

## Cross option agreement

This draft agreement deals with the purchase from a critically ill or deceased shareholder or partner of their share of the business by the other shareholders or partners (the owners). The draft includes optional words in square brackets. The notes next to these indicate when these words should either be included or deleted.

### **Options on death**

The agreement creates a 'Call' option for the surviving owners to buy a deceased owner's share in the event of death. It also creates a 'Put' option for the personal representatives of each owner to sell their share to the surviving owners.

### **Options on diagnosis of a critical illness**

The agreement can create a 'Put' option for an owner that has been diagnosed with a critical illness covered by their plan to sell their share to the other owners. If this option is not required, clauses D3 and D4 should be deleted.

The agreement can also create a 'Call' option for the other owners to buy the share of an owner that has been diagnosed with one of the critical illnesses covered by their plan. This option is only available if the 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 owners will take out a Bright Grey Business Protection Menu plan on his or her own life. This plan should be put under a business trust, with the other owners as the beneficiaries. If any option is exercised after the death or critical illness of one of the owners, the other owners may use the funds from the Bright Grey plan to buy the dead or critically ill owner's share of the business.

## **Notes**

*This draft can be used for both companies and partnerships where the other owners will purchase a dead or critically ill owner's share of the business. It should not be used if a company is to purchase its own shares.*

*This draft 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 this draft wording is followed, the square brackets and notes should be deleted, as they are for reference only.*

*The business's own legal advisers should draft an agreement specific to the business, taking into account the provisions of the articles of association or partnership agreement 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.*

*We 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. Only one agreement is required for each scheme.*

# Option agreement

This Agreement is made on the  day of  20

by

title
first name
middle name
last name

and

title
first name
middle name
last name

of the first part

of the second part

and

title
first name
middle name
last name

and

title
first name
middle name
last name

of the third part

of the fourth part

(hereafter referred to together as “the parties” and individually as “the party”)

## Whereas

i the Parties are partners in the firm/shareholders in the company known as  (hereinafter called “the business”)

ii the Parties wish to enter into an arrangement so that on the death <sup>1</sup>[or serious illness] of a Party <sup>1</sup>[he or] his personal representatives shall have the option to sell his share of or shares in the Business (hereinafter called “the Share”) to the other Parties and <sup>2</sup>[in the case of death] the other Parties shall have the option to purchase his Share from <sup>1</sup>[him or] his personal representatives in the manner hereinafter appearing.

<sup>1</sup> If the agreement is not to include any options on critical illness, delete these words.

<sup>2</sup> If the agreement is only to include options on death or is to include a Put and a Call option on critical illness, delete these words.

## A Definitions

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

**Specified Value:** means the value specified in the First Schedule hereto;

**Fair Value:** means the value specified in the Second Schedule hereto;

**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;

**Relevant Proportion:** means the proportion specified in the Third Schedule hereto;

## B Basic agreement

Each of the Parties hereby agrees:

**B1** to grant options over his Share to the other Parties;

**B2** to effect a Plan with Bright Grey which provides:

- i Life Cover
  - ii Life or Critical Illness Cover
  - iii Critical Illness Cover
- or any one or more of them.

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

in the manner hereinafter appearing in consideration of each of the other Parties agreeing to do the same.

## C Call option

**C1** On the death of any Party the surviving Parties shall together have the option to purchase within three months from the date of his death the deceased Party's Share 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 on the exercise of such option the deceased Party's personal representatives shall sell the said Share to the surviving Parties on the terms hereinafter appearing.

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

**C3** Where on the death of any Party there is more than one surviving party and one or more of the surviving Parties wish to exercise the option conferred by clause C1 hereof and one or more of the surviving Parties do not wish to exercise that option such of the surviving Parties as do wish to exercise that option may do so and such of the surviving Parties as do not wish to do so need not do so and 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 Parties exercising the option agree otherwise).

<sup>3</sup>**C4** In circumstances where a payment is made under the Plan with respect to Life or Critical Illness Cover or Critical Illness Cover the other Parties together shall in the event of the Party who is the subject of such cover not being able to return to his normal duties, which shall be determined in the sole discretion of the other Parties, within 12 months of the claim under the Plan being accepted by Bright Grey or such longer period as the other Parties may determine have the option to purchase that Party's share for the Agreed Value (and for the avoidance of doubt the option shall only be exercisable in respect of the whole of that Party's Share) and on the exercise of such option the party who is the subject of such cover shall sell the said share to the other 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 Parties then the provisions of Clauses C2 and C3 shall apply with the necessary changes being made unless the context otherwise requires.]

