

# NON-EXCLUSIVE SALES DISTRIBUTOR AGREEMENT

This Non-Exclusive Sales Distributor Agreement (“Agreement”) is made and effective this [Date] \_\_\_\_\_ (the “Effective Date”), by and between KVAR.US LLC, a Florida corporation with offices at 1001 North Alternate A1A, Suite 102, Jupiter, Florida 33477 (hereinafter KVAR) and

\_\_\_\_\_  
(Name & Corp. - hereinafter (“Distributor”).

## **RECITALS**

**WHEREAS**, KVAR is a manufacturer marketing products in the business of energy management and efficiency, worldwide under the name of KVAR<sup>(TM)</sup> for both residential, commercial and industrial applications; and

**WHEREAS**, KVAR holds title and sole ownership to technology relating to the optimization of electrical power of motors, as described in United States Patent Number 5,440,442, issued August 8, 1995; and

**WHEREAS**, KVAR has developed, expedited economical methods and specifications to perform the teachings of the patent, has acquired market information related to the technology, and has developed a manufacturing process all of which are proprietary to KVAR; and

**WHEREAS**, KVAR.US LLC, desires to appoint Distributor and Distributor desires to accept appointment, as a distributor of KVAR Products for residential application as set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are incorporated herein by reference and of the mutual agreements and promises set forth herein, and intending to be legally bound, the parties do hereby covenant, promise and agree as follows:

## **AGREEMENT**

### **1. Distributor’s Fee Waived with \$1995 purchase of products.**

The Initial Distributor Fee shall be waived with the initial purchase of \$1995 worth of products as noted on page 9.

**2. Rights Granted.** KVAR.US LLC hereby grants to Distributor a non-exclusive right on the terms and conditions contained below to purchase, inventory, promote and resell “KVAR Products” (as defined below) for residential and commercial electrical panel applications only (the “Rights Granted”). Nothing herein shall prevent or prohibit KVAR.US LLC from selling any of KVAR Products directly to the customers. In order to protect the goodwill of KVAR Distributor’s accounts, if Distributor is unwilling or unable to service its accounts, then KVAR.US LLC reserves the right to service the accounts.

**3. Products.** As used in this Agreement “KVAR Products” shall mean the products, related-service parts and accessories manufactured and/or sold by KVAR as follows:

A. capacitance assemblies for residential and commercial electrical panels (Panel Units) as identified in **Attachment A**

B. residential demonstration kits.

4. **Terms of Sale.** All sales of Panel Units to Distributors shall be made pursuant to this Agreement at such prices (as shown in **Attachment A** herewith attached to this Agreement) and on such terms as KVAR.US LLC shall establish from time to time on at least 30 days notice. Risk of loss due to damage or destruction of KVAR Products shall be borne by the Distributor after delivery to the carrier for shipment. The shipper will be selected by KVAR.US LLC unless Distributor requests a reasonable alternative. All orders are subject to acceptance by KVAR.US LLC and must be paid in full before shipping. KVAR.US LLC shall attempt to fill all accepted orders within thirty (30) days of full payment or as arranged by Distributor with KVAR.US LLC. Except as otherwise expressly agreed by KVAR.US LLC in advance, this Agreement shall control all aspects of the dealings between KVAR.US LLC and Distributor with respect to KVAR Products and any additional or different terms in any Distribution order are hereby rejected.

5. **Payment.** All payment for KVAR Products shall be paid in full by certified check, cash, cashier's check, money order or credit card.

6. **Sales Polices.** Sales quotas, giving reasonable regard to past performance and market potential of KVAR Units, may be established by KVAR.US LLC from time to time. Distributor agrees to employ sales personnel of demonstrated capacity to attain such quotas. Distributor agrees to monitor sales personnel to ensure compliance with policy, procedures and the terms of this Agreement. Distributor is responsible for the action of its sale personnel.

7. **Distributor's General Duties.**

Distributor agrees not to engage in the distribution promotion, marketing or sale of any goods or products that compete or conflict with Panel Units. Distributor agrees to supply to KVAR.US LLC a list of items handled by Distributor following KVAR.US LLC's request to ensure that no conflict exist.

In addition to any other right or remedy to which KVAR.US LLC may be entitled, shipments may be suspended at KVAR.US LLC's discretion in the event that Distributor fails to promptly and faithfully discharge each and every obligation in this Section.

8. **Advertising Polices.** Distributor agrees to faithfully comply with the terms and conditions of advertising, promoting, and merchandising programs as KVAR.US LLC may establish from time to time. Any advertising policy is that the KVAR name and logo(s) and product(s) of KVAR can be expressly used in accordance to written permission of and approved by KVAR.US LLC.

