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Option agreement

BPS Technology Limited

Company

TMT Partners Pty Limited

Option Holder

Clayton Utz
Lawyers
Level 28, Riparian Plaza
71 Eagle Street
Brisbane QLD 4000
GPO Box 9806
Brisbane QLD 4001
Tel +61 7 3292 7000
Fax +61 7 3221 9669
www.claytonutz.com

Our reference 12293/80153977

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Call option agreement

Date

Parties

BPS Technology Limited ACN 167 603 992 of Level 10, 1 Eagle Street, Brisbane in the State of Queensland (**Company**)

TMT Partners Pty Limited ACN 096 929 083 of Level 8, 1 Alfred Street, Sydney in the State of New South Wales (**Option Holder**)

Background

The Company has agreed to grant to the Option Holder an option to require the Company to issue and allot the Option Shares to the Option Holder on the terms and conditions set out in this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

ASIC means the Australian Securities and Investments Commission.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which the banks are open for business generally in Queensland.

Call Option has the meaning given in clause 3.1.

Completion means completion of the sale and purchase of the Option Shares in accordance with clause 4.

Completion Date has the meaning given in clause 3.5(a).

Condition means the condition specified in clause 2.1.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

End Date means 31 October 2014 or any other date agreed in writing between the Company and the Option Holder.

Exercise Notice means a notice substantially in the form set out in Schedule 1.

Exercise Period means the period set out in clause 3.3 during which the Option Holder may exercise the Call Option.

Exercise Price means \$1.15 per Option Share.

GST has the meaning given in the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Indemnified Losses means, in relation to any fact, matter or circumstance, all losses, costs, charges, damages, expenses, penalties and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this agreement).

Option Shares means 300,000 fully paid ordinary shares in the capital of the Company.

PPSA means the Personal Property Securities Act 2009 (Cth).

Recipient has the meaning given in clause 6.3.

Regulatory Authority means:

- (a) any government or local authority and any department, minister or agency of any government; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Security Interest has the meaning given in section 12 of the PPSA.

Supplier has the meaning given in clause 6.3.

1.2 Business Days

If the day on which any act to be done under this agreement is a day other than a Business Day, that act must be done on or by the immediately preceding Business Day except where this agreement expressly specifies otherwise.

1.3 General rules of interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, a Regulatory Authority, an incorporated or unincorporated association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (g) a reference to this agreement is to this agreement as varied, novated, ratified or replaced from time to time;

- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (j) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (k) a reference to \$ or **dollar** is to Australian currency; and
- (l) this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

2. Condition precedent

2.1 Condition

Clause 3 does not become binding on the parties, and no contract for the grant of the Call Option is formed until the ordinary shares of the Company are quoted on the Official list of ASX Limited.

2.2 Reasonable endeavours to satisfy Condition

Each party must use all reasonable endeavours to ensure the Condition is satisfied as soon as practicable after the date of this agreement and in any event before the End Date.

2.3 Notice in relation to satisfaction of Condition

Each party must within 1 Business Day after becoming aware of the satisfaction of the Condition notify the other party of the satisfaction of the Condition and provide reasonable evidence that the Condition has been satisfied.

2.4 No waiver of Condition

The Condition may not be waived.

2.5 Failure of Condition

A party is entitled to terminate this agreement by notice to the other party:

- (a) if the Condition becomes incapable of satisfaction; or
- (b) if the Condition has not been satisfied before the End Date,

except where the Condition has become incapable of satisfaction or has not been satisfied as a direct result of a failure by the party seeking to terminate to comply with its obligations under clause 2.2.

2.6 Effect of termination

If this agreement is terminated then:

- (a) the provisions of this agreement will cease to have effect except for the provisions of clause 1, this clause 2.6 and clauses 5 to 9 which will survive termination; and
- (b) each party retains the rights it has against the other party in respect of any breach of this agreement occurring before termination.

3. Call Option

3.1 Grant of Call Option

The Company irrevocably grants to the Option Holder an option to require the Company to issue and allot the Option Shares to the Option Holder for the Exercise Price on the terms and conditions set out in this agreement (**Call Option**).

3.2 Consideration for Call Option

In consideration for the grant of the Call Option, the Option Holder pays to the Company the sum of \$10 (receipt of which the Company acknowledges).

3.3 Exercise Period

The Option Holder may only exercise the Call Option on a Business Day during the period:

- (a) starting on the date the ordinary shares of the Company are first quoted on the official list of ASX Limited; and
- (b) ending on the date that is three years from the date the ordinary shares of the Company are first quoted on the official list of ASX Limited.

3.4 Lapse of Call Option

The Call Option will lapse if the Option Holder does not exercise the Call Option during the Exercise Period.

3.5 Exercise of Call Option

The Option Holder is not obliged to exercise the Call Option. The Option Holder may exercise the Call Option at any time during the Exercise Period by giving the Company an Exercise Notice. The Exercise Notice:

- (a) must be dated. The date of issue of the Option Shares must be no less than 5 Business Days and no more than 15 Business Days after the date on which the Company receives the Exercise Notice (**Completion Date**);
- (b) must be signed by, or on behalf of, the Option Holder;
- (c) once given may only be revoked with the consent of the Company; and
- (d) must be accompanied by the Exercise Price payable by bank cheque or other immediately available funds.

