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# Director's Share Protection

## Technical Guide

# INTRODUCTION

The purpose of this guide is to explain in plain English how the Legal & General Director's Share Protection Scheme operates.

The guide aims to answer the most common questions that you may be faced with whilst dealing with this topic, whilst at the back there are examples of completed documentation.

The guide refers to Directors or Shareholding Directors in a Private Limited Company but in fact the plan can normally extend to include other beneficial owners of shares in the Company.

The guide describes Legal & General's preferred method of setting up Director's Share Protection – utilising Life and/or Critical Illness Policies, plus a written agreement between the Directors.

# WHAT IS THE AIM OF THE AGREEMENT?

A Share Protection arrangement is required to enable Directors to purchase the shares from the deceased Director's estate and to provide the deceased Director's dependants with a willing buyer and cash instead of shares.

Legal & General's Director's Share Protection Plan is designed to ensure that funds are available in the right hands for the purchase of a Director's shares on death. An option is also given to the deceased's personal representatives to sell the deceased's shares to the continuing shareholding Directors on death (or, if required, upon contracting a critical illness).

An effective Director's Share Protection Plan should provide:

1. Flexibility.
2. Capital that is available in the right hands at the right time.
3. Tax efficiency.

In order for the agreement to be implemented each Director must effect a life/critical illness policy which is written in trust for the surviving directors. The Cross Option Agreement provides the basis for the share purchase and details how the purchase can be made. An example is attached together with an example of the simple trust wording required.

The Cross Option Agreement should be entered into, with one agreement covering all the Directors. The completed trust document will be returned by Legal & General to the Trustees and should be kept with the policy(ies).

## Why is an Agreement needed?

Without an agreement, upon the death of a Director, the surviving Directors run the risk of the shares passing to someone with no interest in the company, or even to another company that might then be in a position to make a takeover bid.

On the death of a shareholding Director, the Articles of Association should stipulate what happens, but usually his/her personal representatives and subsequently his/her beneficiaries will become entitled to his/her shareholding. Unless the deceased Director owned a majority of the shares, the beneficiaries will probably find ownership of the shares bestows very little benefit. Sales of shareholdings to outsiders may be restricted and a sale to the continuing shareholding Directors may only be possible if funding has been arranged in advance. This could mean that the family of the deceased Director may not receive the best price for their shareholding or indeed not find a buyer at all.

Most surviving Directors in this situation will want to buy the deceased Director's shares and keep control of the company, but only a few will have the right amount of cash available at the right time. Some businesses may turn to their bankers, but many have existing loans that would rule out further advances. Also a crisis, such as the death of a Director, tends to create uncertainty and instability within a company, so banks will be less likely to be willing to make a loan. A serious illness could have a similar impact.

**The solution is forward planning to ensure the right amount of cash being available at the right time – life assurance and critical illness cover if selected.**

# HOW DOES THE AGREEMENT OPERATE?

The Agreement is able to include options on death and, if required, critical illness. The Directors should indicate in the agreement which events they wish to plan for, which should also be reflected in the type of policies that are being arranged. The agreement operates as follows:

**Death** - on the death of a Director, his/her personal representatives have the option to sell their shares in the Company to the surviving Directors. Equally, the surviving Directors have the option to buy the deceased Director's shares from the personal representatives. If an option is exercised by either party then the other party would be bound to buy or sell, as the case may be.

The Directors can exercise their option to buy the shares at any time within three months of the date of death.

The personal representatives can exercise their option to sell the shares at any time within six months of the date of death.

**Critical Illness** - If Critical Illness Cover is selected with your life policy, any Directors suffering from any illness or disability that results in a payment under a Critical Illness Policy, will have the option to sell their shares to the other Directors. This option is available for six months after the date of receipt of the sum assured under the Life and Critical Illness (if selected) Policy, and not from the date that the critical illness is diagnosed. You should note that there is NOT an option for the other Directors to buy the shares from the critically ill Director, as it is felt to be inappropriate to be able to force the critically ill Director to sell his/her shares, perhaps against his/her will. Although this option could be attractive to the other Directors, it may not be for the Director who has had only a very mild heart attack and who intends to resume work, fully recovered, after only a few months. On Payment of a valid critical illness claim no further benefits will be payable and the policy will end.

The appropriate agreement is a single option agreement that leaves the critically ill Director in control, with the option to sell if he/she so desires but with no corresponding option to buy given to his/her co-Directors.

Under their agreement, each shareholding Director must effect and maintain a Life and Critical Illness (if selected) Policy under an appropriate trust, to provide the required amount of money to purchase the shareholding. The beneficiaries of the trust would be the co-Directors, so that the proceeds from a policy are available for them to buy the Director's shares on death or critical illness.

