



Members Agreement

The agreement is made the

BETWEEN

(1)

("the Grower) and

(2) **WOLDGRAIN STORAGE LIMITED** whose registered office is at Forrester Boyd Wainfleet House 139 Eastgate Louth Lincolnshire LN11 9QQ ("the Society")

1. Recitals

The Marketing Agent is a co-operative association of agricultural producers which markets grain on behalf of those producers and the Grower has a marketing agreement with both the Society and the Marketing Agent through which they are bound by contract to market the contracted quantity of their cereal crop each year

2. Definitions

In this Agreement unless the context requires otherwise:-

2.1 "Marketing Agent" means Openfield Marketing Ltd.

2.2 "grain" means wheat, barley, oats, oilseed rape and pulses grown by the Grower on land occupied by him with the exception of any of those grown under seed contracts

2.3 "Grower" includes the Grower and means a shareholder in the Society who has a contract with the Society on terms which are the same as those of this Agreement except that the definition of grain, the contracted quantity, and the amounts or rates of any payments calculated on the basis of the contracted quantity may be different and "Growers" shall be construed accordingly

- 2.4 “minimum quantity” means **1100** tonnes of grain
- 2.5 “seed contract” means a contract under which the Grower has agreed to grow grain to be used for seed
- 2.6 “contracted quantity” means tonnes of grain but without prejudice this tonnage shall be deemed to be reduced to take into account compulsory set aside (or similar arrangement) to the extent that this may exceed the set aside area applicable to the Grower’s business for the **2010** harvest
- 2.7 “handling charge” as set out in clause 6
- 2.8 “Board” means the Board of directors for the time being of the Society

3. Commencement

This Contract shall commence from the date of this Agreement and shall be the whole agreement between the Grower and the Society and any prior Agreement shall be deemed cancelled by mutual consent

4. Commitment

- 4.1 Subject to the provisions of paragraph 4.2 of this clause, in each year in which this Agreement is in operation the Grower shall supply to the Society not less than the contracted quantity of grain for storage and screening and, if necessary, drying and the Society shall store and screen the same and, if necessary, dry it. The contracted quantity shall not be less than the minimum quantity
- 4.2 The Society shall not be obliged in any year to store, screen, or dry any variety of grain if, in the opinion of the Board of the Society, there will not be a sufficient quantity of that variety supplied by all the Growers
- 4.3 The Society shall not be obliged to store screen or dry any grain with a moisture content in excess of 20% unless the Society in its sole discretion agrees to do so

- 4.4 The Society shall not be obliged to store screen or dry any oilseed with a moisture content in excess of 16% unless the Society in its sole discretion agrees to do so
- 4.5 With regard to feed grain pulses, these are taken by arrangement only and the acceptance of feed grain pulses is to be at the sole discretion of the Society
- 4.6 Each Grower shall ensure that all grain or oil seed supplied for storage and sale hereunder is of such quality and in such condition as the Society may reasonably require from time to time and by way of notification to the Growers
- 4.7 On any question of the quality of condition of the grain or oil seed, the decision of the Board shall be final

5. Annual Storage Notification

- 5.1 On or before the 31st day of May in each year the Society shall notify the Grower of its estimate of the rates and charges payable by Growers in respect of grain to be harvested that year and supplied to the Society for each of storage, screening and drying
- 5.2 On or before the 31st day of July in each year the Society shall decide the final rates of the charges payable hereunder in respect of the grain from the last previous harvest
- 5.3 On or before the 1st March each year the Grower shall notify the Society of its estimate of the tonnage of the grain or oil seed likely to be supplied by the Grower in that particular year and in particular whether or not they are expected to meet the requirement of the minimum quantity

6. Handling Charges

- 6.1 In respect of each tonne of grain so supplied under this Agreement by the Grower he shall in respect of such of the services provided (either at the request of the Grower or if the Society shall consider any of such services to be reasonably required) pay a charge calculated at the appropriate estimated rate so notified under clause 5.1
- 6.2 If the total of the final charges payable by the Grower under clause 5.2 in respect of that grain is greater than the total payable by him under paragraph 5.1 then the difference

between the two totals shall be payable by him to the Society forthwith but if the total of the final charges is less than the total payable under that paragraph then the Society shall forthwith refund the difference to the Grower. (Subject to Board approval)

