

No: 95134

**THE COMPANIES ACTS 1985 TO 1989**

**COMPANY LIMITED BY SHARES**


**RESOLUTION**

**of**

**LES TAYLOR CONTRACTORS LIMITED**

By Written Resolution of the Members of the above Company dated 20<sup>th</sup> September, 2002, the following resolutions were duly passed:-

1. That the terms of the Option Agreement proposed to be made between the Company, Leslie Paterson Taylor, Janette Spence Taylor and Simon Pierre Gilmartin which will oblige the Company, if the conditions therein are fulfilled and if the Company is called upon by Simon Pierre Gilmartin to do so, to purchase all of the A Shares in the Company registered in the name of Simon Pierre Gilmartin, which terms are set out in the copy of the proposed Option Agreement attached to this Written Resolution and for identification purposes signed as relative hereto, be and are hereby authorised.
2. That in accordance with Section 320(1) of the Companies Act 1985 the transaction detailed in the Option Agreement referred to in Resolution 1 above in terms of which the Company may be required to purchase all of the A Shares in the Company registered in the name of Simon Pierre Gilmartin at a consideration calculated in accordance with the Option Agreement be and is hereby approved notwithstanding that Simon Pierre Gilmartin, Leslie Paterson Taylor and Janette Spence Taylor are directors of the Company.

  
.....  
Company Secretaries



**OPTION AGREEMENT**

**- between -**

**LESLIE PATERSON TAYLOR  
MRS JANETTE SPENCE TAYLOR  
LES TAYLOR CONTRACTORS LIMITED**

**- and -**

**SIMON PIERRE GILMARTIN**



34 Albyn Place  
(DX AB41)  
ABERDEEN  
AB10 1FW

Tel: 01224 845845  
Fax: 01224 845800

## **OPTION AGREEMENT**

between

1. **LESLIE PATERSON TAYLOR**, residing at Windynook, Home Lane, Mormond View, New Leeds, Peterhead, Aberdeenshire (hereinafter referred to as "Mr. Taylor");
2. **JANNETTE SPENCE TAYLOR**, residing at Windynook, Home Lane, Mormond View, New Leeds, Peterhead, Aberdeenshire (hereinafter referred to as "Mrs. Taylor");
3. **LES TAYLOR CONTRACTORS LIMITED**, a Company incorporated in Scotland (Company Number 95134) having its registered office at Broad House, Broad Street, Peterhead, Aberdeenshire;
4. **SIMON PIERRE GILMARTIN**, residing at Beechfield House, East Knock, Mintlaw, Peterhead, Aberdeenshire ("Mr Gilmartin")

(each being a "Party" and together being "the Parties")

### **WHEREAS:-**

- (A) Les Taylor Contractors Limited, (hereinafter referred to as "the Company") is incorporated in Scotland as a private limited company (Company Number 95134) and has its registered office at Broad House, Broad Street, Peterhead, Aberdeenshire;
- (B) Mr. Gilmartin is the registered holder of certain A Ordinary Shares of £1 each in the capital of the Company ("A Shares"), options to subscribe for A Shares in the capital of the Company ("the Employee Options") and might in the future acquire further A Shares;
- (C) The Parties are parties to an agreement dated 18<sup>th</sup> December 1997 ("the First 1997 Agreement") which provided for a put option and a call option governing situations where Mr Gilmartin dies or ceases to be an employee of the Company prior to or following the exercise of the Employee Options.
- (D) Mr Taylor, Mrs Taylor and Mr Gilmartin are parties to a second Agreement dated 18<sup>th</sup> December 1997 entitled "Double Cross Option Agreement" ("the Second 1997 Agreement") which provided for a put option and a call option in respect of the A Shares registered in the name of Mr Gilmartin in the event of Mr Gilmartin contracting a critical illness and being unable to continue in employment with the Company or dying.
- (E) The Parties have agreed to enter into this Agreement to terminate both the First 1997 Agreement and the Second 1997 Agreement and to substitute new put and call option arrangements.

**NOW THEREFORE IT IS HEREBY AGREED** as follows:-

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement and in the Schedule hereto the following expressions shall, unless the context otherwise requires, have the meanings hereinafter mentioned-

"Call Option" means the call option granted by Mr. Gilmartin to Mr Taylor, Mrs Taylor and the Company in terms of Clause 3.1;

"Call Option Notice" means a notice from Mr Taylor, Mrs Taylor and the Company to Mr. Gilmartin or his executors or personal representatives in the form set out as Part 1 of the Schedule;

"Consideration" means a price per Option Share determined on the occurrence of a Relevant Event as the fair value thereof by the Independent Accountants who shall base their valuation on the greater of:-

- (a) the net asset value of the Company;
- (b) six times the average of the most recent three years post tax profits of the Company; and
- (c) in the case of the valuation of the Employee Option Shares only, the price at which Mr Gilmartin may exercise the Employee Options.