# WHY IS THE AGREEMENT NOT A BINDING CONTRACT FOR SALE?

Under current legislation many shares will qualify for 100% Business Property Relief for Inheritance Tax.

However, if the Share Purchase Agreement in force was a binding contract for sale, such as a Buy and Sell Agreement, this valuable Business Property Relief would be lost. This may not be important if the shares are to pass on death to the spouse (who is fully exempt from Inheritance Tax). Nevertheless, this exemption should not be relied upon as the spouse may die before the Director. Consequently, if a binding agreement for sale were in place, further inheritance tax planning might be required.

A Cross Option Agreement however is not a binding contract for sale and therefore this method preserves Business Property Relief. This method simply gives the surviving Directors an option to buy the Director's shares and the personal representatives of the deceased have a matching option to sell to the surviving Directors.

## What price is to be paid for the shares?

As a starting point, the open market value of the business should be used. This would ensure that all parties are fairly treated. This can, however, lead to certain practical problems, such as how can one be sure that the amount of cover in force equates to the value that would have to be paid? Indeed, the very reference to open-market value means that such a value has to be formally arrived at. This will inevitably cause some delay in the completion of the sale and purchase but perhaps more seriously, it is this issue that often means the whole plan is delayed or even never finalised.

The answer for many companies may be to elect for a fixed value for the shares for the purpose of the Cross Option Agreement. By adopting a fixed price method of valuation, one is merely adopting a method of valuing a share in a business. This method ensures that the appropriate level of life cover can be effected. If death/payment of a critical illness policy occurs within three years of the agreement being established this specified value as written into the agreement will be the price to pay for the shares.

However, if death or payment of a critical illness policy occurs more than three years after the date of the agreement a 'fair value' will be paid. The Fair Value of the Shares of each Shareholder will be the relevant proportion of the market value of the Company as at the date of the Shareholder's death or the Payment Date (as the case may be). This amount will be determined by an independent auditor or professional valuer who will be appointed by the surviving Shareholders and the personal representatives of the deceased Shareholder. If such a valuation is not carried out then the 'Fair Value' of the Shares 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 in England and Wales.

The arrangement should be reviewed at least every three years. Once the agreement is set up it should not just be left to rest but constantly reviewed and kept in line with reality. This should also give a good opportunity to review the life/critical illness cover. If the specified sum is not reviewed, then the price to be paid under the agreement reverts to the 'fair value'.

# WHAT IF NEW DIRECTORS' JOIN THE BUSINESS?

All new shareholding Directors should enter into the arrangement by completing a supplemental agreement. An additional Life and Critical Illness Policy must also be effected and the appropriate trust forms completed.

If Part B on the Trust document has originally been left blank, then the trust will automatically pay out to all the surviving Directors in the company in shares equivalent to their shareholdings. Provided this is not to change, then the Declaration of Trust automatically copes with new Directors.

If Part B was originally completed, then the Trustees will need to exercise their power to include the new Director in the default beneficiaries section and possibly to change the Trustees. This is quite simple and Legal & General can provide the necessary forms.

### How long does the Agreement last for?

The Agreement can last indefinitely but, as mentioned earlier, regular reviews should be carried out.

### What are the taxation effects of the Cross Option Agreement?

#### Inheritance Tax

Provided that all shareholding Directors participate, there will be no Inheritance Tax on the premiums payable as it will be considered to be a bona fide commercial arrangement. If for some reason this were not the case, life policy premiums would usually fall within one or more of the Inheritance Tax exemptions. The proceeds of the life or life and critical illness policy when written under trust will be payable to the trustees free from Inheritance Tax, since they do not form part of the deceased's estate. The estate of the deceased shareholder includes the shares and not cash, thus preserving Business Property Relief on the value of the shareholding.

#### Capital Gains Tax

There is no Capital Gains Tax on death but there could be a liability on beneficiaries of the estate on the increase in value of the shares between death and sale, although in practice this would be rare.

A Capital Gains Tax liability may arise, in the event of the sale of a Director's shares due to critical illness. Indexation and taper relief for business assets will be available in the normal way.

### How are the funds to make the purchase provided?

A Life Assurance or Life and Critical Illness plan is written on the Director's own life. The Cross Option Agreement states that each Director shall, no later than one month after the date of the agreement, effect either a life policy or Life and Critical Illness policy. Each policy will be subject to a trust for the other Directors so that, if there is a death/critical illness claim, the proceeds of the plan would be paid to the continuing Directors to enable them to purchase the deceased's/critically ill Director's shares. Examples of these simple forms, which are available from Legal & General, and details on how to complete them are included in this guide.