9. **Product Warranty Policies.** In the event that any of KVAR Products are proved to KVAR.US LLC satisfaction to have been defective at time of sale to Distributor, KVAR.US LLC will make an appropriate adjustment in the original sales price of such product or, at KVAR.US LLC's election, replace the defective product. KVAR.US LLC shall provide to Distributor information with respect to KVAR's limited warranty extended to the original consumer of Panel Units.

**KVAR.US LLC MAKES NO WARRANTY TO DISTRIBUTOR WITH RESPECT TO THE PRODUCTS, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

10. **Indemnification.**

A. KVAR.US LLC agrees to protect Distributor and hold Distributor harmless from any loss or claim arising out of inherent defects in any of KVAR Products existing at the time such product was sold by KVAR.US LLC to Distributor, provided that Distributor gives KVAR.US LLC immediate notice of any such loss or claim and cooperates fully with KVAR.US LLC in the handling thereof.

B. Distributor agrees to protect KVAR.US LLC and hold KVAR.US LLC harmless from any loss or claim arising out of the negligence of Distributor, Distributor's agents, employees or representatives in the installation, use, sale or servicing of KVAR Products or arising out of any representation or warranty made by Distributor, its agent, employees, or representatives with respect to KVAR Products that exceeds KVAR's limited warranty.

11. **Use of the KVAR<sup>(TM)</sup> Name.** Distributor will not use, authorize or permit the use of the name "KVAR" or any other trademark or trade name owned by KVAR as part of its firm, corporate or business name in any way. Distributor shall not contest the right of KVAR to exclusive use of any trademark or trade name used or claimed by KVAR. Distributor may, subject to KVAR.US LLC's written prior approval, utilize KVAR's name, trademarks or logo in advertising on stationery, business card or other medium.

12. **Relationship of Parties.** The relationship between KVAR.US LLC and Distributor is that of vendor and vendee. Distributor, its agents and employees shall, under no circumstances, be deemed employees, agents, or representatives of KVAR.US LLC. Distributor will not modify any KVAR Products without written permission from KVAR.US LLC. Neither Distributor nor KVAR.US LLC shall have any right to enter into any contract or commitment in the name of, or on behalf of the other, or to bind the other in any respect whatsoever. No Distributor is guaranteed a specific income. The Distributor's success or failure depends solely on its efforts. The Distributor will obtain at its expense all necessary permits, licenses, import/export licenses or other consents for the lawful operation of Distributor's business. Distributor will pay all taxes, expenses, debits and other liabilities of the Distributor when due and agrees to operate in a lawful and ethical manner. It is the Distributor responsibility to make self-employment and tax payments, as they are required by law. Further, Distributor will not fix any liability on KVAR.US LLC whatsoever, whether City, County, State and/or taxes.

13. **Term and Termination.** Unless earlier termination as provided below, the term of this Agreement shall commence on the Effective Date and shall continue for one year. At the end of the term, the Agreement shall continue until terminated by either party on at least 30 days prior notice.

A. KVAR.US LLC may terminate at any time by written notice given to Distributor not less than ninety (90) days prior to the effective date of such notice in the event KVAR decides to terminate all outstanding distributor agreements for KVAR Products and to offer a new or amended form of distributor agreement.

B. KVAR.US LLC may terminate this Agreement upon notice to Distributor, upon any of the following events: (1) failure of Distributor to fulfill or perform any one of the duties, obligations or responsibilities of distributor in this Agreement, which is not cured within ten (10) days notice from KVAR.US LLC; (2) any assignment or attempted assignment by Distributor of any interest in this agreement or delegation of Distributor's obligations without KVAR.US LLC's written consent; (3) any sale, transfer or relinquishment, voluntary or involuntary, by operation of law or otherwise, of any material interest in the direct or indirect ownership or any change in the management of Distributor; (4) failure of Distributor for any reason to function in the ordinary course of business; (5) conviction in a court of competent jurisdiction of Distributor, or a manager, partner, principal officer or major stockholder of Distributor for any violation of law tending, in KVAR.US LLC's opinion, to affect adversely the operation or business of Distributor or the good name, goodwill, or reputation of KVAR, products of KVAR, or Distributor; or (6) submission by Distributor to KVAR.US LLC of false or fraudulent reports or statements, including, without limitation, claims for any refund, credit, rebate, incentive, allowance, discount, reimbursement or other payment by KVAR.US LLC.