- 6.3 Unless the Grower and the Society agree otherwise, if from the grain harvested in any year the Grower supplies to the Society a total quantity which is less than the minimum quantity there shall nevertheless be payable to the Society the full charge in respect of the minimum quantity but where the Grower supplies less than the minimum quantity due to causes beyond his reasonable control the Society shall endeavour to replace the shortfall with grain or other crops from Growers and shall apply any additional payments received thereby in reducing the liability of the Grower under this paragraph
- 6.4 Every sum due from the Grower to the Society under this clause 6 shall be due without set-off or counterclaim on presentation of invoice and shall be payable by the Grower within twenty-eight days of invoice. Interest may be levied by the Society on overdue accounts at 4% above the National Westminster Bank plc base lending rate from time to time from the date when payment became due to the date of actual payment compounded monthly
- 6.5 In deciding the rates of charges in accordance with this clause 6 the Society shall not discriminate unfairly between one Grower and another, shall consult and take into account any advice offered by the Auditor of the Society and subject to the provisions of paragraph 6.5.4 of this clause, shall make full provisions for :-
- 6.5.1 the whole cost of maintaining and operating the Society's screening, drying and storage services;
 - 6.5.2 the need to accumulate a reasonable sum as a permanent reserve;
 - 6.5.3 the need to place to reserve a sum to enable the Society to meet the reasonable anticipated financial commitments including (but without prejudice to the generality) provision for new or replacement plant premises and equipment of a capital nature, all sums so placed to reserve in respect of charges payable by the Grower being recorded as having been paid by him;
 - 6.5.4 if in any year the Board, having taken into account any advice offered by the Auditor of the Society decide that it would not be in the best interest of Growers as a whole or of the Society to make full provision for the costs and reserves provided for in paragraph 6.5.3 of this clause then the Board may fix charges for

that year at such lower level as they may so decide and any resulting deficit shall be attributed among the Growers in the same manner as allocation to reserves are to be attributed under paragraph 6.5.3 of this clause and the rates and charges may vary between one class of service and another

- 6.6 On the termination of this Agreement for any reason and by any method the Society in its sole discretion may pay to the Grower at such time or times as the Society decides a sum not exceeding the aggregate of the sums recorded as having been placed to reserve under paragraph 6.5.3 of this clause in respect of charges paid by the Grower and may appropriate to the permanent reserve fund mentioned in paragraph 6.5.3 of this clause any part of that aggregate which is not paid to the Grower within three years after termination

7. Additional Grain

With the consent of the Society the Grower may supply grain in excess of the minimum quantity for screening, drying and/or storage and in such an event the Society may require the Grower in addition to paying the handling charge due under clause 6

- 7.1 to pay to the Society a premium decided by the Society in respect of the additional grain,
or
- 7.2 to make an additional capital contribution to the Society of an amount related to the additional tonnage of grain and calculated at the rate specified in clause

provided that the Society shall have no right to require the Grower to make an additional premium of capital contribution under this paragraph unless the quantity of the Grower's grain stored by the Society at any one time exceeds the minimum quantity

8. Property and Risk

- 8.1 As between the Society and the Grower the property in the grain shall not pass to the Society but subject to paragraph 8.2 the risk of loss or damage to the grain shall be on

the Society whilst the grain is in the possession of the Society including whilst in transit or being handled by vehicles or equipment belonging to or hired by the Society

- 8.2 Any liability of the Society under this clause shall not exceed the amount recoverable by the Society under its insurance policy or against any haulier or other third party. Details of any insurance policy shall be made available to the Grower on request

9. Shareholding

- 9.1 If he has not already done so the Grower shall subscribe forthwith for one share in the Society and shall retain a holding of one share during the currency of this Agreement
- 9.2 In the event of the Grower failing or ceasing to comply with paragraph 9.1 above for any cause this Agreement shall terminate forthwith
- 9.3 In the event of the Grower failing or ceasing to comply with paragraph 9.1 from any cause or ceasing to be under contract to market grain through the Marketing Agent as aforesaid, this Agreement shall terminate forthwith