### Who should pay the premiums?

Each Director undertakes to pay premiums on his own life. This may not be equitable because of different ages and sums assured and, if possible, the Company should adjust their pay or fees to compensate for this.

If the Company pays the premium on behalf of the Director this will be a benefit in kind and the Director will become liable for income tax on it.

### What type of policy should be effected?

This will depend upon individual circumstances and what can reasonably be afforded. Since it is often not known when the Director will retire, Whole of Life Assurance may be most appropriate.

If critical illness is also to be covered this can usually be arranged as an additional option to a life assurance policy.

# WHAT IF A DIRECTOR LEAVES THE BUSINESS?

If a Director leaves the company the Agreement will normally cease to apply to that Director.

The policy on his/her life may be appointed to him/her if all the trustees agree, or may be maintained, surrendered or lapsed by the Trustees.

It is possible for outgoing Directors, if they retain their shareholding, to stay in the scheme but this is rare.

What if the sum assured doesn't match the price to be paid for the shares as specified in the Agreement?

If there are regular reviews of the agreement and it is amended it is unlikely that the proceeds of the life policies will not match the price to be paid for the shares. However, of course, if the specified sum is not reviewed and the agreement not amended, then the price to be paid under the agreement reverts to the open market value, that is, the traditional method of share valuation, and this could mean that the sums assured under the policies may not match the price to be paid. The agreement should therefore be frequently reviewed.

If the sum assured is less than the Agreed Value the agreement gives the option for the balance to be paid to the shareholder's personal representatives in installments over an agreed period. The agreement allows specific details to be inserted regarding number and frequency of payments. This amount may or may not bear interest and the appropriate wording should be deleted.

If however, the sum assured exceeds the agreed value, the co-Directors can, if they wish, pass the excess to the shareholder's personal representatives or keep it themselves. The agreement caters for either arrangement and the appropriate wording should be deleted.

What if the Directors don't wish to specify a value for the shares to be purchased?

Directors should be encouraged to specify a value and, if they don't, then an amendment to the agreement will be needed in order to revert to the ordinary open market value at the time the purchase is made.

Will the Agreement prevent a Director from selling any of his/her shares during their lifetime?

The Articles of Association should govern this but the provisions detailed in the agreement will not in any way prevent any sale or other disposal of the Director's shares during his lifetime. The agreement only covers share transfer on death or critical illness of the shareholder.

What if there is already a share purchase Agreement in force?

It will be important to encourage the clients to review this agreement and to replace it with the Legal & General Cross Option Agreement if it appears to be more appropriate.

## Other Share Transfer Arrangements

You may come across other methods of share transfer (for example, Buy and Sell) and other ways of writing the life policy (for example, Life of Another, Absolute Trust, Joint Life First Death) but they have major disadvantages.

The Buy and Sell agreement - With this method the Directors enter into an agreement whereby on retirement or death, the retiring Director or his/her estate will sell their share to the remaining directors who, in turn, will buy. The Directors will purchase the shares in the proportion in which the remaining shareholding is held. The major disadvantage of the buy and sell method is the loss of Business Property Relief, so if a Director dies, their shares may be liable to Inheritance Tax.

Life of another, as a way of writing the life policy, has its limitations in that it is inflexible when the business dissolves or when new Directors join. In addition, if there are more than two participants each has to have a policy on the lives of all the other Directors, resulting in a large number of policies.

An absolute trust is similarly inflexible for businesses where new members join or existing ones leave.

If there are only two participants a joint life policy can be written. Again, there is no flexibility when someone joins or leaves, and if one Director dies the survivor no longer has any life cover.

Note: Similar Share Protection Schemes can be arranged for partnerships – See Legal & General's Technical Guide entitled 'Partner's Share Protection'.

# CASE STUDY

Overleaf are completed forms based on the following case study:

John Spencer, Stephen Young and Mark Jones are directors in Spencers Plant Hire Ltd.

The current value of the Director's shares are:-

John Spencer	£125,000
Stephen Young	£ 75,000
Mark Jones	£ 34,000

Each Director effects a Term Assurance policy for a sum assured which matches the current value of their shareholdings. All three policies are written under trust. One Cross Option Agreement is required.

# DIRECTOR'S SHARE PROTECTION TRUST DOCUMENTATION

Specimen of correctly completed Declaration of Trust



## Directors' Share Protection Documentation Pack

Date of Life Assurance Application Form

Full Name of Life Assured

Contract Name

Name of the Company, that is the business of the Settlor

This section should be left blank unless the beneficiaries are NOT the Directors in the Company in shares equivalent to their shareholdings, in which case the names and shares should be entered

Name and addresses of the additional Trustees – usually the Settlor's co-shareholders in the Company

### DECLARATION OF TRUST FOR SHAREHOLDING DIRECTORS

This Declaration of Trust is to be incorporated in the application form dated  ("the Application")

made by  ("the Settlor")

for (a)  policy(ies) on the life of the Settlor.

