



**“Members Agreement”**

means the agreement to be signed by the Grower agreeing to become a member of the Company

**"Operational Programme" "Producer Organisation" "Recognised Produce"**

shall have the meanings ascribed to them in Council Regulation (EC) No. 2200/96 as amended from time to time

**2. Ownership of the Assets**

- 2.1 The Grower hereby acknowledges that the Assets remain the sole property of the Company unless otherwise provided in accordance with the terms of this Agreement and where practicable the Assets are to be identified with the Company's name
- 2.2 The Grower hereby agrees to make the Assets available for use by all Members at such times and upon such notice as the Company shall request. The Assets shall only be used by Members for Recognised Produce unless otherwise authorised by the Company. The Company must be informed immediately if the Assets are used by a non-member or for ineligible produce
- 2.3 If the Assets (or any of them) are used by a person who is not a Member or for non-Member produce or for ineligible produce the Grower will reimburse the Company in respect of any penalties or charges or assistance recovered in relation to the Asset arising under the EU Fresh Fruit and Vegetables Aid Scheme as a consequence of such use
- 2.4 The Company will fully depreciate the cost of the Assets in accordance with normal accounting principles and the Regulations of the EU Fresh Fruit and Vegetables Aid Scheme over the following periods from 1<sup>st</sup> January in each year:-
- |                              |         |
|------------------------------|---------|
| Perennials, trees and shrubs | 8 years |
| Moveable equipment           | 5 years |
| Fixed equipment              | 5 years |
- 2.5 Once the Asset is depreciated to a zero value in accordance with Clause 2.4 or once the Operational Programme is completed, whichever is the longer, the Grower has the opportunity to purchase the Asset for the higher of the market value or the written down value of the Asset (subject to a minimum payment of £1 plus VAT) provided that the Grower is still a Member on that date
- 2.6 The Company gives no warranties or indemnities (other than good title) in respect of the Assets upon the transfer of the Asset in accordance with Clause 2.5 and all warranties express or implied are hereby excluded

**3. Insurance and Maintenance**

- 3.1 The Assets shall remain at the sole risk of the Grower
- 3.2 The Grower shall at all times:-
- 3.2.1 insure the Asset for at least its full replacement value with an insurer of good repute and promptly pay all premiums in respect thereof notify the insurer of the Company's interest and shall immediately produce the certificate of insurance and the premium receipt or other evidence of insurance upon request of the Company;
- 3.2.2 maintain the Asset in a good and usable condition in accordance with the manufacturer's recommendations;
- 3.2.3 ensure that only properly qualified competent persons carry out any repairs of the Asset;
- 3.2.4 meet the total cost of any repairs of the Asset; and

- 3.2.5 inform the Company immediately of any damage to the Asset or of any repairs needed and arrange for its repair or replacement as soon as is reasonably practicable. In the case of trees and plants a 5% loss is deemed acceptable
- 3.3 If the Grower fails to insure the Assets as aforesaid or to supply the Company with satisfactory evidence thereof the Company may insure such Assets and the Grower shall forthwith reimburse the Company its expenditure in respect thereof
- 3.4 The Asset must be available for inspection by the Rural Payments Agency the EU Commission or the Company or their respective officials or representatives at any reasonable time

#### **4. Termination of Agreement**

- 4.1 The Company may terminate this Agreement at any time on giving to the Grower one month's written notice
- 4.2 In the event that the Grower's membership of the Company is terminated in accordance with the Members Agreement the Grower will indemnify the Company against any outstanding liabilities under any Hire Purchase or similar agreement relative to the Asset entered into by the Company on the behalf of the Grower The Company may elect in relation to any Asset owned by the Company for the use and benefit of the Grower to do any of the following:-
  - 4.2.1 require the Grower to reimburse the Company in respect of any penalties or charges or assistance recovered in relation to the Asset arising under the EU Fresh Fruit and Vegetables Aid Scheme as a consequence of such termination;
  - 4.2.2 require the Grower to deliver the Asset without delay to another Member at the Grower's own cost;
  - 4.2.3 require the Grower to purchase the Asset for the higher of the market value or the written down value of the Asset.
  - 4.2.4 require the Grower to allow the remaining Members to have exclusive use of the Asset for such reasonable period and at all reasonable times upon giving the Grower reasonable notice

#### **5. General**

- 5.1 This Agreement shall be governed by English Law and the parties hereby agree to submit to the exclusive jurisdiction of the English Courts
- 5.2 The Company may assign its rights under this Agreement The Grower shall not be entitled to assign its rights under this Agreement or any part of it without the prior written consent of the Company
- 5.3 Failure by the Company in enforcing or partially enforcing any provision of this Agreement or any rights or remedies under this Agreement will not be construed as a waiver of any rights under this Agreement
- 5.4 No variation to this Agreement shall be valid unless made in writing and signed by the parties to this Agreement
- 5.5 Nothing in this Agreement shall create any partnership joint venture or other relationship of principal and agent between the Company and the Grower
- 5.6 The provisions of this Agreement shall be binding on the heirs and successors of the Grower
- 5.7 Any notice to be given under this Agreement shall be in writing and shall be delivered by hand, sent by first class recorded delivery post or sent by fax (such fax notice to be confirmed by letter posted within 24 hours) to the address of the other party set

out in this Agreement or to the fax number of the other party as may have been notified Any such notice shall be deemed to have been served if:

5.7.1 delivered by hand – at the time of delivery;

5.7.2 sent by post 2 business days after posting; and

5.7.3 if sent by fax – at 9a.m. on the next business day after the fax was dispatched

## **ASSET AGREEMENT**

**AS WITNESS** the hand of a Director duly authorised for and on behalf of the Company and the hand of the Grower or a person duly authorised on behalf of the Grower.

**SIGNED** by **R Hinge**

Duly authorised for and on behalf of **FRUITION PO LIMITED** (“the Company”)

**SIGNED**

Duly authorised for and on behalf of **XXXXXXXXXXXXXXXXXX** (“the Grower”)