of its Grain or the execution of a Transfer In-store of its Grain.
- 22.4 The Customer acknowledges that it is in its best interest to ensure that, if possible, Transfers In-store are negotiated on the basis of delivered weight, not shrunk weight.
- 22.5 The Customer agrees that the tonnage held and described in Ezigrain is to the value specified to three decimal places (.000), but that the tonnage will only be calculated to two decimal places rounded up or down when transferred to a purchaser defined in 22.2A or 22.2B.
- 22.6 Viterra may post Purchase Options on behalf of Grain Buyers at Sites and/or through Viterra Communication Tools and/or on Ezigrain, in its sole discretion. The Customer acknowledges that, in respect of any Purchase Option, Viterra makes no representations with respect to the operations of a Grain Buyer including its financial viability, the accuracy of prices posted or the terms and conditions under which it operates.
- 22.7 Without limiting these Terms, the Customer agrees that the Purchase Option price recorded on a Weighnote or Transfer In-store (the **Recorded Price**) will be final regardless of whether it corresponds exactly with the latest applicable price for that Purchase Option advised to Viterra by the applicable purchaser (including a Grain Buyer) or the latest applicable price published through Viterra Communication Tools (the **Customer Price**). In the event that the Recorded Price differs from the Customer Price (**Price Difference**), the Customer acknowledges that:
- A. the Price Difference does not constitute a "proven error" for the purposes of section 8.5;
 - B. the Weighnote will not be amended to take into account the Price Difference (either by an increase or decrease in the Recorded Price); and
 - C. Viterra will not be liable for, and the Customer must not make any claim in respect of, any Loss incurred by the Customer as a result of, or in connection with, the Price Difference except to the extent this results from the gross negligence of Viterra or any of its employees, contractors or agents.
- 22.8 Transfers In-store may be initiated by the Customer providing instructions by verbal, written, or electronic communication to Viterra.
- 22.9 To nominate Grain for a Transfer In-store, Viterra may rely on any instruction (either verbal, written or electronic communication) which reasonably appears to have been communicated by or on behalf of the Customer (and may assume that instructions have been issued by or on behalf of the Customer for Transfers In-store via Ezigrain).
- 22.10 Upon receiving and accepting instructions (pursuant to section 22.9 and this section 22.10):
- A. Viterra is authorised to effect the Transfer In-store for and on behalf of the Customer. For this purpose, the Grower irrevocably appoints Viterra as its agent and attorney.
 - B. Viterra will seek the purchaser's acceptance of the Transfer In-store and confirm completion to the Customer.
- 22.11 A Customer may utilise the Warehouse to Cash service (and may execute a Transfer In-store itself directly by use of this service) pursuant to these Terms, and the following specific terms:
- A. A Customer may select up to 250 mt of its Grain (of one Grade, at one Site) at a time to Transfer In-store to a Grain Buyer using Warehouse to Cash.

- B. A Grain Buyer will notify Viterra of the live cash price for which it will purchase Grain, which will be published through Ezigrain or other Viterra Communication Tools. It is the Customer's responsibility to review this live cash price.
- C. The Customer acknowledges and accepts that by transferring a parcel of Grain to a Grain Buyer using Warehouse to Cash, the Customer has accepted the cash price offered by the Grain Buyer using this Warehouse to Cash service, such acceptance being binding upon the Customer.
- D. The live cash price offered by the Grain Buyer is not guaranteed until the Transfer In-store has been submitted using this service. Prices are subject to change or can be withdrawn by the Grain Buyer at any time.
- E. If nominating Grain for Transfer In-store using this service against Sustainable Cash, the Customer acknowledges and warrants that:
 - (i) It is the Customer's responsibility to ensure that it has the relevant Sustainable Accreditation in place with the Grain Buyer; and
 - (ii) Viterra has the right to determine (acting reasonably) whether the Customer has appropriate Sustainable Accreditation in relation to the Grain nominated;
 - (iii) In the event the Customer does not have the required Sustainable Accreditation in place, Viterra may prohibit the Transfer In-store from proceeding, and payment to the Customer for such sale may be withheld by the Grain Buyer until such Sustainable Accreditation is completed and in place.
- F. The Customer acknowledges that the warranties, representations and acknowledgements described in these Terms as relate to Warehouse to Cash do not limit or otherwise derogate from those made by the Customer in accordance with the Ezigrain General Terms and Conditions of Use.

23. EFFECTIVE DATE OF TRANSFERS

The activity date, for charging purposes, of a Transfer In-store will be the date that Viterra receives instructions from the Customer to effect the transfer. The effective date of a Transfer In-Store will be the date the Customer nominates to effect the transfer. Viterra will use its reasonable endeavours to process a transfer within 48 hours of receipt of instructions.