In this Declaration of Trust the following expressions shall have the following meanings:-

#### SECTION A

The Beneficiaries means the Settlor and the individuals beneficially owning ordinary shares in the Company

The Company means

The Policy means the policy or policies effected pursuant to the Application which expression wherever used in this Declaration shall include the benefit of the insurance contract or contracts completed pursuant to the acceptance of the Application and any variation or amendment to the said contract or contracts hereby authorised referred to

The Trust Fund means the Policy the full benefit thereof all property at any time held by the Trustees upon the trusts declared in this Declaration of Trust whether by way of further settlement accumulation of income capital accretion or otherwise and all property from time to time representing the foregoing respectively

Legal & General means Legal & General Assurance Society Limited.

#### SECTION B

The Default Beneficiary(ies) are	Name	Share
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>

#### SECTION C

The Additional Trustees are

Name:

Address:

Name:

Address:

Name:

Address:

The Trust Period means the period of 79 years from the date of this Declaration which period shall be the Perpetuity Period for the purposes hereof.

I hereby request and declare that the Policy be issued to me as Trustee and expressed to be held upon an irrevocable trust (here in after called the Trust) subject to the trust powers and provisions set out below.

I further desire to appoint the Additional Trustees to act with me as trustees of this Trust (and we jointly here in after shall be called "the Trustees" which expression shall include the trustees for the time being of the Trust) and the receipt by the Trustees of any moneys payable under the Policy shall discharge to Legal & General for all such moneys.

PLEASE REFER TO COMPLETION NOTES AT THE BACK OF THIS PACK.

## TRUST PROVISIONS

1. During the Trust Period the Trustees shall have power by deed or deeds revocable (whether by the person(s) making the deed or some other person(s)) during the Trust Period or irrevocable to appoint part or all of the Trust Fund and the income thereof for the benefit of such one or more of the Beneficiaries in such one or more shares and for such interests and subject to such trusts powers and provisions (including protective trusts discretionary trusts or powers operative or exercisable at the discretion of the Trustees or any other persons) as the Trustees shall in their absolute discretion think fit Provided Always that any appointment in favour of the Settlor can only be made by at least two Trustees of whom the Settlor is not one.
2. Subject to and in default of any appointment made under paragraph 1 above and subject to paragraph 5 hereof the Trustees shall hold the Trust Fund and the income thereof absolutely for the Default Beneficiary(ies) and if more than one in the percentage shares specified in Section B above and if no shares are specified in equal shares absolutely.
3. If no Default Beneficiary is indicated in Section B above then subject to and in default of any appointment made under paragraph 1 of the Trust Provisions and subject to paragraph 5 hereof the Trustees shall hold the Trust Fund and the income thereof absolutely for the person or persons (other than the Settlor) who is or are for the time being the Shareholder(s) in the Company and if more than one in the same proportions as each such Shareholder's shareholding in the Company bears for the time being to the aggregate of all such Shareholders' shareholdings in the Company excluding the shareholding of the Settlor and of any Shareholder(s) precluded from benefiting by paragraph 5 below.
4. The trusts hereby declared shall carry the intermediate income but section 31 of the Trustee Act 1925 shall not apply and where the Beneficiary entitled to income is a minor the Trustees shall hold such income for the absolute benefit of any such minor Beneficiary as shall be entitled thereto.
5. Notwithstanding the foregoing, no person shall be capable of benefiting under paragraphs 1-3 hereof unless he has settled a contract of life assurance, critical illness or terminal illness contract on his own life on trusts similar to those contained herein for the Beneficiaries not excluded from benefiting by this paragraph 5 and the benefit to which any such person would but for this paragraph 5 be entitled shall accrue to and form part of the entitlement of the person(s) not so excluded by this paragraph 5 from benefiting and if more than one in proportion to the entitlement inter se that they have in the absence of this paragraph 5.
6. The statutory powers of advancement contained in section 32 of the Trustee Act 1925 or if applicable section 33 of the Trustee Act (Northern Ireland) 1958 shall apply to the trusts hereof with the following variation that is to say the omission in proviso (a) to subsection (1) of the said section of the words "one-half" of Section 31 of the Trustee Act 1925 or if applicable Section 32 of the Trustee Act (Northern Ireland) 1958 shall not apply to the trusts of this Policy.
7. Any Trustee for the time being (other than the Settlor) being a solicitor or other person engaged in any profession or business shall be entitled to charge and to be paid all usual professional or other charges for business done by him/her or by his/her firm in relation to the trusts thereof.
8. There shall be vested in me a power of removal of any trustee and a power of appointment of a new trustee and or additional trustee(s) during my lifetime and thereafter a power of appointment only shall be vested in the Trustees provided always that a power of removal shall be exercisable only if there are at least two individuals remaining as Trustees of which at least one is not the Settlor.
9. The Trustees may at their discretion and subject to the trusts aforesaid either retain the Policy or deal with the Policy in any manner that they may in their absolute discretion think fit including power (where the Policy so permits but without prejudice to the generality of the foregoing) to surrender the Policy or convert the Policy in accordance with the options available under the Policy. Any new policy or increase or decrease of benefits secured by the Policy or by any new policy or policies which is or are effected under any options which are contained in the Policy shall be subject to the same trusts as are herein declared.
10. Any moneys liable to be invested hereunder may be invested or laid out in the purchase or at interest upon the security of such stocks funds shares securities investments or property of whatsoever nature and wheresoever situate and whether involving liability or not and whether producing income or not (including the improvement repair insurance (in any value and against any risk) rebuilding and decorating of any property for the time being comprised in the property subject to the trusts hereof or the execution of any other works on or for the benefit of any such property) and including any policy or policies of life assurance whether in the name of a nominee or not as the Trustees shall in their absolute discretion think fit to the intent that the Trustees shall have the same full and unrestricted power of investing and transposing investments as if they were absolutely entitled thereto beneficially.

