

## **BUY/SELL OPTION AGREEMENT**

### **Variables**

1. Year
2. Full name of first party
3. Short form name
4. Name of second party
5. Short form name
6. Year
7. Full Name of first party
8. Address
9. Postcode
10. Short form name
11. Full Name of second party
12. Address
13. Postcode
14. Short form name
15. Description or type of business/practice
16. Name of business/practice
17. Definition of business/practice
18. Definition of "Undertaking"
19. Name of first party
20. Name of second party
21. Complete details of Market Value
22. Name of Proprietor who granted the option
23. Name of Proprietor exercising option
24. Date of Buy/Sell Option Agreement

**DATED**

**200\_**

**BETWEEN:**

**#2#**

**(“#3#”)**

**-and-**

**#4#**

**(“5#”)**

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**BUY/SELL OPTION AGREEMENT**

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 200\_

**BETWEEN:** #7# of #8# in the State of Victoria #9# (“#10”)

**AND:** #11# of #12# in the said State #13# (“#14#”)

(collectively called “**the Proprietor**”)

**WHEREAS:**

- A. The Proprietors conduct #15# under the name and style “#16” (hereinafter called “#17#”).
- B. The Proprietors wish to provide for their interests in their respective practices to be subject to certain options upon the occurrence of the events specified in this Agreement.
- C. The Proprietors also wish to provide funding, through life insurance, for certain of the obligations which may arise from the options specified in this Agreement.

**NOW THE PARTIES AGREE** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1. Definitions

In the construction of this Agreement, unless the contrary intention appears:

“**Best Endeavours**” means, where a Policy is to be applied for, or an application is to be made for the sum insured under a Policy to be increased, making application to and complying with all reasonable requirements of the relevant insurer as soon as reasonably practicable.

“**Call Option**” means, in relation to the Interest of a Terminating Proprietor, an option granted by the Terminating Proprietor to a Continuing Proprietor by which, upon its exercise, the Terminating Proprietor is required to dispose of that Interest to the Continuing Proprietor.

“**Commencement Date**” means the date of this Agreement or an earlier date (if any) agreed upon by the Proprietor.

“**Continuing Proprietor**” means, in relation to an Option Event, a Proprietor who is not the Terminating Proprietor.

**“Disablement”** means, in respect of a Proprietor, the definition of “total and permanent disablement” or a similar term contained in the Policy (if any) under which that Proprietor is the life insured and, in the absence of such Policy, the definition agreed upon by the Proprietors.

**“Interest”** means a Proprietor’s legal and equitable interest in the Undertaking

**“Market Value”** means, in respect of an Interest, the amount determined to be the Market Value pursuant to Clause 5.2 and, if applicable, Clause 5.3.

**“Option Event”** means the events specified in Schedule 2 and includes in respect of a Proprietor, the death, Disablement or Trauma of the Proprietor, or the service by the Proprietor on the other Proprietor of notice stating that he wishes to dispose of his Interest.

**“Option Notice”** means a notice in the form set out in Schedule 3.

**“Proprietors”** means the parties which have executed this Agreement.

**“Policy”** means a policy required to be effected and maintained under Section 11 by a Proprietor and which policy has been accepted by the other Proprietor for the purposes of this Agreement.

**“Proper Law”** means the law specified in Section 18.

**“Purchase Price”** means, in respect of an Interest, the amount determined to be the Purchase Price pursuant to Clause 5.1.

**“Put Option”** means, in relation to the Interest of a Terminating Proprietor, an option granted by a Continuing Proprietor to the Terminating Proprietor by which, upon its exercise, the Continuing Proprietor is required to acquire that Interest from the Terminating Proprietor.

**“Section”** means a Clause or group of Clauses in this Agreement identified by the same initial number.

**“Terminating Proprietor”** means, in relation to an Option Event, a Proprietor in respect of whom the Option Event has occurred.

**“Trauma”** means, in respect of a Proprietor, the definition of “trauma” or a similar term contained in the Policy (if any) under which that Proprietor is the life insured and, in the absence of such Policy, the definition agreed upon the Proprietors.