24. CARRIER/DELIVERER ACTING ON CUSTOMER'S BEHALF

24.1 Where:

- A. a Deliverer seeks Services (whether in respect of a Load or otherwise) on behalf of the Customer; and
- B. the Deliverer:
 - (i) is in possession of the Customer's NGR or NGR information; or
 - (ii) the Customer has previously advised or represented to Viterra that the person has the authority to seek and obtain Services on behalf of the Customer,

that person will be treated as the agent of the Customer and the Customer will be bound by the actions of that person.

- 24.2 Where the Customer engages a Deliverer to make a Transfer In-Store, the Customer will be required to provide Viterra with written confirmation that the Deliverer is acting on behalf of the Customer.
- 24.3 As between Viterra and the Customer, the Customer is at all times responsible for the acts and omissions of its Deliverer under or in respect of these Terms (including failure to comply with any portion or all of these Terms).
- 24.4 Viterra may, but is not bound to, take any notice of or act on any absence, countermand, revocation or withdrawal of authority that is not in writing and given by all interested parties.

25. PROVISION OF INFORMATION AND ASSISTANCE

- 25.1 The Customer must promptly provide to Viterra all information and assistance requested from time to time relating to or in connection with the Services, a Load, the Customer or its Deliverer, which Viterra reasonably requires (such as obtaining consents, and completing and signing documents) to perform its obligations under, or exercise its rights in respect of, these Terms.
- 25.2 When making any decisions or enforcing its rights under these Terms, Viterra will act reasonably.
- 25.3 It is the Customer's responsibility to provide true and accurate personal information; and ensure any change to the information is advised to National Grower Register Pty Ltd for the purpose of updating Viterra.

26. CHARGES

The Charges for the Services can be found in the Storage & Handling Service Fees Document through Viterra Communication Tools or Ezigrain. The Charges for Transfers In-store include the Receival Service Fee and accumulated monthly carry debt. Administration charges may apply to some Transfers In-store. In the instance of self-outright, a domestic outright charge applies for outright from Viterra Sites.

27. PAYMENT, LIEN AND HOLDING OF GRAIN

- 27.1 All accrued charges and any costs payable on any account in respect of Grain that is the subject of the Outturn Right must be paid in accordance with the invoice properly rendered by Viterra. The full amount of an invoice rendered by Viterra must be paid by the Customer within 15 days from the date of that invoice.
- 27.2 In the event that Charges (including but not limited to freight expenses and costs which have accrued prior to the date of Outturn) have not yet been paid, and the Grain is subject to a Transfer In-store in which the purchaser has agreed to accept responsibility for payment of Charges, Viterra may invoice that applicable purchaser.
- 27.3 Despite section 27.2, each Customer remains jointly and severally liable to Viterra for payment of all Charges.
- 27.4 The Customer acknowledges and agrees that Viterra will have a first and paramount lien on the Customer's Grain to satisfy Customer Obligations. The Customer also grants a security interest to Viterra and Viterra Companies over the Customer's Grain and any proceeds of sale thereof as security for the payment of Customer Obligations. Viterra may nominate any particular quantity of Common Stocked Grain as the Customer's Grain for the purpose of enforcing its lien and/or security interest. The Customer irrevocably appoints Viterra as its agent and attorney to sell a sufficient quantity of the Customer's Grain (Viterra will take reasonable steps to sell at Fair Market Value) to satisfy Customer Obligations whether under the lien and/or the security interest or otherwise and to account to the Customer for any balance of sale proceeds. Any such sale of the Customer's Grain reduces the Customer's Outturn Right commensurately.
- 27.5 Either party may in its discretion deduct from, set-off against and/or otherwise reduce or deem satisfied any obligation it may have to the other party (which, for Viterra, will not exceed the Customer Obligations).
- 27.6 Notwithstanding and without limiting anything else in these Terms, Viterra in its absolute discretion may place a temporary hold on all or a portion of the Customer's Grain at any stage if it believes that due to any liability, breach, indemnity, error, mistake, circumstance, fact or other thing whatsoever there may, will or might now or in the future be undischarged Customer Obligations.
- 27.7 In relation to section 27.6, when a temporary hold is in place, the Customer may be restricted by Viterra (acting reasonably) in the manner in which the Customer can deal with or transact their Grain subject to the temporary hold.