I hereby declare that I intend to pay the premiums under the Policy for the sole benefit of the persons beneficially interested from time to time under this Trust and I hereby irrevocably disclaim any lien or charge on the Policy for the repayment of any such premiums.

It is hereby certified that this instrument falls within Category N of the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987.

This trust shall be governed by the law of England and Wales.

Full name  
of Settlor

Name of Settlor:

JOHN SPENCER

Signature of Settlor:

*John Spencer*

Date:

The Settlor  
should sign but  
not date. (The  
date will  
be completed by  
Head Office.)

*For Head Office Use Only*

# DEED OF ASSIGNMENT

**DEED OF ASSIGNMENT/ASSIGNATION**

**This Assignment/Assignment** is made the \_\_\_\_\_ day of \_\_\_\_\_ (year) *for Head Office use only*

Between *(name of Grantee)* **JOHN SPENCER**  
of *(address)* **112 HIGH STREET, CRAWLEY**  
*here in after called 'the Grantee(s)' of the one part and the Grantee(s)*

and *(name of first Trustee)* **STEPHEN YOUNG**  
of *(address)* **12 THE PARADE, BRIGHTON, BN2 7AG**

and *(name of second Trustee)* **MARK JONES**  
of *(address)* **55 GROVE PARK, WORTHING, BN18 2PW**

and *(name of third Trustee)* \_\_\_\_\_  
of *(address)* \_\_\_\_\_

and *(name of fourth Trustee)* \_\_\_\_\_  
of *(address)* \_\_\_\_\_

*here in after called 'the Trustees' of the other part*

**Whereas** the Grantee is the Grantee of the Policy(ies) of Assurance (here in after called 'the Policy(ies)') specified in the Schedule hereto and holds the Policy(ies) upon the trusts and with and **subject to** the powers and provisions therein set out  
**and whereas** the Grantee have appointed the Trustees as Trustees to receive the moneys payable under the Policy(ies) and is desirous of assigning the Policy(ies) to the Trustees  
**Now this deed witnesseth** that the Grantee as Trustee hereby assigns the Policy(ies) unto the Trustees **to hold** the same unto the Trustees upon the Trusts and with and subject to the powers and provisions upon which and subject to which the Grantee holds the same and the Trustees hereby accept such trusts  
It is hereby certified that this instrument falls within Category A of the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987.  
**In witness** whereof the said parties to these presents have hereunto set their hands the day and year first above written  
**The Schedule** herein before referred to

Office: **Legal & General Assurance Society Limited** Date \_\_\_\_\_ Policy No. \_\_\_\_\_ *for Head Office use only*

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Signed and Delivered as a Deed by the said

Full name of Grantee **JOHN SPENCER**  
Signature of Grantee *John Spencer*

Witness's signature and address  
*D Smith, 27 THE PARADE, HORSHAM, SUSSEX*  
\* Witness's signature and address

Signed and Delivered as a Deed by the said

Full name of first Trustee **STEPHEN YOUNG**  
Signature of first Trustee *S Young*

Witness's signature and address  
*D Smith, 27 THE PARADE, HORSHAM, SUSSEX*  
\* Witness's signature and address

