



# SPECIMEN CROSS OPTION AGREEMENT INDIVIDUAL PURCHASE

## Introduction

This draft cross option agreement is for the consideration of legal and financial advisers to the proposed parties and not for signature as it stands. The agreement deals with the purchase of a critically ill or deceased shareholder, partner or member's share of the business by the other business owners.

**Important Note:** This specimen cross option agreement is for general guidance only and may not be appropriate for your client's particular circumstances. It is therefore supplied by Royal London without acceptance of liability. Only (1) plans on the life of the proposer and issued by Royal London or the divisions known as Bright Grey and Scottish Provident and (2) the Business Trust issued by Royal London have been taken into account in the preparation of this specimen agreement. We strongly recommend that you take separate legal and taxation advice prior to signing any agreement and while the agreement is in existence.

## Notes

This draft only caters for a purchase by individuals. It assumes that each of the parties will take out an own life plan to be written under a Business Trust for the benefit of the other owners. A separate draft is available for company share purchase.

This draft agreement lays out options arising on death and, if required, critical illness by selecting the appropriate wording. The solicitor drawing up the final agreement should therefore remove the tick boxes and simply include any appropriate wording and delete the notes, as they do not form part of the agreement.

As will be seen, this is a basic draft. It can be made more comprehensive, but this is a matter for the parties and their own legal advisers. The starting point for any ownership protection arrangement must always be a clear understanding of what the parties want to achieve.

## A Deed of Agreement

**Note:** Insert the date. This agreement should be dated on the date that it is signed.

Date

**Note:** Insert full names and addresses of all interested parties.

**Name**

**Address**   
  
 **Postcode**

**Name**

**Address**   
  
 **Postcode**

**Name**

**Address**   
  
 **Postcode**

**Name**

**Address**   
  
 **Postcode**

The above-named parties to this Agreement (“Stakeholders” and each a “Stakeholder”) are (1) shareholders (2) partners or (3) members in a business called:

**Note:** Insert the full name and address of the business.

**Business Name**

**Address**   
  
 **Postcode**

(the “Business”) the Business being a

- \* company incorporated under the Companies Acts
- \* partnership
- \* limited liability partnership

(\* select wording as appropriate)

## B

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Each Stakeholder wishes to enter into arrangements as set out in this Agreement for the sale and purchase of his/her Interest in the Business in the event of his/her critical illness, terminal illness or death (as these terms should be understood in terms of the Policy) or some of such events, all as set out in this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

### B1 Definitions

In this Agreement, unless the context otherwise requires, the following expressions shall have the following meaning and other terms shall be as defined above:

“Interest” – a Stakeholder’s interest in the Business as a partner or member or his/her holding of registered shares in the Business as appropriate.

“Policy” – in respect of each Stakeholder, the policy or policies effected by him/her on his/her life pursuant to Clause B2i, each such policy also being a “Policy”.

“Policy Proceeds” – any sums payable by the insurer under the Policy by way of claimed benefit except in respect of a life assured other than the Stakeholder who effected the Policy.

“Expert” – a practising member of the Institute of Chartered Accountants in the jurisdiction in which the above address of the Business is situated, unless otherwise agreed in writing by each of the Stakeholders or, if deceased, his/her respective legal personal representatives or executors.

### B2 Policies and Application of Policy Proceeds

**B2i** Each of the Stakeholders hereby agrees (a) to effect and thereafter maintain one or more policies of assurance with the identity of the company(ies), term, sum assured and other details of each being as agreed in writing with the other Stakeholders for the purposes of this Agreement and (b) periodically to review the sums assured against the value from time to time of his/her Interest and to adjust the sum assured with the written consent of the Stakeholders and the trustees holding the Policy.

**B2 ii** Each of the Stakeholders shall procure that the Policy will be subject to a declaration of trust (in terms accepted in writing by the other Stakeholders) whereby the Policy Proceeds are applicable as set out in Clause G. The settlor of the relevant trust as party to this Agreement and notwithstanding the terms of the trust undertakes (and binds his legal personal representatives and executors) not to appoint a trustee who is not a Stakeholder, nor to remove a trustee who is a Stakeholder, but all only for so long as the settlor is party to this Agreement or he/she or his/her estate is subject to obligations under the Agreement which remain undischarged.

**B2 iii** Options as among the Stakeholders and their legal personal representatives or executors shall arise according to Clause E and be of the nature as described in Clauses C and D.

## C Options – Death Claims and Terminal Illness Claims

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**C1** In the event of the Policy Proceeds being in respect of the death of a covered Stakeholder, the other Stakeholders shall have the option to purchase and the deceased Stakeholder’s legal personal representatives or executors shall have the option to sell (to the other Stakeholders) the Interest of the deceased Stakeholder. On the exercise of such option under the Clause the legal personal representatives or executors shall sell or the other Stakeholders shall purchase the Interest as appropriate.