The Option Holder may only exercise the Call Option once in respect of all of the Option Shares.

4. Completion

4.1 Issue and Allotment of Option Shares

On Completion the Company must issue and allot and the Option Holder must procure the Option Shares for the Exercise Price.

4.2 Time and place for Completion

Completion must take place at Southport at 9 am on the Completion Date, or at any other place, date or time as the Company and the Option Holder agree in writing.

5. Confidentiality

5.1 No announcement or other disclosure of transaction

Except as permitted by clause 5.2 each party must keep confidential the existence of and the terms of this agreement and all negotiations between the parties in relation to the subject matter of this agreement.

5.2 Permitted disclosure

Nothing in this agreement prevents a person from disclosing matters referred to in clause 5.1:

- (a) if disclosure is required to be made by law or the rules of a recognised stock or securities exchange and the party whose obligation it is to keep matters confidential or procure that those matters are kept confidential:
 - (i) has not through any voluntary act or omission (other than execution of this agreement) caused the disclosure obligation to arise; and
 - (ii) has before disclosure is made notified the other party of the requirement to disclose and, where the relevant law or rules permit and where practicable to do so, given the other party a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;
- (b) if disclosure is reasonably required to enable a party to perform its obligations under this agreement;
- (c) to any professional adviser of a party who has been retained to advise in relation to the transactions contemplated by this agreement or any auditor of a party who reasonably requires to know;
- (d) with the prior written approval of the other party; or
- (e) where the matter has come into the public domain otherwise than as a result of a breach by any party of this agreement.

6. GST

6.1 Interpretation

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 6 have the meanings given to those terms by the GST Act (as amended from time to time); and

- (b) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause.

6.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

6.3 GST payable

If GST is payable in relation to a supply made under or in connection with this agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply or, if later, within 5 Business Days of the Supplier providing a valid tax invoice to the Recipient.

6.4 Variation to GST payable

If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 6.3 then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 6.3.

7. Notices

7.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or facsimile;
- (b) must be in writing and in English (or accompanied by a certified translation into English);
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

(i) if to the Company:

Attention: Tony Wiese

Address: Level 1, 121 Scarborough Street, Southport QLD 4215

Fax number: (07) 5531 0612

(ii) if to the Option Holder:

Attention: Mark Burns

Address: Level 8, 1 Alfred Street,

(d) (in the case of personal service, post or facsimile) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and

(e) must be delivered by hand or posted by prepaid post to the address, sent by fax to the number of the addressee, in accordance with clause 7.1(c).

7.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (d) (in the case of delivery by hand) on delivery,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day (**working day** meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

8. Entire agreement

To the extent permitted by law, this agreement constitutes the entire agreement between the parties in relation to its subject matter including the sale and purchase of the Option Shares and supersedes all previous agreements between the parties in relation to its subject matter.

9. General

9.1 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

9.2 Assignment

A party cannot assign or otherwise transfer any of its rights under this agreement without the prior consent of each other party.

9.3 Consents

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

9.4 Costs

Each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

9.5 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

9.6 Further acts and documents

Each party must promptly do, and procure that its employees and agents promptly do, all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

9.7 Severance

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

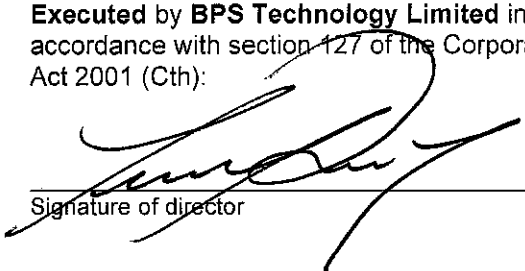
9.8 Waivers

Without limiting any other provision of this agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement;
- (b) a waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

Signed as an agreement.


Executed by BPS Technology Limited in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

Trevor Dietz

Full name of director




Signature of company secretary/director

Antoinette Wiese

Full name of company secretary/director


Executed by TMT Partners Pty Limited in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

MARK BURNS

Full name of director



Signature of company secretary/director

HUGH RICHARDS

Full name of company secretary/director

Schedule 1 Exercise Notice

[Company's name]
[Company's address]
Attention: [Company's contact]

[Date]

Notice of exercise of call option

We refer to the call option agreement between us dated *[insert date of agreement]* (**Agreement**). Words and expression defined in the Agreement have the same meaning when used in this notice.

We hereby exercise the Call Option granted to us under the Agreement and require you to issue and allot to [us] the Option Shares on the terms and conditions set out in the Agreement.

In accordance with clause 3.5(a) of the Agreement we attach the Exercise Price in respect of the Option Shares.

This notice constitutes an Exercise Notice for the purposes of the Agreement.

.....

[Insert name]
For and on behalf of
[Option Holder's name]