

## **bvim Network Agreement**

### **Terms & Conditions**

#### **BACKGROUND**

- A.** bvim Pty. Ltd. (**bvim, us or we**) is an Australian distributor of battery energy storage systems (**BESS**) the (**Products**).
- B.** You are or will be as at the Commencement Date licensed to install BESS.
- C.** bvim has set up an Australia-wide website (**the Website**) which offers limited and defined number of business the opportunity to become part of the a “**bvim Installer Network**” which in turn will supply Product and assist in providing referrals and business leads to You (**the Services**)

#### **THE PARTIES AGREE:**

##### **1. Period**

This agreement commences on the date of registration and continues on an annual basis until terminated (**the Term**) in accordance with the provisions of this agreement.

##### **2. Our Obligation to Promote and Provide Leads**

2.1. For the duration of the Term bvim shall

- i) promote and provide leads and referrals to You on the Website (**the bvim Leads**) in Your Territory as set out in the First Schedule.
- ii) promote and co-brand You with bvim on the Website;
- ii) Supply the Product(s) in accordance with clause 3.

##### **3. Supply of Product**

- 3.1. For the duration of the Term, You agree to promote bvim and the Product to each potential customer that results from the bvim Leads.
- 3.2. bvim agrees to sell to You the Product.( refer to bvim product list, storage battery, solar inverters Solar panels etc.)
- 3.3. if bvim ceases to import and or supply the Product, bvim may supply such other model as bvim may by notice in writing to You substitute for the discontinued model or Product.

##### **4. Orders for products and prices**

- 4.1. You must place orders for bvim's products to bvim at the address provided in writing by bvim.
- 4.2. bvim must sell the products to You in accordance with the orders placed at the full list price as shown in bvim's price list subject to the right of bvim to change the prices of its products without notice.

4.3 bvim will use its best endeavours to supply the Product according to Your orders in so far as not prevented or hindered by limitations of availability, production hold-ups, shortages of labour and the like. In the event of such happenings the bvim agrees to fulfil the Distributor's orders equally with orders of other customers or installers whose volume of business is on the same level as Yours.

## 5. Payment for Products & Retention of Title

5.1 You agree to pay in full for the Product(s) upon placing an order for same. You acknowledges that the Product(s) will not be supplied or delivered until payment is made in full.

5.2 Without in any way limiting your obligations set out in 5.1 above, Title in the Products does not pass to you until we have received payment in full.

5.3 To protect bvim's security interest in the goods until payment we may choose to register the agreement between us under the *Personal Properties Securities Act 2009*. You agree to do all things necessary to facilitate such registration.

5.4 On default in payment You irrevocably permit bvim or any person authorised by us in writing upon reasonable notice to enter Your premises or the premises where the Products are reasonably believed by bvim to be held on Your behalf. You also agree to indemnify and hold us harmless for all reasonable costs and expenses of recovery of the Products and losses if any on their resale.

5.5 You agree to sign documents or do all things necessary to protect our rights under the agreement and appoint us as your attorney to sign any document or do anything that may reasonably be required to enforce our rights on default.

## 6. Resale prices

6.1 bvim may provide to You, by way of recommendation only, a price at which the Product may be resold;

6.2 The parties agree for the purposes of s 97 of the *Trade Practices Act 1974* (Cth) that:

6.2.1 the price or process set out by bvim are only recommended prices and there is no obligation on the part of the distributor to comply with those recommendations;

6.2.2 this clause 6.2 is taken to be incorporated by reference into every price list or price recommended by bvim to You under this agreement.

## 7. Conditions for resale & Installer Services

7.1. You must at all times during this agreement offer for sale and sell the products as goods supplied by bvim and according to the specifications supplied by bvim to You from time to time either generally or in any particular case (**Your Services**);

7.2. You must not make any representation or give any warranty in respect of the products other

than those contained in bvim's conditions of sale as current at the time of the offering for sale or the sale.

- 7.3. bvim will recommend you to potential customers by providing to you the bvim Leads. You are solely responsible for negotiating and agreeing upon the terms and conditions for the sale and installation of the Product(s) so long as it does not conflict or is otherwise inconsistent with this Agreement, and you are and will at all times be in compliance with this Agreement in the course of performing your obligations thereunder. You acknowledge and agree that we will have no obligation or liability whatsoever arising from your engagements with your customers including without limitation any liability to you for unpaid fees or other amounts.
- 7.4. You agree to perform all Your Services in a professional and workmanlike manner, in compliance with all our then-current policies and procedures and Certification Materials, as applicable. You shall test all installations of our products performed by you using the testing tools made available to you through our website or otherwise. You will not permit any individual to perform any Installer Services for or on your behalf unless such individual has met all applicable Certification Requirements. We reserve the right to audit, review or inspect, at any time, your performance of Installer Services or the results thereof. If any such audit, review or inspection reveals any deficiency or non-compliance with this Agreement, you will, promptly upon notice from us, correct such deficiency or non-compliance at your expense.
- 7.5. You agree to allow bvim to quote/price product(s) required for installation.