28. PERSONAL PROPERTY SECURITIES LAW

- 28.1 Viterra acknowledges and agrees that the Customer has a purchase money security interest (**PMSI**) over the Customer's Commodity and any proceeds of sale thereof for the purposes of the PPSA and that the Customer or its Deliverer may register the PMSI on the Personal Property Security Register.
- 28.2 On delivery of Grain to Viterra, the Customer acknowledges and agrees that Viterra has control of the Grain for the purposes of the PPSA and for the exercise of Viterra's rights under section 27.4.
- 28.3 The parties agree, at their 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 other party, acting reasonably, asks and considers is required for the purposes of:
- A. ensuring that any security interest the other party has under these Terms is enforceable, perfected and otherwise effective;
 - B. enabling the other party to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the other party has the priority it requires; or
 - C. enabling the other party to exercise rights in connection with its security interest and/or lien under these Terms. Each party agrees to pay or reimburse the reasonable costs of the other party in connection with anything done by that other party in connection with the enforcement of any such security interest or of any lien over Commodity of the Customer.
- 28.4 The parties acknowledge and agree that they are not entitled to receive any notice from the other party 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.
- 28.5 The parties agree that they must not disclose any information of the kind referred to in section 275(1) of the PPSA.
- 28.6 If there is any inconsistency between the Customer's and Viterra's rights under this section and its rights under Chapter 4 of the PPSA, this section prevails.
- 28.7 The parties acknowledge and agree that unless otherwise defined in these Terms, terms and expressions used in this section 28 have the same meaning as given to them under the PPSA.

29. DEFAULT INTEREST

The Customer shall pay interest on overdue monies calculated at the rate of 3% above the corporate overdraft reference rate offered by the Commonwealth Bank of Australia calculated on a daily basis from the due date for payment to the date on which all such outstanding monies, plus the accrued interest, are paid in full.

30. LIABILITY

- 30.1 Viterra is only liable for the loss, damage, destruction or contamination by Viterra of the Customer's Grain if that loss, damage, destruction or contamination is caused by the gross negligence or wilful default of Viterra or any of its employees, contractors or agents.
- 30.2 The liability of Viterra to the Customer for any Loss including, damage, destruction or contamination of Grain (for whatever reason) will not exceed the sum of \$250,000 per event or in the aggregate.
- 30.3 Viterra will not be liable for any Special or Indirect Loss suffered or incurred by the Customer arising out of Viterra's acts or omissions or the acts or omissions of Viterra's employees, agents or contractors.
- 30.4 To the maximum extent permitted by Law, Viterra excludes all conditions or warranties implied by custom, general law or statute. If certain conditions and warranties cannot by Law be excluded, Viterra's liability under any such condition or warranty is limited to either of the following (in the absolute discretion of Viterra):

- A. the cost of re-supplying the Services;
- B. reimbursement of the Customer for the Loss suffered by the Customer, in accordance with the provisions of this section 30.

- 30.5 To the extent permitted by Law, the operation of the Proportionate Liability Legislation is excluded in relation to any right, obligation or liability of a party in respect of these Terms, whether those rights, obligations or liabilities are sought to be enforced in contract, in tort or pursuant to any statute, and any claim.

31. INDEMNITY

The Customer will indemnify and hold Viterra harmless against all Loss arising out of or in connection with these Terms or receipt of the Services (limited to the following):

- A. any acts by, or omissions of, the Customer (or any person acting on behalf of the Customer or the Customer's Deliverer) at the Site (including acts or omissions causing or contributing to any loss of, or damage to, any property of any person, and any injury to, or death of, any person);
- B. any overloading of a vehicle containing any Grain;
- C. any claim by a third party to a lien, charge or other security interest in the Grain or the Outturn Right;
- D. any claim by a third party relating to the acts or omissions of the Customer in respect of the Grain or any Transfer In-store;
- E. any material breach of these Terms including any warranty or representation given by or on behalf of the Customer in respect of the Grain that is brought to, or unloaded at, the Site by the Customer or the Deliverer;
- F. damaged or contaminated Grain (including fertiliser, containing genetically modified variety or varieties, and residue affected Grain) at the risk of the Customer;
- G. any claim by a third party in relation to the whole or any part of a Load that is the subject of Services, except to the extent that such Loss was caused by a negligent act or omission of, or default by, Viterra or any of its employees, contractors or agents;
- H. any material inaccuracy in warranties made by the Customer (or on behalf of the Customer) by agreement to these Terms or by Delivery Declaration or Digital Delivery Declaration.

32. COMPLIANCE WITH LAWS

- 32.1 In receiving the benefit of these Terms, the Customer must at all times comply with (and ensure that its relevant Deliverer or Deliverers comply with) all Laws including, where applicable, all Road Safety Legislation.
- 32.2 Without limiting the Customer's general obligations to comply with all Laws in section 32.1, the Customer warrants that it:
- A. has addressed and remedied any non-compliance issues with respect to any Laws;
 - B. as in place compliance assurance conditions in relevant commercial arrangements with other responsible persons under any Laws;
 - C. is not relying on any oral or written representations or statements made by Viterra with respect to the transport of Grain, other than what is set out in these Terms.

33. DELIVERY CARD AND NGR

- 33.1 The Customer must not involve Viterra in any dispute between parties to a Delivery Card (or a Co-operative Bulk Handling Limited or other entity's card linked to an NGR registration).
- 33.2 Unless required by Law, Viterra is not required to provide any documentation or to assist with such a dispute.
- 33.3 Despite section 33.2, Viterra will act in good faith to assist if the Customer requests information from Viterra provided the Customer agrees to reimburse Viterra's reasonable costs and expenses in complying with any information request (having regard to the employee resources required to be expended, the volume of information required and the transaction date the information request relates to).