10. Qualification Loan (Capital Contribution)

- 10.1 On the signing of this Agreement the Grower shall become liable to provide an unsecured and interest free loan ("qualification loan") to the Society by way of contribution to its capital expenditure on buildings equipment and land in the sum of:
- 10.1.1 £40 for each tonne of grain comprised in the contracted quantity and
- 10.1.2 such further sum or sums as may be required in the future for such like purposes and as may be approved by a majority of not less than 75% of the Growers by special resolution at a properly convened general meeting of the Society
- 10.2 The said qualification loan shall be paid by the Grower in whole or in instalments at such time or times as the Society shall direct but if the Society directs that the capital contribution shall be paid by instalments the Society shall ensure so far as is reasonable that financial parity is maintained between the Growers by calling for payments from the Growers in proportion to the outstanding amounts of their respective capital contribution

- 10.3 The Society shall not pay the Grower any interest on the capital contribution
- 10.4 Any balance between the amount paid by way of qualification loan by the Grower to the Society and the figure specified in clause 10.1.1 shall be paid by the Grower to the Society as an additional charge under the service charges at a rate as agreed by the Grower and the Society until the capital contribution specified at clause 10.1.1 has been satisfied. Any further payments in this respect under the service charges will be used by the Society to amortise the capital contribution of the Grower and the sum standing to the credit of the Grower as a qualifying loan shall be reduced accordingly
- 10.5 At intervals of three years the Society shall re-calculate the level of qualification loan paid by each and every Grower and if the Grower has supplied additional grain by virtue of the provisions of clause 3 and that amount is on average five per cent or more of the contracted quantity he shall pay the additional sum so required in paragraph 10.1.2 hereof on the basis of the whole of such increase
- 10.6 On the revision of qualification loans, any premiums paid by a Grower in the three year review period, may be converted to satisfy all or part of his additional qualification loan due from that Grower, but any excess premium shall not be refundable
- 10.7 If the Grower fails to pay the said qualification loan or any instalment thereof within thirty days of receiving written notice from the Society of the requirement so to do then the Society may terminate this Agreement by giving to the Grower not less than thirty days written notice to that effect
- 10.8 Within three years after the termination of this Agreement for any reason and by any method the Society in its sole discretion may repay to the Grower the total sum remaining to the credit of the Grower under this clause by way of capital contribution but, subject thereto, the Society may repay that sum in whole or in instalments at such time or times as it thinks fit

11. Operating Rules

The Society may from time to time make regulations governing the operation of its storage services which the Grower shall observe and in particular but without prejudice to the generality of this paragraph the Society may make regulations governing

11.1 the arrangements for the collection of grain from the Growers and/or the delivery of grain to the Society's store

11.2 the access of Growers to the store for the purpose of inspecting grain there and seeing the operation of the plant

11.3 the calculation of the weight of grain stored for Growers

11.4 the sampling and designation of grain

11.5 the entitlements of the respective Growers to proportions of the grain in the store

and the Society shall notify Growers of all regulations made under this paragraph

12. Termination

Subject to the other provisions for termination contained herein, this Agreement shall continue in operation from the date hereof for a period of ten years and thereafter may be terminated by either party giving to the other party not less than twelve months notice in writing to that effect to expire at the end of the first ten year period or at any time thereafter

13. Assignment, Death, Loss of Farm

13.1 This Agreement shall not be assignable by the Grower without the written consent of the Society such consent to be at the sole discretion of the Society. The Society shall be entitled to such contract or otherwise let out such of the services to be provided under clause 3 hereof

13.2 If the Grower, being a sole trader, dies during the currency of this Agreement then his personal representatives shall assume the whole benefit and burden of the Grower hereunder and shall be entitled within a period of 12 months from the date of death to

assign the benefit and burden of this Agreement to a third party approved by the Society at its sole discretion

13.3 If for any reason the Grower is unable or it becomes impracticable for him to fulfil his obligations hereunder then this Agreement may be terminated at any time by the Society giving to the Grower not less than three months notice in writing to that effect

14. Bankruptcy, Liquidation etc

14.1 The Society may terminate this Agreement by written notice at any time after the occurrence of any of the following events (without prejudice to any other remedy that may be available or the antecedent rights of the parties) with respect to the Grower namely:

14.1.1 an execution or distress is levied against any property of the Grower and is not discharged or paid off within twenty-one days thereafter;

14.1.2 an incumbrancer takes possession or a receiver is appointed of the whole or any part of the property or undertaking of the Grower;

14.1.3 the Grower makes any composition or scheme of arrangement with his or its creditors including individual voluntary arrangements or any similar scheme;