**“Undertaking”** means #18#.

## 1.2 **Interpretation**

In this Agreement, unless the context otherwise requires:

- (a) words importing any one gender shall be deemed to include the other gender
- (b) words importing the singular number shall be deemed to include the plural number, and vice versa.
- (c) Any word connoting a natural person includes a reference to a body corporate.
- (d) Headings are for convenience of reference only and shall not affect the interpretation of the Agreement.
- (e) For convenience, the first letters of words and expressions defined in the Agreement are indicated by capital letters (but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition).
- (f) References to any Act shall be construed as referring to that Act as amended, modified or re-enacted from time to time and shall include any enactment in substitution or replacement for such Act;
- (g) All dollar (\$) amounts are in Australian currency.

## 2. **GRANT OF OPTIONS**

### 2.1 **Call Options**

Each Proprietor (“the Grantor”) grants to each other Proprietor (“the Grantee”), a Call Option in relation to the Grantor’s Interest. The Call Option may be exercised by the Grantee upon the occurrence of an Option Event in respect of the Grantor, which Option Event is specified in Schedule 2 as an Option Event applicable to Call Options.

### 2.2 **Put Options**

Each Proprietor (“the Grantor”) grants to each other Proprietor (“the Grantee”), a Put Option in relation to the Grantee’s Interest. The Put Option may be exercised by the Grantee upon the occurrence of an Option Event in respect of the Grantee, which Option Event is specified in Schedule 2 as an Option Event applicable to Put Options.

### 2.3 **Application of Call Options**

- (a) Subject to Clause 2.3(b), a Call Option which a Continuing Proprietor exercised shall relate to the whole of the Interest of the Terminating Proprietor.

- (b) If the Terminating Proprietor and Continuing Proprietor so agree, a Call Option which a Continuing Proprietor exercises shall relate to that proportion of the Interest of the Terminating Proprietor as is agreed.

#### 2.4 **Application of Put Options**

- (a) Subject to Clause 2.4(b), a Put Option which a Terminating Proprietor exercises shall relate to the whole of the Interest of the Terminating Proprietor.
- (b) If a Call Option is subject to an agreement pursuant to Clause 2.3(b), a Put Option involving the same Terminating Proprietor and the same Continuing Proprietor shall relate to the same proportion of the Terminating Proprietor's Interest as the Call Option.

### 3. **NOTICE OF OPTION EVENTS**

Upon the death, Disablement or Trauma of a Proprietor, that Proprietor (or, in the case of the death of a Proprietor, the deceased Proprietor's legal personal representative) shall as soon as practicable give notice of the occurrence of such death, Disablement or Trauma to the other Proprietor.

### 4. **EXERCISE OF OPTIONS**

A Party to an option wishing to exercise that option shall do so by:

- (a) except where Clause 4(b) or Clause 4(c) applies, serving an Option Notice upon the other party to the option within 30 days of-
  - (i) where the Option Event is the death or Disablement of a Proprietor, the earlier of the date it became aware of the occurrence of the Option Event and the date it received notice of the occurrence of the Option Event pursuant to Section 3; or
  - (ii) where the Option Event is the service of notice by the relevant Proprietor that it wishes to dispose of its Interest, the date of receiving such notice.

Whichever is applicable;

- (b) where the Option Event is the death of a Proprietor and the party wishing to exercise the option is the deceased Proprietor's legal personal representative, serving an Option Notice upon the other party to the option within 30 days of the date of the grant of probate or letters of administration over the estate of the deceased Proprietor;

- (c) where the Option Event is the death of a Proprietor and the party which is to be served with the Option Notice is the deceased Proprietor's legal personal representative, serving an Option Notice on the legal personal representative within 30 days of the later of:
  - (i) the date of the party serving the notice receiving notice of the occurrence of the Option Event pursuant to Section 3; and
  - (ii) the date of the grant of probate or letters of administration over the estate of the deceased Proprietor;
- (d) where the Option Event is the Trauma of a Proprietor and the option is a Put Option, serving an Option Notice upon the other party to the option within 90 days of the giving of notice of the Option Event pursuant to Section 3; and
- (e) where the Option Event is the Trauma of a Proprietor and the option is a Call Option, serving an Option Notice upon the other party to the option within 30 days of the expiry of 180 days from the date of receipt of notice of the Option Event pursuant to Section 3 **PROVIDED THAT** the option shall not be capable of exercise prior to the expiration of the period of 180 days and not at all if the Proprietor who suffered the Trauma has established, before the expiry of the 180 days and to the satisfaction of the other Proprietor (who shall act reasonably for this purpose) that he has resumed in the full duties he was carrying out in the Undertaking prior to suffering the Trauma.