34. INFORMATION USE & DISCLOSURE

34.1 Viterra may collect Personal Information from the Customer for the purpose of providing Services. The Customer acknowledges that Viterra's ability to provide these Services may be affected or prevented if Viterra is not provided with all personal information that is requested or required.

A copy of Viterra's Privacy Policy can be located on the Viterra Website. The Privacy Policy includes details of:

- A. how Viterra collects, holds, stores and shares Personal Information;
- B. the circumstances in which the Customer's Personal Information might be sent overseas;
- C. the Customer's rights of access to, and correction of, its Personal Information; and
- D. the security measures Viterra has in place over the Customer's Personal Information.

34.2 Viterra may collect other information (outside of Personal Information) from the Customer for the purpose of providing Services. The Customer acknowledges that Viterra's ability to provide these Services may be affected or prevented if Viterra is not provided with all information that is requested or required. Unless required by law, the Customer is not obliged to provide Viterra with other information, however if the Customer fails to do so, it may impact on the ability of Viterra to perform the Services.

34.3 The Customer consents (and will obtain the consent of any individual that Viterra may deal with on behalf of the Customer) to the use or disclosure of Personal Information and other information collected by Viterra pursuant to these Terms as follows:

- A. to evaluate whether and to what extent products or services of a Viterra Company may (in Viterra's opinion) be of interest to the Customer, and to use and disclose such information for the purposes of promoting (including by electronic communications) such products or services (which may include Viterra Australia Pty Ltd) to the Customer;
- B. to disclose to a Viterra Company for use by the Viterra Company internally for any other purposes relating to Viterra's or a Viterra Company's business operations and/ or its dealings or relationship with the Customer;
- C. to disclose such information to comply with requests from government and regulatory bodies and authorities and end point royalty managers;
- D. Without limiting section 34.3C, to disclose information to Biosecurity SA (or related entity) in accordance with the "Guidelines for Reporting Agricultural and Veterinary Chemical Misuse" in respect of any actual or suspected non-compliance with the *Agricultural and Veterinary Products (Control of Use) Act 2002* (SA);
- E. to disclose such information to National Grower Register Pty Ltd or its agents for the purposes of the operations of the NGR or for promoting goods or services of other companies of relevance to the Customer;
- F. to disclose such information to any organisation to which the Customer has transferred ownership of Grain (whether by donation, sale or other kind of transfer), for the purpose of allowing the transferee to identify the transferor;
- G. To disclose such information to any organisation whom a transferee of any of a Customer's Grain has notified Viterra may receive such information; and
- H. to use or disclose such information where the Customer consents to Viterra doing so or requests Viterra to do so, or where Viterra is legally entitled to do so.

34.4 You may request access to your personal information by contacting us. All privacy related queries, requests to access information or privacy complaints should be made in writing to "The Privacy Officer", Viterra Operations, GPO Box 1169 Adelaide SA 5001 or via email to privacy@viterra.com.

35. VARIATIONS

35.1 Viterra may vary these Terms applicable to future Loads and Services (including the Charges) at any time and from time to time by publishing the revised terms and conditions on the Viterra Website. The Customer will be deemed to have read, understood and accepted the revised terms and conditions 20 Business Days after they have been published in accordance with this section 35.

35.2 If Viterra exercises its rights under section 35.1, it agrees to notify all Customers (either by hand, mail, electronically or otherwise by way of the Viterra Communication Tools) registered with NGR including, where applicable, using Viterra's SMS Subscription Service.

36. GOODS AND SERVICES TAX

36.1 Any amounts payable under these Terms are calculated or expressed exclusive of GST.

36.2 If GST is, or becomes payable, under these Terms, the recipient must pay to the supplier an amount equal to the GST payable on the Supply.

36.3 An amount payable under this section must be paid at the same time as the payment of the amount in respect of that Supply is due and must be paid in addition to the amounts otherwise payable under these Terms.

36.4 If the recipient fails to pay any GST when due, the supplier may recover the amount of the GST from the recipient as a debt due under these Terms.

36.5 In these Terms, **GST**, **recipient** and **Supply** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or substituted from time to time) and **supplier** means the entity which makes a supply.

37. DISPUTE RESOLUTION

37.1 Neither party may commence court proceedings in respect of a claim or dispute arising under or in connection with these Terms (**Dispute**) unless:

- A. that party has first issued a dispute notice to the other party (which, for the Customer, is a written notice to Viterra's Service Centre) setting out the particulars of the Dispute (**Dispute Notice**); and
- B. 30 days has elapsed since the provision of the Dispute Notice and no response to the Dispute Notice has been received by the disputing party.