## **8. Installer not to tamper with products & Insurance**

- 8.1. You must sell the products in the same condition as they are received by them;
- 8.2. You must not alter, remove or in any way tamper with any of bvim's or the manufacturer of the Products marks or numbers on the products except that You may attach to the products by means of a plate label or by other suitable means a notice bearing Your name and address and indicating that You are the supplier of the product and are appropriately authorised as such. bvim reserves the right to direct You to adopt a particular form of text for any label under this clause 9.2.
- 8.3. During the Term and for a period of at least two years thereafter, (and without limiting your licensing obligations to take out and maintain insurance at any particular amount) you must procure and maintain, in full force and effect and at your expense, a comprehensive general liability insurance policy or policies with a policy limit for at least \$1 million in respect of the performance of Installer Services covering death, personal injury, property damage, contractual liability, operations liability, advertising injury and product liability, and any other liability arising out of or occurring in connection with your business under any agreement between you and any bvim User. Such policy or policies shall provide that bvim is an additional named insured and that they will not be cancelled or altered without at least 60 days' prior written notice to us. You must furnish us with a certificate of such insurance upon our request. The purchase of such insurance coverage shall not relieve you of any of your obligations or liabilities under this Agreement.
- 8.4. Unless otherwise agreed risk passes to you at the time the Product leaves our ordinary place of business to Your specified location. You assume all responsibility for filing claims for damage against the carriers and other agents. You must insure the goods against loss or damage until payment has been made to us.

## **9. Relationship between parties**

- 9.1. The parties agree that this agreement does not constitute that You are our agents or as partners with bvim for any purpose whatsoever;
- 9.2. You must not pledge the credit of bvim to any third party at all;
- 9.3. You may describe yourself as authorised suppliers and or installer of bvim's products and/or part of the bvim network but must not describe yourself as an agent for bvim.
- 9.4. You must not share/divulge the content of this agreement. A non-disclosure agreement (NDA) to protect bvim's commercial prices and operations applies.

## **10. Effect of delays in delivery**

You shall have no right of action against bvim in respect of any loss occurring to them by reason of any delay in delivery caused by or contributed to by shortage of stock or delays in transit or delays caused by accidents or strikes.

## **11. Installer not to assign**

You must not assign or purport to assign the benefit of this agreement without the prior consent in writing of bvim.

## **12. Termination by notice**

Either party may terminate this agreement by giving one months' notice in writing to the other. If such notice is given, this agreement ends at midnight on the day on which that notice expires.

## **13. Summary termination of agreement by company**

- 13.1. Bvim may terminate this agreement by giving notice in writing to You immediately if any of the following events occur:
  - 13.1.1. On breach — if You commit a breach of any of the stipulations of this agreement that is not rectified to the satisfaction of bvim within seven (7) days after You receive notice from bvim directing them to rectify that default.
  - 13.1.2. On liquidation, insolvency— if the distributors enter into liquidation whether compulsorily or voluntarily otherwise than for the purposes of amalgamation or reconstruction or compound with their creditors or have a receiver appointed of all or any part of their assets or take or suffer any similar action.

#### **14. Termination on company ceasing to trade**

If bvim ceases to carry on business as importer and supplier of the Products it may at any time, bvim terminate this agreement by giving 30 days notice in writing to You. If such notice is given, this agreement ends at midnight on the day on which that notice expires.

#### **15. Sub-Installer or agents**

- 15.1. You may appoint any number of agents and sub-contractors for the territory as it thinks fit, but only:
  - 15.1.1. if you seek the prior consent of bvim under clause 15.1.2. You must give a reason why you seek to appoint an agent or a sub-contractor;
  - 15.1.2. with the previous consent in writing of bvim;
  - 15.1.3. on such terms as bvim approves in writing.
- 15.2. You are responsible solely for the acts or omissions of any person who is appointed and acts as an agent or a sub-contractor.
- 15.3. Without limiting clause 15.2, You agree to indemnify bvim on a full indemnity basis:
  - 15.3.1. for any loss bvim suffers itself; or
  - 15.3.2. against any liability bvim incurs in relation to any third party, that is caused by or contributed to by an act or omission of an agent or sub-distributor.
  - 15.3.3. Clauses 15.2 and 15.3 survive termination of this agreement.

#### **16. Arbitration clause**

- 16.1. Subject to clause 16.2, all questions, disputes or differences which arise between the parties with respect to this agreement or its subject matter are to be referred to a single arbitrator in accordance with the subject to the provisions of the Commercial Arbitration Act of the State of South Australia or any re-enactment or statutory modification of that law for the time being in force;
- 16.2. If there is any dispute concerning the amount of any money due or payable by either party to this agreement to the other under this agreement a certificate as to the amount signed by the auditors for the time being of bvim is conclusive and binding on both parties.

## **17. Service of notices**

17.1. Any notice, demand, direction, permission, control, authorisation, or other communication (each a “notice”) required or permitted, whether expressly, or by necessary implication, to be given under this agreement is:

17.1.1. to be in writing addressed to the address of the intended recipient shown in this contract or to such other address as has been most recently notified by the intended recipient to the party giving the notice.