**C2** In the event of the Policy Proceeds being in respect of terminal illness of the covered Stakeholder, the option(s) shall be as follows:-

The other Stakeholders shall have the option to purchase and the Stakeholder who has suffered the terminal illness shall have the option to sell (to the other Stakeholders) the Interest of the terminally ill Stakeholder. On the exercise of an option under this Clause the terminally ill Stakeholder shall sell or the other Stakeholders shall purchase the Interest as appropriate.\*

The Stakeholder who has suffered the terminal illness shall have the option to sell his/her Interest (to the other Stakeholders) and on the exercise of this option the other Stakeholders shall purchase the Interest.\*

(\*Select wording as appropriate)

## D Options – Critical Illness Claims

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In the event of the Policy Proceeds being in respect of critical illness of a covered Stakeholder, the option(s) shall be as follows:-

The other Stakeholders shall have the option to purchase and the Stakeholder who has suffered the critical illness shall have the option to sell (to the other Stakeholders) the Interest of the critically ill Stakeholder. On the exercise of an option under this Clause, the critically ill Stakeholder shall sell or the other Stakeholders shall purchase the Interest as appropriate.\*

The Stakeholder who has suffered the critical illness shall have the option to sell his/ her Interest (to the other Stakeholders) and on the exercise of this option the other Stakeholders shall purchase the Interest.\*

(\*Select wording as appropriate)

## E Availability and Exercise of Options

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- E1** If an option as described in Clauses C or D is sought to be exercised, the provisions of Clauses E to H in particular shall apply.
- E2** The options in Clauses C and D shall arise upon, and must be exercised within three months of, the earlier of (a) the Policy Proceeds being paid to the trustees of the Policy following admission of the claim by the insurer and (b) the Policy Proceeds otherwise being presently payable to the order of such trustees.

## F Valuation

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- F1** The purchase price of the relevant Interest shall be determined as at the day immediately preceding the date of death or date of formal diagnosis of the relevant terminal/critical illness giving rise to the payment of Policy Proceeds, as the case may be, in accordance with the articles of association, limited liability partnership agreement or partnership deed of the Business. If they do/it does not provide for such determination, the value of the Interest shall be determined by the Expert.
- F2** The Expert shall be appointed by the Stakeholders (if the Stakeholder on whose life the Policy Proceeds have become payable is deceased, his/her legal personal representatives or executors) within two weeks of the exercise of an option, failing which by the Secretary of the Institute of Chartered Accountants in the jurisdiction in which the above address of the Business is situated.
- F3** The Expert shall act as expert not as arbitrator but shall afford the Stakeholders (including legal personal representatives and executors) the opportunity to make such oral and written representations as they may wish, subject to such reasonable time and other limits as the Expert may prescribe. The Expert's decision shall be final and binding and not subject to review or appeal.
- F4** The value of the Interest shall be notified to the trustees holding the relevant Policy as soon as determined by the Expert.

## G The Trust in respect of the Policy

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The terms of the declaration of trust referred to in Clause B2ii shall require that in respect of the Policy subject to such trust and in regard only to the Policy Proceeds, the trustees at their absolute discretion may pay a sum equal to the value of the Interest to the Stakeholders (other than the person covered) according to the parties to and terms of any relevant option agreement and in respect of any Policy Proceeds not so applied, pay such monies to the beneficiaries in the declaration of trust.

## H Sale and Purchase

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- H1** The sale and purchase of the Interest following on the exercise under Clauses C to E of an option shall take place one month after the date of exercise of the option or the date on which the value of the Interest has been determined pursuant to Clause F, whichever is the later.
- H2** Each Stakeholder obliged to purchase an Interest under Clauses C to E shall, notwithstanding such Clauses, only be required to purchase an Interest according to the proportion that the amount of the Policy Proceeds which he is granted absolutely by the trustees bears to the total Policy Proceeds, and in any event and regardless of the number of Stakeholders acquiring the Interest, such obligation on each Stakeholder shall only extend to so much of the Interest as the monies received by each Stakeholder is adequate to purchase.

## I Continuing Protection

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- I1** The premiums for the Policy shall be paid by the Business. The Business shall have no lien or claim on the Policy or the Policy Proceeds for any reason. To the extent that premiums are not paid by the Business the Stakeholders undertake according to the ratio of their respective Interests to pay punctually all the premiums and other monies necessary for keeping each Policy in force.
- I2** Each of the Stakeholders undertakes that if a relevant policy is or becomes void, voidable, unenforceable or paid up for any reason without the valid exercise of any of the options under Clauses C to E he/she shall immediately effect a policy in its place or exercise any option under the policy to effect a new policy in its place and the new policy shall thereafter be comprised within the term "Policy". The new policy shall be written in trust all on the same terms as apply or applied to the other policy.
- I3** Each of the Stakeholders undertakes that there is no third party right by way of security, charge, beneficial interest or otherwise affecting the Policy or Policy Proceeds save the declaration of trust referred to in Clause B2ii and further undertakes that he or she shall not at any time create or permit to arise or exist whether voluntarily or by operation of law any such third party right.

## J General

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- J1** In the event of the dissolution of the partnership or limited liability partnership or winding up of the company constituting the Business this agreement shall terminate automatically on the due performance of all outstanding obligations under it.
- J2** A notice will be sufficiently given if it is delivered by hand or if it is sent by recorded delivery post to the last known or usual home address (or registered office) of the relevant Stakeholder or legal personal representatives or executors as appropriate.
- J3** The Agreement shall bind the legal personal representatives and executors of the Stakeholders.
- J4** The Agreement shall be subject to the law of England unless the above-stated address of the Business is in Scotland when the law of Scotland shall apply. No third party rights are intended to be or are by this Agreement created.

IN WITNESS WHEREOF this instrument is executed as a deed on the day and year first mentioned above

**Stakeholder**  
**Signed as a deed and delivered by the said**

**Name**

**Signature**

**Witness**

**Name**

**Address**

**Postcode**

**Signature**

**Stakeholder**  
**Signed as a deed and delivered by the said**

Name

Signature

**Witness**

Name

Address

 Postcode 

Signature

**Stakeholder**  
**Signed as a deed and delivered by the said**

Name

Signature

**Witness**

Name

Address

 Postcode 

Signature

**Stakeholder**  
**Signed as a deed and delivered by the said**

Name

Signature

**Witness**

Name

Address

 Postcode 

Signature



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