## 5. **DETERMINING THE PURCHASE PRICE**

- 5.1. Upon the exercise of an option, the Purchase Price in respect of the relevant Interest shall be the Market Value of the Interest at the date on which the Option Event occurred.
- 5.2 Subject to Clause 5.3, the Market Value of an Interest of a Proprietor shall be the amount specified in Item 1 of Schedule 1.
- 5.3 At any time after the first anniversary of either the Commencement Date or the most recent agreement as to the Market Value of an Interest, a Proprietor may serve written notice on the other Proprietor requesting a revaluation and if the Proprietor does not agree in relation to the revaluation within 3 months of the date of service of the notice, the value shall be determined by an accountant appointed by the Proprietor (or, in the event of failure to agree as to the accountant, an accountant appointed the President of the Institute of Chartered Accountants).

## 6. **PAYMENT OF PURCHASE PRICE**

- 6.1 Subject to Clauses 6.2 and 6.3, upon the exercise of an option, the Continuing Proprietor shall pay to the Terminating Proprietor the Purchase Price of the Interest of the Terminating Proprietor. Such payment shall be made to the Terminating Proprietor within:

- (a) except where Clause 6.1(b) applies, 90 days of the date of service of the relevant Option Notice;
  - (b) if the relevant Option Event was an event in respect of which, pursuant to Section 11, a Policy was required to be maintained on the life of the Terminating Proprietor, and the Continuing Proprietor has not through any act or omission caused any unreasonable delay in the payment by the insurer of the proceeds of the Policy, 7 days of the later of such payment of the proceeds by the insurer and the service of the relevant Option Notice.
- 6.2 Where, pursuant to Section 11, the Terminating Proprietor was required to maintain a Policy on his life the proceeds of which would be payable upon the occurrence of the Option Event relevant to an option, the Purchase Price payable under Clause 6.1 in respect of such option shall be reduced by the value of the proceeds paid, or deemed under Clause 11.1(d) to have been paid, under such Policy. Where the value of the proceeds is greater than the applicable Purchase Price, the Purchase Price shall be zero. Where the value of the proceeds is less than the applicable Purchase price the balance shall be payable by cash or bank marked cheque as provided for in clause 6.1(a).
- 6.3 Where Clause 6.2 applies, for the purposes of Section 7 the Continuing Proprietor shall be deemed to have paid that part of the Purchase Price which was offset under Clause 6.2, to the Terminating Proprietor on the date the Terminating Proprietor receives the proceeds of the Policy or would have been expected to receive the proceeds of the Policy in the absence of any act or omission by the Terminating Proprietor which may have caused an unreasonable delay in such payment.
- 6.4 Notwithstanding any preceding provision of this Clause 6 in the event that a Proprietor has resumed in full his duties after the suffering of Trauma (as provided for in Clause 4(e) of this Agreement) and has in consequence of suffering the Trauma received a payment from the insurer then the Purchase Price shall be reduced by the monetary equivalent of the proceeds of the payment so received from the insurer multiplied by the increase in the Consumer Price Index (All Groups) published by the Australian Bureau of Statistics from time to time for the City of Melbourne and in measuring such increase the denominator shall be the Index last published immediately before the receipt of proceeds from the insurer and the numerator shall be the Index last published immediately prior to the date for payment of the Purchase Price (the "CPI Increase").

## **7. TRANSFER OF INTEREST**

- 7.1 Subject to Clause 7.2, on payment of the full amount of the Purchase price by a Continuing Proprietor, having regard for any deemed payment of any part of the Purchase Price pursuant to Clause 6.3, the Terminating Proprietor shall as soon as reasonably possible transfer its Interest to the Continuing Proprietor.