37.2 The parties will use their best endeavours to try to resolve any Dispute as soon as reasonably possible.

38. ASSIGNMENT

38.1 Viterra may assign the benefit of these Terms to any Viterra Company and without limiting section 34, the Customer consents to Viterra disclosing any information or documents it considers necessary to exercise these rights. If Viterra exercises its rights under this section, it agrees to notify the Customer of the assignment and the identity of the relevant Viterra Company as soon as reasonably practicable after the assignment.

38.2 The Customer may not assign, transfer or otherwise dispose of all or any part of its rights or obligations under these Terms without the prior written consent of Viterra, which consent shall not be unreasonably withheld or delayed.

39. SUBCONTRACTING OF SERVICES

39.1 Viterra may in its sole and absolute discretion:

- A. sub-contract the provision of the whole or any part of the Services; or
- B. otherwise engage any person to undertake the provision of any part of the Services on Viterra's behalf,

without notice to the Customer.

39.2 Subcontracting of all or any portion of the Services does not relieve Viterra from any liability or obligation under these Terms and Viterra remains fully liable for the actions of any subcontractor or third party as if they were the actions of Viterra.

40. NOTICE

A notice, consent or other communication under these Terms is only effective if it is in writing and addressed to the party to whom it is to be given and, for a Customer, can be delivered (either by hand, mail, or electronically) to an address of the Customer registered with NGR. This section does not apply to any notice, consent or communication which these Terms expressly authorise to be published at a Site or through Viterra Communication Tools or Ezigrain.

41. NO WAIVER OF RIGHTS

A failure or delay in exercising any right, power or privilege in respect of these Terms will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, or privilege. Any waiver by a party in respect of any of these Terms will only be effective if in writing, and will apply only to waiver in a specific instance unless otherwise clearly stated.

42. ELECTRONIC EXECUTION

42.1 Without limitation to the methods by which Viterra and the Customer may bind themselves under these Terms (including under section 1.3), the parties agree that:

- A. the Customer will be bound under these Terms in relation to delivery of a Load and in relation to other obligations under these Terms, by execution of a Weighnote by the Customer (or its Deliverer) through the click of the button marked 'Accept Weight' on the Driver Control Station (DCS) at the weighbridge at a Site prior to delivery of the Load, just as the Customer would be bound if this document were physically executed;
- B. the Customer will be bound under these Terms in relation to a delivered Load and in relation to other obligations under these Terms, by execution of a Weighnote by the Customer (or its Deliverer) through the click of the button marked 'Accept Weight' on the Driver Control Station at the weighbridge at a Site following delivery of the Load, just as the Customer would be bound if this document were physically executed;
- C. The Customer will have made a Delivery Declaration which binds the Customer to the warranties in that Delivery Declaration and to these Terms in relation to a delivered Load, by submission of a Digital Delivery Declaration by the Customer (or its Deliverer) in accordance with these Terms, through the selection of the digital icon marked 'Submit' on the Digital Delivery Declaration form, just as the Customer would be bound by execution of a physical Delivery Declaration,

(each, an **Electronic Execution**).

- 42.2 The intentional action involved in Electronic Execution shall be evidence of consent to be legally bound by these Terms and to the warranties in the Digital Delivery Declaration respectively. The parties consent to execution by way of Electronic Execution in accordance with the *Electronic Transactions Act 1999* (Cth) and any applicable corresponding state or territory law.
- 42.3 The parties agree to not contest the proper execution by Electronic Execution of these Terms or the Digital Delivery Declaration in any proceeding.
- 42.4 Each person taking the action involved in Electronic Execution warrants that they are duly authorised to execute and bind to these Terms and warranties in the Digital Delivery Declaration the party they represent by way of Electronic Execution, and the parties acknowledge and agree that they have entered into agreement and will be bound by these Terms and to the warranties in the Digital Delivery Declaration in reliance on this warranty.

43. RELATIONSHIP AND GOVERNING LAW

These Terms establish a relationship that subsists in contract only and do not make Viterra the partner, agent, employer, employee, trustee, fiduciary or the like of any other person nor extend to any other person any rights beyond those expressly set out in the Terms. The Terms will be governed by the laws of South Australia and Viterra and the Customer submits to the exclusive jurisdiction of the Courts of South Australia.

44. DEFINITIONS AND INTERPRETATION

In these Terms, unless the context otherwise requires:

Charges mean the charges and costs imposed by Viterra for providing the Services as set out in the Storage and Handling Service Fees document published on Viterra Communication Tools and Ezigrain (and amended from Service Year to Service Year).

Common Stocked means the practice of intermixing and storing Grain (of the same specification or Grade unless otherwise provided for in these Terms) owned by different persons.

Common Stocked Grain means Grain stored in Viterra's storage system that has been Common Stocked.

