

Business Protection

Specimen Option Agreement

Guidance Notes

This agreement can be used by owners of a business who take out life insurance for each other. If one of them dies, becomes critically ill or terminally ill, to enable:

- the remaining shareholders/partners to buy the deceased's shares in the company or holding in the firm; and/or
- the estate or personal representatives of the deceased to sell those shares or that holding; and/or
- the critically ill or terminally ill shareholder/partner to sell those shares or that holding.

This allows the remaining partners/shareholders to retain those shares/that holding, helping to protect the interests of the firm or company and it also helps provide financial protection for the critically ill or terminally ill partner or shareholder or his/her heirs. If either party exercises their option, the other party(ies) is/are obliged to comply.

- Aviva strongly recommends that you seek independent legal advice before completing this agreement and that you consider whether this agreement is appropriate for your needs.
- Aviva also strongly recommends that you seek independent financial advice on the taxation consequences of implementing this agreement, due to the potential application of inheritance tax, capital gains tax and income tax.
- Aviva also recommends that you carefully consider the commercial implications of signing this agreement.
- You should ensure that the agreement does not contradict any company articles of association or partnership agreement.
- At any time after entering into this agreement if a partner sells his/her holding in the firm, or a shareholder sells his/her shares in the company, or if a new partner buys a business holding in the firm or a new shareholder buys shares in the company, then a new agreement should be entered into.
- It is the responsibility of the parties to this agreement that the document is periodically reviewed to ensure that it meets the desired requirements of the parties.

Single and Double Option Agreement – Partners and Shareholders – Terminal illness and/or Critical illness and/or Death

This is a specimen agreement which will need to be adapted for your individual circumstances in consultation with your own professional advisers. Aviva strongly recommends that you seek independent legal and tax advice to ensure the agreement addresses your specific needs. Aviva cannot be held responsible for any loss caused directly or indirectly following completion of this specimen form of agreement.

THIS AGREEMENT is made on the day of 20

Between:

Name of partner or shareholder of

Address

Address

Address and

Between:

Name of partner or shareholder of

Address

Address

Address and

Between:

Name of partner or shareholder of

Address

Address

Address and

Between:

Name of partner or shareholder of

Address

Address

Address and

(individually called “a Party”, together called “the Parties”)

each of whom is a partner or shareholder in the firm or company known as (or any succeeding firm or company name).

WHEREAS:

1. Together, the Parties are the legal and beneficial owners of the entire issued share capital of the company/the partners of the firm.
2. The above Parties wish to enter into an agreement determining how the Parties deal with their shares in the company or the capital and goodwill of the firm (the "Business Holding"), as described in clause 1 below.
3. On the terminal illness, critical illness or death of one of the Parties, the benefits payable under the Policy are intended to enable the remaining Parties to buy the relevant Option Proportion of the Business Holding (as described in clause 3 below), paying the relevant Price (as described in clause 4 below), either:
 - a. under the Option to Purchase should they wish to do so; or
 - b. under the Option to Sell should they be required to do so,as described in clause 1 below.

IT IS HEREBY AGREED THAT:

Delete as appropriate optional terms in the clauses you wish to exclude:

1. Option to Purchase and Option to Sell

In the event that any one of the Parties dies:

- [each of the remaining Parties shall have the option to buy the Business Holding from the estate/personal representatives of the deceased Party ("the Option to Purchase"). On the exercise of such Option to Purchase, the estate/personal representatives of the deceased Party shall be required to sell the Business Holding to the remaining Parties]; and/or
- [the estate/personal representatives of the deceased Party shall have the option to sell the Business Holding to each of the remaining Parties ("the Option to Sell"). On the exercise of such Option to Sell, each of the remaining Parties shall be required to buy the Business Holding from the estate/personal representatives of the deceased Party]; and/or

In the event that any one of the Parties suffers from an illness that constitutes a terminal illness or critical illness under the Policy taken out on the life of the Party:

- [the terminally ill or critically ill Party shall have the option to sell the Business Holding to each of the remaining Parties ("the Option to Sell"). On the exercise of such Option to Sell, each of the remaining Parties shall buy the Business Holding from the terminally ill or critically ill Party].

Such Option to Purchase or Option to Sell will be on the basis described in clauses 3, 4 and 5 below.