14.1.4 the Grower, being a sole trader, is adjudicated bankrupt;

14.1.5 the Grower, being a body corporate, enters into liquidation by the making of an order or the passing of a resolution for winding up or the signing of an instrument of dissolution save for the purposes of amalgamation or reconstruction and if the said Grower is a partnership then such right to terminate shall arise on the occurrence of any such event with respect to the partnership or to any partner therein

14.1.6 If the Grower shall commit a breach of this Agreement which is incapable of remedy or in the case of persistent breach giving rise to at least three notices to the Grower under 14.1.7 below

14.1.7 if the Grower commits a breach of this Agreement capable of remedy and the Grower shall fail to remedy such breach after sixty days notice (or such other period as may be reasonable in the circumstances) specifying the breach and the steps required to remedy

15. Modification of Agreement

At any time the Society may give written notice to every Grower of its intention to modify the terms of this Agreement and the corresponding agreements with Growers other than the Grower and requiring each Grower to notify the Society in writing of his acceptance or refusal of the modifications within such period as shall be stated in the notice being not less than twenty-one days and if the modifications are duly accepted by not less than three-fourths of the total number of Growers and :

15.1 If the Grower is one of the Growers who duly accepts the modifications then this Agreement shall be modified accordingly;

15.2 If the Grower is not one of the Growers who duly accepts the modifications then the Society may give the Grower written notice informing him of the due acceptance by three-fourths of the Growers and requiring him to signify in writing his acceptance of the modifications within such period as shall be specified in the notice being not less than twenty-eight days and if the Grower fails to so signify his acceptance then the Society may terminate this Agreement forthwith by giving the Grower written notice to that effect

16. Consequences of termination

16.1 On the termination of this Agreement by the Grower for any reason specified in clause 14 all sums due to be paid to the Society under the provisions of this Agreement shall become immediately repayable

16.2 On the termination of this Agreement for any reason, other than by the Grower under clause 14, the Society shall, only if it is reasonably practicable having regard to the interests of all Growers as a whole, repay to the Grower within two years the total sum paid to the Society by him under clause 10 of this Agreement, less any deficit arising under this Agreement

16.3 On the termination of this Agreement for any reason, other than by the Grower under clause 14, the Society shall repay within five years to the Grower all sums recorded as having been allocated to reserves under clause 6.5.3 in respect of charges paid by the Grower less any deficit recorded as having been attributed to the Grower under this Agreement provided that if the total of such deficit exceeds the total of sums recorded as having been placed to reserve under clause 6.5.3 the Grower shall forthwith pay to the Society a sum equivalent to the difference so far as it cannot be recovered by the Society out of other monies held to the account of the Grower

17. Lien

The Society shall have a general lien against the Grower in respect of the grain and any other property of the Grower which shall be stored by the Society for all charges or other monies that may become due from the Grower to the Society at any time whatsoever and in the event that such lien is not satisfied within a reasonable time the Society may at its absolute discretion sell the grain or other such property or part thereof as agents for the owner and apply the proceeds towards satisfaction of the charges or other monies due together with the costs and expenses of retention insurance and sale PROVIDED THAT and upon accounting to the Grower for any balance that might remain the Society shall be discharged from any liability whatsoever in respect of the grain and any other property

18. Indemnity

The Grower shall indemnify the Society against:-

18.1 All consequences suffered or incurred by the Society (including but not limited to claims, demands, proceedings, fines, penalties, damages, costs, expenses and loss of or damage to the Storage Facility or to other goods stored) of any breach of Contract or of these Conditions by the Grower, or in respect of any incorrect, insufficient or improper packaging of the Goods, or in the event of fraud, deceit or deliberate concealment;

18.2 All claims and demands that might be made in excess of the liability of the Society under these Conditions, or in respect of any indirect or consequential loss or damage;

18.3 All claims, demands, proceedings, fines, penalties, damages, costs and expenses whatsoever suffered or incurred by the Society in consequence of any injury to persons

and/or loss of or damage to property caused by or arising out of the Storage by the Company of Goods.

19. Force Majeure

If default in the performance of any obligation under this Agreement is unavoidably caused by industrial action or restrictions imposed by any government authority, whether at local, national or European

20. Arbitration

Any dispute hereunder shall be referred to arbitration in accordance with the rules of the Society

Signed for and on behalf
of the Grower :

Signed for and on behalf
of the Society :