Signed and Delivered as a Deed by the said

Full name of second Trustee **MARK JONES**  
Signature of second Trustee *Mark Jones*

Witness's signature and address  
*D Smith, 27 THE PARADE, HORSHAM, SUSSEX*  
\* Witness's signature and address

Signed and Delivered as a Deed by the said

Full name of third Trustee \_\_\_\_\_  
Signature of third Trustee \_\_\_\_\_

Witness's signature and address  
\* Witness's signature and address

Signed and Delivered as a Deed by the said

Full name of fourth Trustee \_\_\_\_\_  
Signature of fourth Trustee \_\_\_\_\_

Witness's signature and address  
\* Witness's signature and address

*\* 2 witnesses will only be required to sign for cases completed in Scotland*

Do not date

Full Name and address of Grantee (life assured)

Full name and address of additional Trustees

Do not date

Signatures and Witnesses of the above

# CROSS OPTION AGREEMENT

## SHAREHOLDERS' CROSS OPTION AGREEMENT

For Approval of Legal Advisers

RECITAL

Date of Agreement

This Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_ (year) by

Names of Shareholders who are to be parties to the Agreement

\_\_\_\_\_ of \_\_\_\_\_ of the first part  
 and \_\_\_\_\_ of \_\_\_\_\_ of the second part  
 and \_\_\_\_\_ of \_\_\_\_\_ of the third part  
 and \_\_\_\_\_ of \_\_\_\_\_ of the fourth part  
 (here in after together called "the Shareholders" and individually "the Shareholder")

Full name of Company

who are all shareholders in the company known as  
 \_\_\_\_\_ (here in after called "the Company")

Initial the boxes for the double option to operate on death

**WHEREAS** the Shareholders desire entering into such share purchase arrangement as is indicated by the Shareholders' initials in either or both of the boxes in paragraphs A and B below.

A. on the death of a Shareholder his personal representatives shall have the option to sell his shares in the Company (here in after called "Shares") to the surviving Shareholders and the surviving Shareholders shall have the option to purchase the deceased Shareholder's Shares from his personal representatives on the terms set out in this Agreement

[Shareholders' initials]

B. on a Shareholder suffering from any illness or disability that gives rise to any payment under any critical illness Policy or terminal illness Policy (as here in after defined) effected by him with Legal & General (as here in after defined), the Shareholder in respect of whom the critical illness (as here in after defined) payment is made shall have the option to sell his Shares to the other Shareholders on the terms set out in this Agreement

Initial the boxes for the single option to operate on diagnosis of a critical illness (if applicable)

[Shareholders' initials]

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. 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

"Agreed Value" means

- (a) in relation to the death of a Shareholder, the Specified Value if the death occurs within three years of the date hereof and otherwise means the Fair Value
- (b) in relation to the critical illness or terminal illness of a Shareholder, the Specified Value if the Payment Date (as here in after defined) is within three years of the date hereof and otherwise means the Fair Value

"Critical illness" means any condition that gives rise to a payment of benefit under any critical illness Policy and "critically ill" shall be construed accordingly

"Terminal illness" means any condition that gives rise to a payment of benefit under any "terminal illness Policy" and "terminally ill" should be construed accordingly

"Critical illness Policy" means any policy evidencing a contract with Legal & General which provides critical illness cover and which is effected by a Shareholder in accordance with the terms of this Agreement

"Terminal illness Policy" means any policy evidencing a contract with Legal & General which provides terminal illness cover which is effected by a partner in accordance with the terms of this agreement

"Fair Value" means the value specified in the Second Schedule hereto

"Legal & General" means Legal & General Assurance Society Limited

"Life Policy" means a contract of life assurance effected by a Shareholder on his own life in accordance with the terms of this Agreement

PLEASE REFER TO COMPLETION NOTES AT THE BACK OF THIS PACK

"Payment Date" means the date of receipt of the sum assured paid by Legal & General in settlement of a claim in respect of a critical illness under any critical illness Policy or terminal illness under any terminal illness Policy

"Policy(ies)" means one or more Life Policies and/or one or more critical illness or terminal illness Policies as appropriate

"Relevant Proportion" means the proportion specified in the Third Schedule hereto

"Specified Value" means the value specified in the First Schedule hereto

## 2. AGREEMENT

### 2.1 Each of the Shareholders hereby agrees

- (a) to grant options to the other Shareholders
- (b) to effect one or more
  - (i) Life Policies and/or
  - (ii) Critical illness Policies and/or terminal illness Policies
- (c) to request that the Policies are issued subject to trust for the primary benefit of the other Shareholders and to maintain the Policies
- (d) to co-operate fully in pursuing any claim under a critical illness Policy in respect of the critical illness of the Shareholder or any claim under a terminal illness Policy in respect of the terminal illness of the Shareholder in the manner here in after appearing and in consideration of each of the other Shareholders agreeing to do the same

### 2.2 Without prejudice and subject to all the terms and provisions of the remaining parts and clauses of this Agreement, all of clause 3 and clause 4.1 shall apply only if the boxes in paragraph A. of the Recital have been initialled by the Shareholders and clause 4.2 shall apply only if the boxes in paragraph B. of the Recital have been initialled by the Shareholders.