17.1.2. to be signed by a person duly authorised by the sender;

## **18. Limitation of Liability**

To the extent permitted by law, bvim excludes all liability to You or other person for any loss, claim or damage (whether arising in contract, negligence, tort, equity or otherwise) for any loss, whether direct, consequential, indirect, incidental, special, punitive, exemplary or otherwise (including, without limitation any loss of profits, loss or corruption of data or loss of or damage to reputation or goodwill), arising out of, in connection with or pursuant to any:

18.1 termination of the Services of bvim and or provision or access or subscription to the Website;

18.2 use of the Services or information on or provided by bvim whether directly or through the Site or any information or advice otherwise provided by bvim or a Installer of bvim; or

18.3 any arrangement, contract, agreement, conduct or communication by or between any Installer, even if bvim is aware or ought to have been aware of the possibility of such loss or damage.

If, despite the exclusions of liability set out in this Agreement, bvim has any liability at law in respect of the supply of any goods or services or their use or operation then, to the extent permitted by law, bvim and all associates and related entities of bvim expressly limit their liability to the following remedies (the choice of which is in bvim's sole discretion):

18.4 in the case of services the supply of the services again; or

18.5 the payment of the cost of having the Product(s) supplied again.

## **19. Cancellations and Suspensions**

19.1 Your right to use the Service is subject to any limitations, conditions and restrictions established by us from time to time, in our sole discretion.

19.2 Network Agreement and bvim Certification may be cancelled at any time prior to the end of any 30 day period by written request to bvim. Cancellation will be effective as of the next billing date as long as notice is given at least 48 hours prior to the end of the 30 day period. If your usage of the Services are terminated because of a breach of these Terms and Conditions.

19.3 bvim may alter, suspend or discontinue any aspect of the Service at any time, including the availability of any Services feature, database or content.

19.4 bvim may also impose limits on certain features and aspects of the Service or restrict your access to parts or all of the Service without notice or liability.

## **20. Website Links**

- 20.1 bvim may provide links from the Website to websites maintained by third parties. Such linked websites are not under the control of bvim and bvim is not responsible for the content of any linked website or subsequently linked websites.
- 20.2 bvim is not liable for any loss or damage arising in any way out of or in connection with or incidental to any information or third party service provided by or through any linked websites whether linked to or from the Website
- 20.3 You agree to install script to home page of website which include backlinks and anchor text.

## **21 Guarantee**

- 21.1 If You are a Company then all directors of that company shall be jointly and severally liable and guarantee the performance of all of the terms, covenants, and conditions of our agreements.
- 21.2 The execution of this agreement by the directors confirms their personal acceptance as joint and several guarantors.
- 21.3 The Guarantors and each of them also indemnify bvim for any losses, costs (on a full indemnity basis) or claims as a result of any breach by You of its obligation pursuant to this Agreement.

## **22 Governing Law**

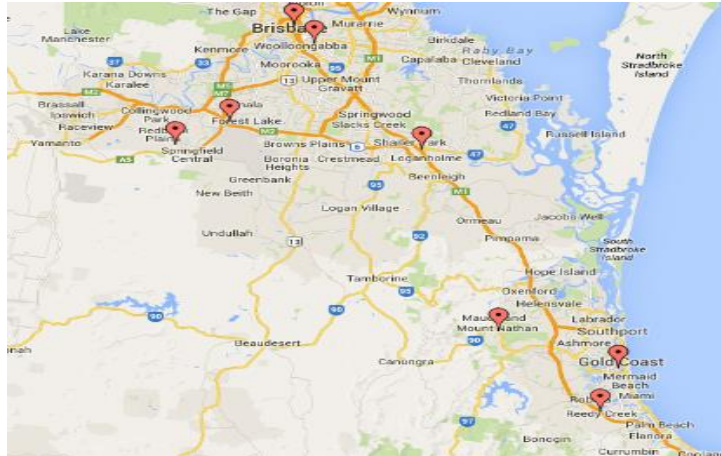
You and the parties and this Agreement shall be governed by and construed in accordance with the laws of the state of South Australia. In the event of any dispute arising out of this agreement, the parties hereby submit to the exclusive jurisdiction of the courts located in, or with jurisdiction over that jurisdiction for the resolution of any such disputes.

## **23 Entire Agreement**

This Agreement sets out the entire agreement and understanding between the parties and supersedes all prior agreement understandings or arrangements (oral or written) in respect of the subject matter of this Agreement.

## FIRST SCHEDULE

Installers Territory is as set out on the bvim 'Find an Installer map' below



## SECOND SCHEDULE

An option to purchase the development of a co-branded webpage on the bvim website for \$195 including GST one time set-up fee + \$110 including GST /year (**the Web Development & Hosting Fee**)

(This only applies where an installer does not have a website).

If no website or landing page is required, contact details will be placed on a generic bvim teardrop on the 'Find an Installer Map'. No fees will apply.