Specimen individual purchase cross option agreement for use with spousal shareholders/partners

Introduction

This draft agreement is suitable where a business is owned by two or more shareholders or partners who work in the business (the "**Working Owners**") and their spouses or civil partners also own an interest in the business but do not work in the business (the "**Non–Working Partners**"). It deals with the purchase from a critically ill or deceased Working Owner of their share of the business, as well as the share of their Non–Working Partner by the surviving Working Owners. This draft agreement includes optional words in square brackets. The notes next to these indicate when these words should either be included or deleted.

Options on death

This draft agreement creates a 'Call' option for the surviving Working Owners to buy a deceased Working Owner's share and the share of their Non–Working Partner in the event of death. It also creates a 'Put' option for the personal representatives of each deceased Working Owner and their Non–Working Partner to sell their share in the business to the surviving Working Owners.

Options on diagnosis of a critical illness

The draft agreement can create a 'Put' option for a Working Owner who has been diagnosed with a critical illness covered by their plan to sell their share and the share of their Non–Working Partner to the other Working Owners. If this option is not required, clauses D3 and D4 should be deleted.

The draft agreement can also create a 'Call' option for the other Working Owners to buy the share of a Working Owner, and the share of their Non–Working Partner, that has been diagnosed with one of the critical illnesses covered by their plan. This option is only available if the Working Owner that has suffered the critical illness is unable to return to their normal duties within 12 months of the payment under their plan. If this option is not required, clauses C4 and C5 should be deleted.

Providing the funds to buy a share in the business

Each of the Working Owners will take out a Royal London Business Menu plan on their own life. This plan should be put under a business trust, with the other Working Owners as the beneficiaries. If any option is exercised after the death or critical illness of one of the Working Owners, the surviving Working Owners may use the funds from the Royal London plan to buy the deceased's or critically ill Working Owner's share of the business and that of their Non-Working Partner.

Notes

This draft agreement can be used for both companies and partnerships where the other Working Owners intend to purchase a deceased's or critically ill Working Owner's share of the business and that of their Non-Working Partner. It should not be used if a company is to purchase its own shares.

This draft agreement contains suggested wordings for options arising on death and, if required, payment of a claim on diagnosis of a critical illness. The notes next to the optional words in square brackets indicate when these words should either be included or deleted. If the wording provided by this draft agreement is used, the square brackets and notes should be deleted, as they are for reference purposes only.

The business's own legal advisers must draft an agreement specific to the business, taking into account the provisions of the Articles of Association, Partnership Agreement or Members' Agreement (as appropriate) as well as the legal and practical implications of such an agreement.

All parties involved must have a full understanding of the tax implications of such an agreement before taking or refraining from any action and should therefore seek independent legal advice.

No value is to be paid for the options themselves created under this agreement. The consideration for the grant of the options by either party is the option received from the other party. On this basis, the agreement may require fixed stamp duty to be paid.

Royal London cannot advise on the particular merits of any one scheme but can only comment on the points in these notes. Clients and their solicitors must accept full responsibility for the legal and tax effects of any agreement based on this draft agreement. Only one agreement is required for each scheme.

Option Agreement

This Agreement is made on D D M M Y Y Y Y

Title Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other (please specify)

First Name(s)

Middle Name(s)

Surname

Address

Postcode

Title Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other (please specify)

First Name(s)

Middle Name(s)

Surname

Address

Postcode

hereinafter collectively called the "**Working Owners**" and "**Primary Parties**" and individually the "**Working Owner**" and "**Primary Party**";

and

Title Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other (please specify)

First Name(s)

Middle Name(s)

Surname

Address

Postcode

Title Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other (please specify)

First Name(s)

Middle Name(s)

Surname

Address

Postcode

hereinafter collectively called the "**Non-Working Partners**" and "**Secondary Parties**" and individually the "**Non-Working Partner**" and "**Secondary Party**".

All the above-named are collectively referred to as the "**Parties**".

Whereas

(1) The Parties are [partners in the firm]/[shareholders in the company] known as ____________ (the "**Business**").

(2) The Parties wish to enter into an arrangement so that on the death [1][or critical illness] of a Working Owner their personal representatives [1][or they] shall have the option to sell their Share in the Business to the other Working Owner(s), who shall have the option to buy the relevant Share in the Business, and the Non-Working Partners of the deceased [1][or critically ill] Working Owner shall have the option to sell their Share in the Business to the other Working Owner(s), who shall have the option to buy the relevant Share in the Business.

(3) Each of the Non-Working Partners is a spouse or civil partner of a Working Owner.

[1] If the agreement is not to include any options on critical illness, delete these words.