7.2 If the Terminating Proprietor is the legal personal representative of a deceased Proprietor, a transfer pursuant to Clause 7.1 shall not be required to be made until at least 30 days after its appointment as legal personal representative.

## 8. **EFFECT OF EXERCISE OF OPTION**

If an option has been validly exercised in respect of an Interest, no other option will be capable of exercise in relation to the Interest.

## 9. **OTHER DEALINGS**

A Proprietor shall not deal with its Interest in any way which would be inconsistent with the terms of this Agreement, without the prior written consent of the other Proprietor.

## 10. **TERMINATION**

### 10.1 **Without Breach**

(a) An option may be terminated, before or after its exercise, by the agreement of the Proprietors which are parties to that option.

(b) An option shall be terminated before but not after its exercise, upon the termination of the Undertaking.

(c) An option may be terminated, before or after its exercise, by a party to the option where:

(i) insurance is required to be effected, maintained and increased under Section 11 in respect of the Option Event which would give rise, or gave rise, to the option; and

(ii) the proceeds of such Policy are not paid, or would not be paid, by the insurer upon the occurrence of the Option Event and there is no reasonable prospect of such proceeds being paid by the insurer; and

(iii) the non-payment of such proceeds is not, or would not be, due to a breach of this Agreement or a failure to use Best Endeavours for the purposes of Clause 11.1(d) by either party to the option.

By written notice to the other party to that option, but only in respect of the relevant Option Event.

(d) An option may be terminated, before but not after its exercise, by a party to the Option where:

(i) insurance is required to be effected, maintained and increased under Section 11 in respect of the Option Event which would give rise to the option; and

(ii) such insurance is not able to be effected, maintained and increased in accordance with Section 11 in respect of such Option Event; and

(iii) the inability to effect, maintain and increase such insurance is not due to a breach of this Agreement or a failure to use Best Endeavours for the purposes of Clause 11.1(d) by either party to the option;

by written notice to the other party to that option, but only in respect of the relevant Option Event.

## 10.2 **Upon Breach**

An option may be terminated, before or after its exercise, by a party to the option where:

- (a) the other party to the option has breached Section 11; and
- (b) the breach involves a Policy which the defaulting party was required to effect and maintain; and
- (c) the party has made a request in writing to the defaulting party that it rectify the breach and the breach has not been rectified within the period specified in the notice, which period shall not be less than 30 days from the date of receipt of the notice by the defaulting party;

by notice in writing to the defaulting. Any such termination will not limit any lawful claim against the defaulting Proprietor by the Proprietor which gave the notice in respect of any loss or damage arising in consequence of the default.

## 11 **LIFE INSURANCE**

### 11.1 **Policies to be Maintained**

- (a) Each Proprietor shall use its Best Endeavours to effect and maintain the Policies in respect of which it is specified as the policy owner in Schedule 4, together with such other Policies as may be required by the Proprietor from time to time under this Agreement and, during the continuance of this Agreement, to effect increases in the sums insured under such Policies as required by this Section 11.
- (b) Except where Clause 11.1(d) applies, if a Proprietor does not use his Best Endeavours to effect and maintain, or to effect increases in the relevant sum insured under, a Policy as required by Clause 11.1(a) the Proprietor shall be in breach of this Agreement
- (c) Except where Clause 11.1(d) applies, if a Proprietor does not use his Best Endeavours to assist the other Proprietor to effect and maintain, or to effect increases in the relevant sum insured under, a Policy as required by Clause 11.1(a), the Proprietor shall be in breach of this Agreement.

- (d) If a Proprietor does not use his Best Endeavours to effect and maintain, or to effect increases in the relevant sum insured under, a Policy as required by Clause 11.1(a) and the Policy is a Policy which the Proprietor is required by effect and maintain on his life the Proprietor shall not be in breach of this Agreement, but the Proprietor shall be deemed, upon the occurrence of an Option Event in respect of which the Policy was required to be effected and maintained, to have received the proceeds which would have been paid had a Policy been effected and maintained in accordance with Clause 11.1(a).