## 3. CALL OPTION

- 3.1 On the death of any Shareholder the surviving Shareholders shall if they together so elect by written notice to the deceased Shareholder's personal representatives (whether or not they have obtained a grant of representation) within three months from the date of the said death be entitled to purchase the deceased Shareholder's Shares from the deceased Shareholder's personal representatives for the Agreed Value whereupon the deceased Shareholder's personal representatives shall sell the said Shares to the surviving Shareholders on the terms here in after appearing
  - 3.2 Where on the death of any Shareholder there is more than one surviving Shareholder and the option conferred by Clause 3.1 is exercised by all the surviving Shareholders each of the surviving Shareholders shall pay to the deceased Shareholder's personal representatives the Relevant Proportion of the Agreed Value and in consideration of such payment shall become entitled to the Relevant Proportion of the deceased Shareholder's Shares or as near thereto as may be possible
  - 3.3 Where on the death of any Shareholder there is more than one surviving Shareholder and one or more (but not all) of the surviving Shareholders wish to exercise the option conferred by Clause 3.1 such of the surviving Shareholders as do wish to exercise that option may do so and such of the surviving Shareholders as do not wish to exercise the said option need not do so and in such a case the Relevant Proportion of the Agreed Value of the Shares to be paid by each of the surviving Shareholders exercising the option and the Relevant Proportion of the Shares of the deceased Shareholder to which each of the surviving Shareholders becomes entitled shall be paid and receivable as if the other Shareholders did not exist (unless inter se the surviving Shareholders exercising the option agree otherwise)
- ## 4. PUT OPTIONS
- 4.1 On the death of any Shareholder the deceased Shareholder's personal representatives shall if they so elect by written notice delivered to the surviving Shareholders within six months after the date of the said death sell the deceased Shareholder's Shares to the surviving Shareholders for the Agreed Value and on the exercise of such option the surviving Shareholders shall purchase the said Shares from the deceased Shareholder's personal representatives on the terms here in after appearing provided that this option will not apply where prior to his death the Shareholder has exercised the option conferred by Clause 4.2 hereof
  - 4.2 In the event of the critical illness or terminal illness of any Shareholder that Shareholder or his legally empowered representative (but only during the lifetime of the critically ill or terminally ill Shareholder) shall if an election by written notice to the other Shareholders is given within six months from the Payment Date sell the Shares of the critically ill Shareholder to the other Shareholders for the Agreed Value whereupon the other Shareholders shall purchase the said Shares from the critically ill or terminally ill Shareholder on the terms here in after appearing
  - 4.3 Where on the death, critical illness or terminal illness of any Shareholder there is more than one other Shareholder and the option conferred by Clause 4.1 or 4.2 is exercised, each of the other Shareholders (unless inter se they agree otherwise) shall pay to the personal representatives of the deceased Shareholder or the critically ill or terminally ill Shareholder (as the case may be) his Relevant Proportion of the Agreed Value and in consideration of such payment shall become entitled to his Relevant Proportion of the Shares of the deceased Shareholder or the critically ill or terminally ill Shareholder (as the case may be) or as near thereto as may be possible

5. LIFE POLICIES, CRITICAL ILLNESS AND TERMINAL ILLNESS POLICIES

5.1 Each Shareholder shall no later than one month after the date of this Agreement effect:

- (a) a Life Policy (where the boxes in paragraph A. of the Recital are initialled) and/or
- (b) a critical illness Policy and terminal illness Policy (where the boxes in paragraph B. of the Recital are initialled)

with such sum assured under each as the Shareholders shall agree between them as being appropriate in the context of the commercial arrangement between them and such Policies shall be written subject to a trust under which the Default Beneficiaries (as defined in the said trust) are the Shareholders for the time being of the Company

5.2 Each Shareholder shall pay promptly (or permit to be deducted and paid over to Legal & General from any sums due to him from the Company) all premiums due from him in respect of the Policies

5.3 Each Shareholder on becoming critically ill or terminally ill will co-operate with the remaining Shareholders in pursuing the claim under the critical illness or terminal illness Policy and will be notified immediately on Legal & General settling the claim under the said Policy