"Employee Option Shares" means the A Shares issued to Mr Gilmartin in terms of and upon exercise of the Employee Options;

"Independent Accountants" means an independent firm of chartered accountants approved by the Parties (and in the absence of such approval as to the identity of the firm of chartered accountants within 14 days of the occurrence of a Relevant Event then by an independent firm of Chartered Accountants nominated by the President of the Institute of Chartered Accountants) which firm of chartered accountants shall act as experts and not as arbiters and who shall report their determination of the Consideration to the Parties within 30 days of their appointment;

"Mr. Gilmartin" means Mr. Gilmartin as designated in this Agreement or, in the event of his death prior to the exercise of an option hereunder, his

	executors or personal representatives whomsoever;
"Mr. Taylor"	means Mr. Taylor as designated in this Agreement or, in the event of his death prior to the exercise of an option hereunder, his executors or personal representatives whomsoever;
"Mrs Taylor"	means Mrs. Taylor as designated in this Agreement or, in the event of her death prior to the exercise of an option hereunder, her executors or personal representatives whomsoever;
"Option Shares"	means all of the A Shares registered in the name of Mr Gilmartin on the date of exercise of the Put Option or the Call Option;
"Put Option"	means the put option granted by Mr Taylor, Mrs Taylor and the Company in favour of Mr. Gilmartin in terms of Clause 4.1;
"Put Option Notice"	means a notice from Mr. Gilmartin to Mr Taylor, Mrs Taylor and the Company in the form set out as Part 2 of the Schedule;
"Relevant Event"	means Mr Gilmartin ceasing to be a director and employee of the Company for any reason including without prejudice to the foregoing generality due to death, ill-health or retirement;
"Schedule"	means the Schedule, comprising Parts 1 and 2, annexed and executed as relative to this Agreement;

## **2. FIRST 1997 AGREEMENT AND SECOND 1997 AGREEMENT**

- 2.1 The Parties agree that the First 1997 Agreement is hereby terminated.
- 2.2 Mr Taylor, Mrs Taylor and Mr Gilmartin hereby agree that the Second 1997 Agreement is hereby terminated.

## **3. CALL OPTION**

- 3.1 Mr. Gilmartin hereby grants to Mr Taylor, Mrs Taylor and the Company an option to require Mr. Gilmartin to sell and transfer the Option Shares to them for the Consideration.

- 3.2 The Call Option may only be exercised by Mr Taylor, Mrs Taylor and the Company serving a Call Option Notice on Mr Gilmartin at any time within a period of 3 months of the occurrence of a Relevant Event indicating the number of Option Shares which they each wish to purchase (the aggregate number being equal to the number of Option Shares held by Mr Gilmartin) and in the event that the Call Option is not so exercised within said 3 month period then it shall lapse and cease to be exercisable.

#### **4. PUT OPTION**

- 4.1 Mr Taylor, Mrs Taylor and the Company hereby grant to Mr. Gilmartin an option to require them to purchase the Option Shares for the Consideration.
- 4.2 The Put Option may only be exercised by Mr. Gilmartin serving a Put Option Notice on Mr Taylor, Mrs Taylor and the Company within 3 months of the occurrence of a Relevant Event. In the event that Mr Gilmartin serves a Put Option Notice Mr Taylor, Mrs Taylor and the Company may determine between themselves the number of Option Shares which they shall each purchase (provided that the aggregate number shall be equal to the number of Option Shares). In the event that any of Mr Taylor, Mrs Taylor or the Company fail to complete the acquisition of the Option Shares on the Completion Date pursuant to Clause 6 hereof then without prejudice to any other remedy available to him Mr Gilmartin may, notwithstanding that more than 3 months may have elapsed since the occurrence of the Relevant Event, serve a further Put Option Notice on any other Party requiring them to purchase the balance of the Option Shares.

#### **5. CERTIFICATE OF SUMS DUE**

A certificate signed by Messrs. Stronachs, Solicitors, Aberdeen, stating that the Call Option or the Put Option has been exercised pursuant to this Agreement and that the Consideration remains due and unpaid shall be conclusive evidence of those facts and any such certificate shall conclusively fix the amount of any sum due by Mr. Taylor, Mrs Taylor and the Company to Mr. Gilmartin pursuant to this Agreement.