A Definitions

In this Agreement unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine and the neuter, and vice versa and the following terms shall have the following meanings:

Agreed Value: means, in relation to the death of a Party, the Specified Value if the death occurs within three years of the date hereof and otherwise means the Fair Value;

Fair Value: means the value specified in Schedule 2 hereto;

Non-Working Partner: means the spouse or civil partner of a Working Owner who does not work in the Business;

Relevant Proportion: means the proportion specified in Schedule 3 hereto;

Royal London: means The Royal London Mutual Insurance Society Limited with company number 00099064, having its registered office address at 80 Fenchurch Street, London, United Kingdom, EC3M 4BY;

Share: means the share or shares in the Business owned by a Working Owner and their Non- Working Partner (as applicable);

Specified Value: means the value specified in Schedule 1 hereto; and

Working Owner: means a shareholder or partner in the Business.

B Basic agreement

Each of the Primary Party hereby agrees:

B1 to grant options over their Share, and, where appropriate, the Share of their related Secondary Party to the other Primary Party, as provided in Clauses C and D below;

B2 to effect a plan with Royal London which provides:

i Life Cover;

ii Life or Critical Illness Cover; or

iii Critical Illness Cover,

or any one or more of them (the "**Plan**").

B3 to settle the Plan on trust and to maintain the Plan;

in the manner provided hereinafter and being in consideration of each of the other Working Owners agreeing to do the same.

C Call option

C1 On the death of any Working Owner, the surviving Working Owners shall together have the option to purchase, within three (3) months from the date of the death of the deceased Party, the deceased Primary Party's Share and, where appropriate, the Share of their related Secondary Party from the deceased Party's personal representatives for the Agreed Value (and for the avoidance of doubt the option shall only be exercisable in respect of the whole of the deceased Party's Share and the whole of their related Secondary Party's Share) and on the exercise of such option the deceased Party's personal representatives shall sell the said Shares to the surviving Primary Party on the terms provided hereinafter.

C2 Where on the death of any Primary Party there is more than one surviving Primary Party and the option conferred by clause C1 is exercised by all the surviving Primary Parties, each of the surviving Primary Parties shall provide to the deceased Party's personal representatives their Relevant Proportion of the Agreed Value and shall become entitled to the Relevant Proportion of the deceased Primary Party's Share and, where appropriate, the Share of their related Secondary Party, or as near thereto as may be possible.

C3 Where on the death of any Primary Party there is more than one surviving party and one or more of the surviving Primary Parties wish to exercise the option conferred by clause C1 hereof, and one or more of the surviving Primary Parties do not wish to exercise that option, such of the surviving Primary Parties as do wish to exercise that option may do so and such of the surviving Primary Parties as do not wish to do so are not required to do so. In such a case, the Relevant Proportion of the Agreed Value of the Share to be provided by each of the surviving parties exercising the said option and the portion of the Share to which each of them becomes entitled shall be increased pro rata accordingly (unless among themselves the surviving Primary Parties exercising the option agree otherwise).

[2]**[C4** In circumstances where a payment is made under the Plan with respect to Life or Critical Illness Cover or Critical Illness Cover in the event of the Primary Party who is the subject of such cover not being able to return to their normal duties (which shall be determined in the sole discretion of the other Primary Parties) within twelve (12) months of the claim under the Plan being accepted by Royal London or such longer period as the other Primary Parties may determine, the other Primary Parties together shall have the option to purchase that Primary Party's Share and, where appropriate, the Share of their related Secondary Party for the Agreed Value (and for the avoidance of doubt the option shall only be exercisable in respect of the whole of that Primary Party's Share, and the whole of their related Secondary Party's Share) and on the exercise of such option the party who is the subject of such cover shall sell the said Shares to the other Primary Parties in accordance with the provisions hereof.

C5 In the event of the option contained in Clause C4 being exercised by some but not all of the other Primary Parties then the provisions of Clauses C2 and C3 shall apply with the necessary changes being made unless the context otherwise requires.]

[2] If the agreement is not to include a Call option on critical illness, delete clauses C4 and C5.

D Put option

D1 On the death of any Primary Party, the deceased Primary Party's personal representatives shall have the option to sell within three (3) months from the date of the death of the deceased Party, the deceased Primary Party's Share and, where appropriate, the Share of their related Secondary Party to the surviving Primary Parties for the Agreed Value (and for the avoidance of doubt the option shall only be exercisable in respect of the whole of the deceased Primary Party's Share and the whole of their related Secondary Party's Share) and on the exercise of such option the surviving Primary Parties shall purchase the said Shares from the deceased Primary Party's personal representatives on the terms provided hereinafter.

D2 Where on the death of any Primary Party there is more than one surviving Primary Party and the option conferred by clause D1 is exercised, each of the surviving Primary Parties shall (unless among themselves they agree otherwise) provide to the deceased Primary Party's personal representatives their Relevant Proportion of the Agreed Value and shall become entitled to their Relevant Proportion of the deceased Primary Party's Share and, where appropriate, the Share of their related Secondary Party or as near thereto as may be possible.