Contaminant means any Load or part of a Load which is:

- A. not compliant with Receiving (Classification) Standards; and/or
- B. not in accordance with any declaration or warranty made by a Customer (or Deliverer) in relation to that Load. Viterra will consider a Load to not be in accordance with a declaration that a Load is not Genetically Modified if a sample of the Load contains Genetically Modified material. Viterra will consider a Load to not be in accordance with a declaration that the Load has not had any particular chemical applied at all or with a declaration that the Load has had chemical applied in accordance with relevant legislation and manufacturers' label instructions, if a sample of the Load contains a chemical in excess of the maximum residue limit for that particular chemical stipulated by relevant legislation.

Customer means, as the context requires:

- A. a person or persons that uses the Services being as the case requires:
 - i. the payee(s) registered with the National Grower Register against the Delivery Card number tendered by the Customer or its Deliverer in the process of obtaining Services; and/or
 - ii. where a person obtains Services on the basis of a temporary National Grower Register card number, that person, or where that person is a Deliverer, the person on whose behalf the Deliverer is acting, and such other persons that, upon follow up of completion of registration with National Grower Register, are subsequently registered as payees against that number; and/or
 - iii. the person accessing the Services where that person purports to be a Customer's Deliverer but has failed to obtain the authorisation of the Deliverer's principal (as contemplated by section 24.1A); and/or
- B. a person or persons on whose behalf Grain has been received and warehoused by Viterra and any subsequent non-trade purchaser of the Outturn Right,

and if there is more than one person, Customer means each of them separately and every two or more of them jointly and any one of them has irrevocable authority to deal on behalf of all of the parties comprising the Customer.

Customer's Grain means all and any Grain owned by a Customer in the possession of Viterra and/or any Viterra Company from time to time.

Customer Obligations means any obligation to Viterra and/or any Viterra Company that the Customer has or is reasonably expected to subsequently have whether present or future, certain or contingent, ascertained or sounding only in damages and including any matured monetary obligations and all monies due and payable on any account whatsoever.

Customer Price has the meaning given in section 22.7.

Deliverer means, with respect to a particular Customer, the carrier or other person acting as that Customer's agent pursuant to section 24.

Delivery Declaration means the form titled Delivery Advice and Declaration Form (or other form published by Viterra from time to time) provided by the Customer or its Deliverer at the time of delivery of a Load.

Delivery Card means the NGR delivery card or any replacement delivery card nominated by Viterra from time to time.

Digital Delivery Declaration means the online form published by Viterra on Ezigrain for the same purpose as the Delivery Declaration, executed by Electronic Execution by the Customer or its Deliverer prior to delivery of a Load.

Dispute has the meaning given in section 37.1.

Dispute Notice has the meaning given in section 37.1.

Electronic Execution has the respective meanings in each respective context given in section 42.1A, B and C.

Excess Outturn Notice has the meaning given in section 21.1.

Export Select means the system operated by Viterra under which the Customer elects to deliver Grain to a Site and to have equivalent Grain (but not necessarily the same Grain) outturned by Viterra at a different Site.

Export Select Only means Grain which may only be dealt with in accordance with the terms and conditions of the Export Select system, and either listed on the Viterra Website or notified to the Customer directly by Viterra.

Export Select Only Sites means those Sites where Domestic Outturn is not permitted as determined by Viterra from time to time prior to the commencement of the Season and published on the Viterra Website and otherwise subject to Export Select Only terms and conditions advised by Viterra from time to time.

Ezigrain means the online Grain stock information program, located at ezigrain.com.au or in a different form on the Viterra App.

Ezigrain General Terms and Conditions of Use means the document by that name (as amended from time to time) published by Viterra at www.ezigrain.com.au or in a different form on the Viterra App, governing the conditions of use of Ezigrain.

Fair Market Value means price per tonne calculated to either purchase grain by Viterra or replace shortfall of grain by the Customer and will either be a price agreed between Viterra and the Customer, or, where agreement cannot be reached within one week of first proposal by a party, will be the highest bid price Grain Buyers on the day the calculation is made.

Force Majeure Event means anything outside Viterra's reasonable control including, but not limited to, the following events or circumstances:

- 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 facilities at a Site;
- 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).

Genetically Modified means subjected (either directly or indirectly) to modification, addition and/or deletion of specific and selected genes or groups of genes through the use of targeted chemical, biological or other tools for such purpose, or the progeny of any subject of such work.

Grade means a grade of Grain of the Season specified in the Receival (Classification) Standards and Outturn Standards of that Season.

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 Buyer means a third party grain or commodity marketing company (including any pool operated by such party) and may include Viterra Australia Pty Ltd (or other marketing unit or division of a Viterra Company from time to time).

Grower to Grower means a transfer of title between the Customer and any subsequent non-trade purchaser of the Outturn Right, as the context requires.