6. SUM ASSURED LESS/GREATER THAN AGREED VALUE

If on the death, critical illness or terminal illness of any Shareholder the option under Clause 3.1, 4.1 or 4.2 above is exercised and for any reason the sum assured payable under the Policy(ies) is

- (a) less than the Agreed Value of that Shareholder's Shares the balance of the Agreed Value shall be paid in 12 MONTHLY [state number and frequency] equal installments and the outstanding amount from time to time shall [bear interest at \_\_\_\_\_] [not bear interest]\*
- (b) more than the Agreed Value of that Shareholder's Shares the other Shareholders shall [retain the said excess without any obligation in the case of a deceased Shareholder to the personal representatives or family thereof and in the case of a critically ill or terminally ill Shareholder that Shareholder] [pay over the said excess to the personal representatives of the deceased Shareholder or the critically ill or terminally ill Shareholder (as the case may be) as though the Agreed Value was equal to the sum assured]\*  
\* [delete as appropriate]

7. EFFECT OF AGREEMENT

7.1 Nothing in this Agreement shall in any way whatsoever prevent or hinder any Shareholder from disposing charging encumbering or otherwise dealing in any way with his Shares during his lifetime

7.2 This Agreement shall:

- (a) bind the Shareholders and their respective personal representatives
- (b) cease to bind any Shareholder and his personal representatives on the earlier of
  - (i) him ceasing to be a Shareholder in the Company
  - (ii) the Company being dissolved or a resolution being passed that it shall be liquidated

THE FIRST SCHEDULE  
SPECIFIED VALUE

The Specified Value of the Shares of each Shareholder shall be

Shareholder	Specified Value
JOHN SPENCER	£125,000
STEPHEN YOUNG	£75,000
MARK JONES	£34,000

THE SECOND SCHEDULE  
FAIR VALUE

The Fair Value of the Shares of each Shareholder shall be the Relevant Proportion of the market value of the Company as at the date of the Shareholder's death or the Payment Date (as the case may be) (such Fair Value of the Shares not to be discounted for a minority holding) as determined by an independent auditor or professional valuer agreed between the Shareholders and appointed by all the Shareholders including the personal representatives of the deceased Shareholder or the critically ill or terminally ill Shareholder (as the case may be) and in the absence of any such determination the Fair Value of the Shares 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 in England and Wales

PLEASE REFER TO COMPLETION NOTES AT THE BACK OF THIS PACK

If the proceeds from the policy are less than the agreed value of the shares, the balance will be paid over an agreed period.

State number and frequency

Enter the value that is agreed shall be paid for each of the shareholder's shares and the name of each shareholder

If the proceeds of the policy exceed the agreed value of the shares this excess can either be retained by the surviving shareholders or paid to the Personal Representative of the deceased shareholder. This section should therefore be deleted as appropriate.

**THIRD SCHEDULE  
RELEVANT PROPORTION**

1. Subject to paragraph 2 of this Schedule, the Relevant Proportion in respect of each Shareholder shall be that proportion of the Company's income profits to which that Shareholder is entitled in the accounting period during which
  - (i) in a case where an option under clause 3.1 or 4.1 is exercised, the death referred to in clause 3.1 occurs and
  - (ii) in a case where an option under clause 4.2 is exercised, the Payment Date occurs.
  
2. In calculating the Relevant Proportion, it shall be assumed, except for the purposes of the Second Schedule to this Agreement, that the Shareholder in respect of whose Shares any option is being exercised, had no right to the income profits of the Company
  - (a) on or immediately before his death where the option is being exercised under clause 3.1 or 4.1 hereof,
  - (b) on the Payment Date, where the option is being exercised under clause 4.2 hereof

**In WITNESS** whereof the said Shareholders have hereunto set their hands the day and year first before written

Each of the Shareholders should sign and each signature must be witnessed.

Name of Director:	SIGNED by the said JOHN SPENCER	Witness's signature and address <i>D Smith</i> 27 THE PARADE HORSHAM SUSSEX
Signature of Director:	<i>John Spencer</i>	
Name of Director:	SIGNED by the said STEPHEN YOUNG	Witness's signature and address <i>D Smith</i> 27 THE PARADE HORSHAM SUSSEX
Signature of Director:	<i>S Young</i>	
Name of Director:	SIGNED by the said MARK JONES	Witness's signature and address <i>D Smith</i> 27 THE PARADE HORSHAM SUSSEX
Signature of Director:	<i>Mark Jones</i>	
Name of Director:	SIGNED by the said  	Witness's signature and address  
Signature of Director:	 	