[3] **[D3** In circumstances where a payment is made under the Plan with respect to Life or Critical Illness Cover or Critical Illness Cover in the event of the Primary Party who is the subject of such cover not being able to return to their normal duties (which shall be determined in the sole discretion of the other Primary Parties) within twelve (12) months of the claim under the Plan being accepted by Royal London or such longer period as the other Primary Parties may determine, the critically ill Primary Party shall have the option to sell within three (3) months from the date of their Share, and, where appropriate, the Share of their Secondary Party to the other Primary Parties for the Agreed Value (and for the avoidance of doubt the option shall only be exercisable in respect of the whole of that Primary Party's Share and the whole of their Secondary Party's Share) and on the exercise of such option the surviving Primary Parties shall purchase the said Shares from the Primary Party on the terms provided hereinafter.

D4 Where the option in Clause D3 is exercised by a Primary Party (the "**Selling Party**") and there is more than one other Primary Party against whom the option is exercised (each such Primary Party being referred to as a "**Purchasing Party**") each Purchasing Party shall provide to the Selling Party their Relevant Proportion of the Agreed Value and shall become entitled to their Relevant Proportion of the Selling Party's Share, and, where appropriate, the Share of their related Secondary Party or as near thereto as may be possible.]

[3] If the agreement is not to include an option on critical illness, delete clauses D3 and D4.

E Plan and trusts

E1 Each Primary Party shall no later than one (1) week after entering into this Agreement or as soon as practically possible effect a Plan with Royal London which provides:

i Life Cover

ii Life or Critical Illness Cover

iii Critical Illness Cover

or any one or more of them, the sum assured under which shall be equal in amount to the Specified Value of the combined Shares of that party, and, where appropriate, their related Secondary Party at the date hereof which Plan shall be written subject to a trust under which the beneficiaries are the Primary Parties, other than the Primary Party who is subject to such cover, for the time being and from time to time of the Business and no other person, persons or class of persons.

E2 Each Primary Party shall pay promptly all premiums in respect of the Plan.

F Sum assured less than agreed value

If on the death or critical illness of any Primary Party the option under Clause C or D above is exercised and for any reason the sum assured payable under the Plan is less than the Agreed Value of that party's Share, and, where appropriate, the Share of their related Secondary Party, the balance of the Agreed Value shall be paid in [4] ______ equal instalments and the outstanding amount from time to time shall [5][bear interest at ______% per annum/not bear interest];

[4] Insert the number of instalments

[5] Delete as appropriate and insert an interest rate if required.

G Freedom to dispone

Nothing in this Agreement shall in any way whatsoever prevent or hinder any Party from disposing, charging, encumbering or otherwise dealing in any way with their Share during their lifetime.

H Effect of agreement

H1 This Agreement shall:

i bind the Parties and their respective personal representatives;

ii cease to bind or to confer any benefit on any Party and their personal representatives on the earlier of:

(a) their ceasing to be a partner in or shareholder of the Business (other than by reason of that Party's death); or

(b) the Business being dissolved or a resolution being passed that it shall be liquidated.

iii This Agreement shall be personal to the Parties and their respective personal representatives and the benefit of the Agreement shall not be assignable to any other person.

Signatures

Signature 1

Name	
Signature	
Witness name	
Witness signature	

Signature 2

Name	
Signature	
Witness name	
Witness signature	

Signature 3

Name	
Signature	
Witness name	
Witness signature	

Signature 4

Name	
Signature	
Witness name	
Witness signature	

Schedule 1 Specified Value

The Specified Value of the Share of each Party shall be:

Party Name	Specified Value

Schedule 2 Fair Value

The Fair Value of the Share of each Party shall be the Relevant Proportion of the market value of the Business as at the date of the Primary Party's death or at the date upon which a payment under the Plan with respect to the Critical Illness of a Primary Party is made (as the case may be) as determined by an independent auditor or professional valuer appointed by the personal representatives of the deceased Primary Party, or the Selling Party where a payment under the Plan for a critical illness has been made in respect of that Primary Party, and in the absence of any such determination the Fair Value of the Share shall be the Relevant Proportion of the said market value as determined by the President for the time being of the Institute of Chartered Accountants for [6][Scotland/England & Wales].

[6] Delete as appropriate.

Schedule 3 Relevant Proportion

1. Subject to paragraph 2 of this Schedule, the Relevant Proportion of each Party shall be:

- i if the Business is a partnership, the proportion of partnership profits to which that Party is entitled in the first to occur of: (a) the accounting period during which the death referred to in Clause C or D occurs; and (b) the accounting period during which the option referred to in clause D3 is exercised; or
- ii if the Business is a company, the ratio of the number of issued ordinary shares of the company to which that Party is beneficially entitled at the first to occur of: (a) the death referred to in clause C or D; and (b) the time of the exercise of the option referred to in Clause D3, bears to the total number of such shares to which all the Parties combined are beneficially entitled.

2. In paragraph 1 above, it shall be assumed (except for the purposes of Schedule 2 of this Agreement) that the Party or Parties in respect of whose Share any option is being exercised had no share of or shares in the Business on or immediately before their death or the payment in relation to a critical illness.