Laws include:

- A. Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of legislative authorities of the relevant jurisdiction in which the Site is located;
- B. certificates, licences, consents, permits, approvals and requirements of organisations as provided by relevant governmental authorities;
- C. any direction or requirement imposed by any statutory corporation, statutory authority, tribunal or person exercising statutory power responsible for administering and maintaining standards and requirements in connection with the performance, or the receipt of the benefit, of the Services provided under or in connection with these Terms;
- D. executive or administrative orders or acts of either general or particular application of any Government or any official purporting to act under the authority of that Government including any quarantine or custom restrictions or prohibitions on export, relating to the jurisdiction(s) where these Terms will be performed or the parties are located, or the origin or ultimate destination of any Grain;
- E. laws relating to sanctions, anti-bribery, anti-corruption, anti-money laundering, and tax,

and to avoid doubt includes the Road Safety Legislation and Modern Slavery Law.

Load means a quantity of Grain in bulk.

Loss means liabilities, expenses, losses, claims, damages, and costs (on a solicitor and own client basis and whether incurred or awarded against that company) direct or indirect, past, present or future, fixed or unascertained, actual or contingent and whether arising under contract, in equity, under statute, in tort or otherwise.

Maximum Residue Limit means the maximum amount of pesticide residue that is expected to remain on food products when a pesticide is used according to label directions.

Modern Slavery Law means the *Modern Slavery Act 2018* (NSW) (and similar legislation in other states and territories), the *Modern Slavery Act 2018* (Cth), Divisions 270 and 271 of the *Commonwealth Criminal Code* and any law, rule or other legally binding measure of Australia which creates similar offences to those set out in Divisions 270 and 271 of the *Commonwealth Criminal Code*.

Movement has the meaning given in section 16.1.

NGR means the register of grower details operated by National Grower Register Pty Ltd.

Outturn Right means the Customer's right to the outturn of Grain in accordance with section 13 of these Terms.

Outturn Services means services relating to the outturn of Grain from a Site by a Customer exercising its Outturn Right.

Outturn Standards has the meaning given in section 15.

Personal Information has the same meaning as in the *Privacy Act 1988* (Cth).

Physical Shortfall means insufficient outturn of Grain with respect to the Customer's Outturn Right.

PMSI has the meaning given in section 28.

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 Viterra for the handling of Grain.

Port Terminal Services Agreement means the document of that name as published on the Viterra Website, as amended from time to time by Viterra in accordance with its terms.

Postharvest Declaration Form means the form titled Postharvest Declaration Form published by Viterra from time to time.

PPSA means *Personal Property Securities Act 2009* (Cth).

Price Difference has the meaning given in section 22.8.

Prior Season has the meaning given in section 4.1B(i).

Privacy Policy is Viterra's internal Privacy Policy document, a copy of which can be found on the Viterra website.

Proportionate Liability Legislation means:

- A. Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA); and
- B. Part IVAA of the *Wrongs Act 1958* (Vic); and
- C. the equivalent legislation in any other State of Australia or other jurisdictions where the Site or the parties (including, where relevant, any Deliverer) are located or operate from.

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

Purchase Option means relevant purchase options published by Viterra (including those published through Viterra Communication Tools and Ezigrain from time to time, and from time to time identified as 'Selling Options') for and on behalf of a Grain Buyer to facilitate the purchase by that Grain Buyer of Grain owned by Customers.

Receival (Classification) Standards means standards that either:

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

which accord with the industry benchmarks established for Grain and which are published by Viterra through the Viterra Website prior to the receival of that Grain into a Site.

Receival Service means:

- A. all or any part of the process by which a Load is physically received by Viterra from a Customer or the Deliverer at a Site;
- B. presentation to the Customer of purchase and warehouse options;
- C. the recording and exchange with relevant purchasers of information in electronic form relating to the receipt of the Load; or
- D. the provision to the Customer of transactional information through Ezigrain.

Recorded Price has the meaning given in section 22.8.

Road Safety Legislation means all legislation regulating the safe loading, storage, packing, unloading, handling and carriage of the Grain in the relevant jurisdiction, including.

- A. the *Road Traffic Act 1961* (SA), the *Motor Vehicles Act 1959* (SA), the *Summary Offences Act 1953* (SA) and the *Heavy Vehicle National Law (South Australia) Act 2013* (SA); and
- B. the equivalent legislation in any other State of Australia or other jurisdictions where the Site or the parties are located or operate from; and
- C. regulations and guidelines effected by governmental authorities in association with any legislation regulating the safe loading, storage, packing, unloading, handling and carriage of the Grain; and
- D. any statutory provisions or requirements relating to driver fatigue and mass, speed, drugs and alcohol, maintenance, restraint, dimensions and any other loading requirements, applicable to the performance, or the receipt of the benefit, of the Services provided under or in connection with these Terms.

Safety Card means the physical card growers or carriers are required to have before making deliveries to a Viterra site. The card is received after successfully completing the Viterra Safety Induction for Grower Deliveries.

Season means a period commencing 1 October of one year and going through to 31 January in the following year. **The Season** means, with respect to these Terms and Conditions and within the Service Year, the period 1 October 2024 to 31 January 2025, except where otherwise provided in these Terms and Conditions.