<sup>3</sup> *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 Party the deceased Party's personal representatives shall have the option to sell within three months from the date of his death the deceased Party's Share to the surviving 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 Party's Share) and on the exercise of such option the surviving Parties shall purchase the said Share from the deceased Party's personal representatives on the terms hereinafter appearing.
- D2** Where on the death of any Party there is more than one surviving Party and the option conferred by clause D1 is exercised, each of the surviving Parties shall (unless among themselves they agree otherwise) provide to the deceased Party's personal representatives his Relevant Proportion of the Agreed Value and shall become entitled to his Relevant Proportion of the deceased Party's Share or as near thereto as may be possible.
- <sup>4</sup>**D3** In circumstances where a payment is made under the Plan with respect to Life or Critical Illness Cover or Critical Illness Cover, the Party who is the subject of such cover shall have the option to sell within three months from the date of payment his Share to the other Parties for the Agreed Value (and for the avoidance of doubt the option shall only be exercisable in respect of the whole of that Party's Share) and on the exercise of such option the surviving Parties shall purchase the said Share from the Party on the terms hereinafter appearing.
- D4** Where the option in Clause D3 is exercised by a Party ("the Selling Party") and there is more than one other Party against whom the option is exercised (each such Party being referred to as a "Purchasing Party") each Purchasing Party shall provide to the Selling Party his Relevant Proportion of the Agreed Value and shall become entitled to his Relevant Proportion of the Selling Party's Share or as near thereto as may be possible.]

<sup>4</sup> If the agreement is not to include an option on critical illness, delete clauses D3 and D4.

## E Plan and trusts

- E1** Each Party shall no later than one week after entering into this Agreement or as soon as practically possible effect a Plan with Bright Grey ("the Plan") which provides:
- i Life Cover
  - ii Life or Critical Illness Cover
  - iii Critical Illness Cover
- or any one of more of them the sum assured under which shall be equal in amount to the Specified Value of the Share of that party at the date hereof which Plan shall be written subject to a trust under which the beneficiaries are the partners or shareholders (as the case may be) for the time being and from time to time of the Business and no other person, persons or class of persons.
- E2** Each 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 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 the balance of the Agreed Value shall be paid in <sup>5</sup>  equal instalments and the outstanding amount from time to time shall <sup>6</sup> [bear interest at  % per annum/not bear interest];

<sup>5</sup> Insert the number of instalments

<sup>6</sup> Delete as appropriate and insert an interest rate if required.

## G Freedom to dispense

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 his Share during his lifetime.

# H Effect of agreement

H1 This Agreement shall:

H1 i bind the Parties and their respective personal representatives;

H1 ii cease to bind or to confer any benefit on any Party and his personal representatives on the earlier of  
ii.i his ceasing to be a partner in or shareholder of the Business (other than by reason of that Party's death);  
ii.ii the Business being dissolved or a resolution being passed that it shall be liquidated.

H1 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

<i>Signature 1</i>	<i>Signature 2</i>
name	name
signature	signature
witness name	witness name
witness signature	witness signature

  

<i>Signature 3</i>	<i>Signature 4</i>
name	name
signature	signature
witness name	witness name
witness signature	witness signature

## I The first schedule specified value

The Specified Value of the Share of each Party shall be

<i>Party</i>	<i>Specified value</i>

## J The second schedule 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 Party's death or at the date upon which a payment under the Plan with respect to the Critical Illness of a 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 Party, or the Selling Party where a payment under the Plan for a critical illness has been made in respect of that 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 <sup>7</sup>[Scotland/England & Wales].

<sup>7</sup> Delete as appropriate.

## K Third schedule relevant proportion

**K1** Subject to paragraph 2 of this Schedule, the Relevant Proportion of each Party shall be

- K1 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.
- K1 ii** if the Business is a company, the ratio 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.

**K2** In paragraph 1 above, it shall be assumed, (except for the purposes of the Second Schedule to this Agreement) that the Party in respect of whose Share any option is being exercised had no share of or shares in the Business on or immediately before his death or the payment in relation to a critical illness.

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