2. The Policy

The Parties have each taken out a policy on their own life ("the Policy") as detailed on the attached Schedule and have placed the Policy on trust ("the Policy Trust") for the benefit of each of the remaining Parties; and

[Each Party will pay the premiums on the Policy, taken out on his/her own life until the expiry date of the Policy, and shall produce proof of payment of such premiums on request by the Parties.] [Each Party agrees that the value of the insurance policy shall be commensurate with the value of their share in the business and as appropriate to the proposed arrangements.]

3. Option Proportion

The proportion of the Business Holding each remaining Party is entitled to buy under the Option to Purchase or is required to buy under the Option to Sell shall be:

[Equally between the remaining Parties]; or [In proportion to the remaining Parties' existing Business Holding, at the time the option is exercised.]

4. Price

The Parties each hereby agree that the price paid by the remaining Parties for the Business Holding shall be a fair value, as determined by the firm's accountants or company's auditors in accordance, where applicable, with the partnership agreement of the firm, or the Articles of Association of the company.

5. Time limits

- An Option to Purchase or an Option to Sell must be exercised in writing
 - within [] of the acceptance of the claim under the Policy by the insurance company, on the death of the deceased Party; or
 - within [] of the acceptance of the claim under the Policy by the insurance company, on terminal illness of the terminally ill Party; or
 - within [] of the acceptance of the claim under the Policy by the insurance company, on critical illness of the critically ill Party or, if later,
 - within [] after the issue of a grant of representation (where relevant),
("the Option Period").
- The remaining Parties shall pay the Price (as set out in clause 4) for the Business Holding and the estate/personal representatives of the deceased Party or terminally ill or critically ill Party shall transfer the Business Holding within [] of the expiry of the Option Period (or within [] of the accountants or auditors determining the value of the Business Holding, if later).

6. Shortfall or Excess of Policy Proceeds

If the proceeds from the terminally ill, critically ill or deceased Party's Policy to which any remaining Party is beneficially entitled under the Policy Trust are:

- less than the value given to the Option Proportion of the Business Holding, the balance of the value payable by a remaining Party under the Option to Purchase or the Option to Sell may be paid by the remaining Party in [] instalments every [] month(s) commencing on the anniversary of the acceptance of the claim under the Policy for the death claim, critical illness claim or terminal illness claim.
[Interest is payable on the outstanding amount at [] %]; or
- more than the value given to the Option Proportion of the Business Holding, the excess may be retained by the remaining Party, with no obligation to the estate/personal representatives of the deceased Party or to the terminally ill or critically ill Party.

7. Additional provisions

- [A Party shall not deal in any way with his/her Business Holding, unless the written consent of the other Parties is obtained.]
- [This agreement shall cease to have effect on the dissolution of the firm or company.]
- [This agreement shall have effect in conjunction with the governing documents, e.g. the partnership agreement or the Articles of Association, and any changes in such documents. These governing documents shall take precedence over this agreement should any conflict occur between them.]
- [Any Party to the agreement who ceases to have an interest in the Business Holding shall cease to be a party to the agreement on the date they no longer have an interest in the Business Holding.]
- [Nothing in this agreement shall prevent or hinder any Party from disposing of or dealing in any way with their interest in the Business.]
- [The agreement will bind the parties and their estates after death.]

This agreement is **SIGNED** and **DELIVERED AS A DEED** by

Full name of Party

Signature of Party

IN THE PRESENCE OF:

Full name of witness

Signature of witness

Full address of witness

This agreement is **SIGNED** and **DELIVERED AS A DEED** by

Full name of Party

Signature of Party

IN THE PRESENCE OF:

Full name of witness

Signature of witness

Full address of witness

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Full name of Party

Signature of Party

IN THE PRESENCE OF:

Full name of witness

Signature of witness

Full address of witness

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Full name of Party

Signature of Party

IN THE PRESENCE OF:

Full name of witness

Signature of witness

Full address of witness

SCHEDULE

Name of Policyholder(s)	Insurer	Policy Number	Life Assured	Premium	Amount of Life Cover and/or Terminal Illness Cover and/or Critical Illness Cover	Expiry Date

Aviva Life & Pensions UK Limited. Registered in England No 3253947. Aviva, Wellington Row, York, YO90 1WR.
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