#### **6. COMPLETION**

- 6.1 Completion of the sale and purchase of the Option Shares pursuant to the exercise of the Call Option or of the Put Option ("Completion") shall take place at the registered office of the Company within 14 days of the date on which the Consideration has been determined by the Independent Accountants (or at such other time and/or place as the parties hereto may agree in writing) ("the Completion Date").
- 6.2 At Completion:-
- (a) In the case of
- (i) the exercise of a Call Option the parties who have indicated in the Call Option Notice that they wish to purchase Option Shares ("Purchasers"); and

- (ii) the exercise of a Put Option the parties upon whom Mr Gilmartin has called to purchase the Option Shares ("Purchasers");

shall make payment of the Consideration to Mr Gilmartin by bank draft payable to Mr Gilmartin; and

- (b) Mr. Gilmartin shall deliver to the relevant Purchaser a duly executed transfer of such of the Option Shares purchased by that Purchaser, together with the relative share certificate (or an indemnity in usual form in the event that such share certificate has been mislaid or destroyed). In the event that there is more than one Purchaser Mr Gilmartin shall deliver the share certificate or indemnity to the Company as opposed to the Purchasers.
- (c) In the event that the Company is a Purchaser of any of the Option Shares the Company shall deliver to Mr Gilmartin evidence that the Company has followed all provisions of the Companies Act 1985 relating to the acquisition by a company of its own shares including without prejudice to the foregoing generality a certified copy special resolution of the Company authorising the terms of this Agreement.

## **7. UNDERTAKINGS**

Each of Mr Taylor, Mrs Taylor and Mr Gilmartin undertake to each other to use their respective rights, votes and powers in relation to the Company to procure the convening of all such meetings and the giving or passing of all such waivers and resolutions and the doing or procuring of all such other acts and things as shall be necessary whether under the articles of association of the Company, the Companies Act 1985 or otherwise, from time to time, to give effect to and implement the terms of this Agreement.

## **8. NOTICES**

- 8.1 Every notice given in terms of this Agreement shall be delivered by prepaid recorded delivery mail to the address of the relevant party herein stated or to such other address as it may from time to time notify in writing for this purpose.
- 8.2 Any notice if delivered personally shall be deemed to have been received when delivered and if delivered by recorded delivery mail shall be deemed to have been received upon the date when delivery was in fact recorded.

## **9. CONTINUANCE IN EFFECT**

- 9.1 This agreement shall bind and be enforceable by the parties and their respective heirs, successors, executors and personal representatives whomsoever.
- 9.2 The Call Option and the Put Option shall continue in effect in accordance with the terms of this agreement notwithstanding the death or any supervening incapacity of either party.

## **10. REGISTRATION**

The parties consent to the registration of this Agreement and of any certificate issued under Clause 5 for preservation and execution.



11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of Scotland and the parties hereto hereby prorogate the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents typewritten on this and the 7 preceding pages together with the Schedule in two parts annexed are executed at                      on the                      day of                      as follows:-

Signed by **LESLIE PATERSON TAYLOR**  
In the presence of:

.....  
*Leslie Paterson Taylor*

.....*Witness*

.....*Name*

.....*Address*

.....

Signed by **JANETTE SPENCE TAYLOR**  
In the presence of:

.....  
*Janette Spence Taylor*

.....*Witness*

.....*Name*

.....*Address*

.....

Signed by **SIMON PIERRE GILMARTIN**  
In the presence of:

.....  
*Simon Pierre Gilmartin*

.....*Witness*

.....*Name*

.....*Address*

.....

Signed for and on behalf of  
**LES TAYLOR CONTRACTORS LIMITED**

By

One of the Directors thereof:

In the presence of:

.....  
*Director*

.....*Witness*

.....*Name*

.....*Address*

.....

**SCHEDULE**

**PART 1**

**FORM OF CALL OPTION NOTICE**

Simon Gilmartin,  
[Address]

[Date]

Dear Sir,

**LES TAYLOR CONTRACTORS LIMITED ("THE COMPANY")**

We refer to the Option Agreement dated 2002 entered into between us ("the Agreement") in terms of which you granted to us a Call Option to require you to sell to us certain shares in the Company.

We write pursuant to Clause 3 of the Agreement to give you notice that we hereby exercise the Call Option in terms of the Agreement and now call upon you to sell to us the Option Shares (as defined in the Agreement) in accordance with the terms of Agreement as follows:-

**Party**

**Number of Shares to be acquired**

Leslie Paterson Taylor

Janette Spence Taylor

Les Taylor Contractors Limited

Yours faithfully,

..... Leslie Paterson Taylor

..... Janette Spence Taylor

..... Les Taylor Contractors Limited

**SCHEDULE**

**PART 2**

**FORM OF PUT OPTION NOTICE**

Leslie Paterson Taylor  
Janette Spence Taylor  
Les Taylor Contractors Limited  
[Address]

[Date]

Dear Sir,

**LES TAYLOR CONTRACTORS LIMITED ("THE COMPANY")**

I refer to the Option Agreement dated 2002 entered into between us ("the Agreement") by which you granted to me a Put Option to require you to purchase from me certain shares in the capital of the Company.

I write pursuant to Clause 4 of the Agreement to give you notice that I hereby exercise the Put Option and accordingly I call upon you to purchase from to me the Option Shares (as defined in the Agreement) in accordance with the terms of the Agreement.

Yours faithfully,

**Simon Pierre Gilmartin**