Season Clearance Notice has the meaning given in section 17.1.

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 mean the Receival Services, Warehousing Services, Outturn Services and any other ancillary services (including services relating to the facilitation of transactions) provided by Viterra to the Customer from time to time under these Terms.

Service Year means, with respect to these Terms and Conditions, the period 1 October 2024 to 30 September 2025.

Site means the facility or premises at which Services are provided to the Customer by Viterra (including a Port Terminal).

Site of Origin means the Site to which the Customer or Deliverer delivered their Grain.

Site Pass means the online contractor management system used by Viterra for the registration and monitoring of contractors.

SMS Subscription Service means a text message subscription service operated by Viterra to provide information to subscribers.

Special or Indirect Loss means any Loss or damage suffered which is indirect or which results from some special circumstance or supervening event and includes any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill, wasted overheads or demurrage.

Storage & Handling Agreement means the document of that name as published on the Viterra Website, as amended from time to time by Viterra in accordance with its terms.

Sustainable Accreditation means documents required by a Grain Buyer as communicated by that Grain Buyer in order to classify Grain as able to be sold for Sustainable Cash.

Sustainable Cash means the cash price which a Grain Buyer has bid to purchase Grain which is declared as sustainable, supported by the appropriate relevant Sustainable Accreditation.

Terms has the meaning given in section 1.1.

Transfer In-store means the transfer of the ownership of the Grain and Outturn Right to another party in accordance with these Terms, and includes such transfer by way of:

- A. Warehouse to Cash (including for Sustainable Cash);
- B. Contract;
- C. Pool; or
- D. Grower to Grower.

Viterra has the meaning given in section 1.1.

Viterra App means the mobile application available for iPhone (iOS 11+), Android (8.0+) and all tablet devices which provides the Customer with access to Ezigrain and relevant Viterra information.

Viterra Communication Tools means the following methods through which Viterra may communicate or hold information (which information may be held or communicated by one or more such methods):

- A. the Viterra Website;
- B. the Viterra App;
- C. Viterra's SMS Subscription Service;
- D. any new or replacement communication tool implemented by Viterra from time to time.

Viterra Company means Viterra or any of its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

Viterra Policies has the meaning given in section 11.1.

Viterra Road Vehicle Hygiene Requirements means the requirements published by Viterra from time to time on the Viterra Website or otherwise displayed or available at Sites or required by Law (as amended, varied or substituted from time to time).

Viterra Website means viterra.com.au.

Warehouse to Cash means the Transfer In-store service provided by Viterra in Ezigrain enabling a Customer to transfer and sell warehoused Grain to a Grain Buyer offering a Purchase Option using this service, whereby the Grain Buyer purchases that Grain from the Customer for a live cash price (including, as applicable, for Sustainable Cash or any other particular Warehouse to Cash service offered by Viterra on particular terms from time to time).

Warehousing Services means services relating to or in connection with the storage of Grain (including, without limitation, standard Grain protection and maintenance services and recording of relevant information).

Weighnote means the token, receipt docket, weighnote, receipt or other document (whether issued by Viterra for signature or Electronic Execution by the Customer or Deliverer) acknowledging receipt or outturn of Grain and setting out (amongst other things): the weight, or otherwise type and variety of the Grain, information regarding quality of the Grain, the payment grade, the selected Purchase Option, and (where applicable) the Recorded Price.

In these Terms:

- A. Other grammatical forms of defined words or expressions have corresponding meanings.
- B. Any references to "includes" or "including" or "for example" means without limitation.
- C. Any reference to particular legislation means that legislation as amended, varied or substituted from time to time and all regulations and statutory requirements pursuant to such legislation.
- D. If a provision of these Terms would, but for this section, be unenforceable:
 - i. the provision must be read down to the extent necessary to avoid that result; and
 - ii. if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of these Terms.
- E. No rule of construction applies to the disadvantage of a party because that party put forward these Terms or any portion of it

SCHEDULES

SCHEDULE 1 – SHRINKAGE ALLOWANCE

0.6% of delivered weight of the Grain for cereals, canola and other Grains.
0.85% of delivered weight of the Grain for Pulses.

SCHEDULE 2 – OUTTURN STANDARDS

The Outturn Standards are the applicable Receival (Classification) Standards for Grain unless otherwise specified. Cereals and Pulses have specific exceptions (See Schedule G of Viterra's Pricing Procedures and Protocols Manual). A copy of which is available to the Customer on the Viterra Website or upon request.

SCHEDULE 3 – CONSTRAINTS ON TRANSFERS IN-STORE

The Customer acknowledges that there may be certain limitations to the marketing options and time available for a transfer in store of the Outturn Right.

For example, potential purchasers of the Outturn Right may not accept transfers to cash purchase options or transfers of malting/ milling quality Grain after a certain date. (Please check these conditions with your potential purchaser)