## 11.2 **SUM INSURED**

For the purposes of Clause 11.1:

- (a) a Policy shall be for a sum insured of not less than the total of the Market Values of the Interests of the Proprietor who is the life insured under the Policy;
- (b) where the Market Value of an Interest has been revalued at a higher amount than the amount at which it had last been valued, an appropriate increase in the sum insured shall be effected within 90 days of such revaluation.

## 11.3 **Premiums**

Each Proprietor shall pay all or part of the premiums due upon one or more of the Policies on the basis agreed upon from time to time by the Proprietor.

## 11.4 **Non-Payment of Premiums**

- (a) Subject to Clause 11.4(c), a Proprietor who fails to pay premiums due by it under Clause 11.3 shall be in breach of this Agreement.
- (b) Where a Proprietor defaults in paying premiums, the other Proprietor may pay such premiums on behalf of the defaulting Proprietor, which payments shall be a debt due and payable by the defaulting Proprietor to the Proprietor, who paid the premiums.
- (c) Where Clause 11.4(b) applies, the Proprietor who defaulted in paying the premiums shall not be in breach of this Agreement.

## 11.5 **Policy Assignment**

No Proprietor shall without the written consent of the other Proprietor assign, mortgage or otherwise charge, encumber or deal with a Policy.

## 11.6 **Nominee Policyowner**

A Proprietor may, with the written consent of the other Proprietor, arrange for a Policy which the Proprietor is required to effect and maintain pursuant to Clause 11.1 to be held by a nominee of that Proprietor.

12. **POLICY OWNERSHIP**

No interests in the Policies referred to in Section 11 belonging to any Proprietor other than the Proprietor which effects and maintains each individual Policy shall be created or deemed to be created by any provision of this Agreement.

13. **NOTICE**

All notices to be served pursuant to this Agreement may be sent by prepaid post addressed to the relevant person's last known address. Service shall be deemed to have been effected 3 working days after being so sent by prepaid post.

14. **VALIDITY OF PROVISIONS**

Each provision of this Agreement shall be interpreted in a manner so as to be effective and valid under the Proper Law. If any provision of this Agreement would be prohibited by the Proper Law, that provision shall be ineffective to the extent of the prohibition, without invalidating the remainder of the provision or the remaining provisions of this Agreement.

15. **ENTIRE AGREEMENT**

This Agreement represents the entire understanding of the parties in respect of the matters it contains and supersedes and replaces all prior agreements between the parties.

16. **STAMP DUTY AND COSTS**

Stamp duty and other costs payable in respect of this Agreement shall be paid by the Proprietor in proportion to the Market Values of their Interests at the Commencement Date, or as the Proprietor may otherwise agree.

17. **BINDING EFFECT**

This Agreement shall be binding upon each of the Proprietor and their respective executors, administrators, legal representatives, heirs, successors and permitted assigns.

18. **PROPER LAW**

This Agreement shall be governed by and construed in accordance with the laws of Victoria and the Proprietors submit to the jurisdiction of the Courts of that State or Territory.

**IN WITNESS** whereof the parties have executed this Agreement the day and year first above written.

**SIGNED** by the said            )  
#19#                                )  
in the presence of:            )

.....

**SIGNED** by the said            )  
#20#                                )  
in the presence of:            )

.....

**SCHEDULE 1**

**ITEM 1: MARKET VALUE**

#21#

## **SCHEDULE 2**

### **OPTION EVENTS APPLICABLE TO CALL OPTIONS**

Death:  
or  
Disablement:  
or  
Trauma:

of a Proprietor as defined in the insurance policies detailed in Schedule 4.

### **OPTION EVENTS APPLICABLE TO PUT OPTIONS**

Death:  
or  
Disablement:  
or  
Trauma:

of a Proprietor as defined in the insurance policies detailed in Schedule 4.

**SCHEDULE 3**

**OPTION NOTICE**

TO: #22#

#23# gives notice under the Buy/Sell Option Agreement dated #24# of the exercise or the Put/Call Option held by it pursuant to the Agreement.

Signed .....

**SCHEDULE 4**

<b>POLICY OWNER</b>	<b>LIFE INSURED</b>	<b>INSURED EVENTS</b> (Death and/or Total and Permanent Disablement and/or Trauma)