14. **Obligations on Termination**. On termination of this Agreement, Distributor shall cease to be an authorized distributor of KVAR products and:

A. All amounts owing by Distributor to KVAR.US LLC shall, notwithstanding prior terms of sale, become immediately due and payable;

B. All unshipped orders shall be cancelled without liability of either party to the other;

C. Distributor will resell and deliver to KVAR.US LLC on demand, free and clear of liens and encumbrances, such of KVAR Products and materials bearing KVAR's name as KVAR.US LLC shall elect to repurchase, at a mutually agree price, but not in excess of KVAR.US LLC's current price to Distributor for such products and materials, provided that KVAR.US LLC shall not be obligated to pay Distributor for any item originally provided free of charge; and

D. Neither party shall be liable to the other because of termination for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales, or accounts of expenditures, investments, lease or commitments in connection with the business or good will of KVAR.US LLC or Distributor or for any other reason whatsoever growing out of such termination.

E. All sizing equipment will remain intellectual property of KVAR and upon termination of agreement between Distributor and KVAR.US LLC. All sizing equipment must be returned to KVAR.US LLC at its Jupiter Florida address.

15. **Use of Name Prohibited**. On termination of this Agreement, Distributor will remove and not thereafter use any sign or other promotional or advertising matter containing any trade name, logo, or trademark of KVAR including, but not limited to, "KVAR", and will immediately destroy all stationery, advertising matter and other printed matter in its possession or under its control containing such name, or any of KVAR's trademark, trade names or logos. Distributor will not at any time after such termination use or permit any such trademark, trade name or logo to be used in any manner in connection with any business conducted by it or in which it may have an interest, or otherwise whatsoever as descriptive of or referring to anything other than merchandise or products of KVAR. Regardless of the cause of termination, Distributor will immediately take all appropriate steps to remove and cancel its listing in telephone books, and other directories, and public records, or elsewhere that contain KVAR's name, logo or trademark. If Distributor fails to obtain such removals or cancellations promptly, KVAR.US LLC may make application for such removals or cancellations on behalf of Distributor and in Distributor's name and in such event Distributor will render complete assistance.

16. **Miscellaneous.** In the event of any dispute between the Distributor and any of KVAR's other distributors as to any of the provisions or these terms and conditions of appointment or such other distributor's agreement, then such dispute shall be referred to and determined by KVAR.US LLC and the determination by KVAR.US LLC shall be final and binding upon the parties.

17. **Acknowledgments.** Each party acknowledges that no representation or statement, and no understanding or agreement, has been made, or exists, and that in entering into this Agreement each party has not relied on anything done or said or on any presumption in fact or in law, (1) with respect to this Agreement, or to the duration, termination, or renewal of this Agreement, or with respect to the relationship between the parties, other than as expressly set forth in this Agreement; or (2) that in any way tends to change or modify the terms of this Agreement or prevent this Agreement becoming effective; or (3) that in any way affects or relates to the subject matter hereof. Distributor also acknowledges that the terms and conditions of this Agreement, and each of them, are reasonable and fair and equitable.

18. **Entire Agreement.** This Agreement contains the entire agreement of the parties regarding the subject matter of this Agreement, and there are no other promises or conditions in any other agreement whether oral or written. Any representation, promise, or condition not incorporated herein shall not be binding on either party. This Agreement may be modified only by a further writing that is duly executed by both parties.

19. **Assignment.** Neither this Agreement nor any interest in this Agreement may be assigned by Distributor without prior express written approval of KVAR.US LLC, which may be withheld by KVAR.US LLC at KVAR.US LLC's absolute discretion and require a new distributor's agreement. KVAR.US LLC may assign its rights and obligations in this Agreement upon written notice to the Distributor.

20. **No Implied Waivers.** Except as expressly provided in this Agreement, waiver by either party, or failure by either party to claim a default, of any provision of this Agreement shall not be a waiver of any default or subsequent default.

21. **Notices.** Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services;

If to KVAR.US LLC:                      KVAR .US LLC  
    1001 North Alternate A1A Suite 102  
    Jupiter, Florida 33477

If to Distributor: \_\_\_\_\_  
    \_\_\_\_\_

22. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Venue shall be proper in Palm Beach County. In the event suit is commenced to enforce this Agreement, cost of said suit, including reasonable attorney's fees in all proceedings, trials, investigations, appearances, appeals, or administrative proceeding, shall be paid to the prevailing party. Any dispute under this Agreement shall be referred to an ARBITRATION ASSOCIATION for determination in accordance with its then existing rules.

23. **Severability**. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

24. **Counterparts**. This Agreement may be executed in counterparts with the same effects as if the parties had signed the same document. The counterpart shall be construed together and shall constitute one and the same Agreement. This Agreement may be executed by the parties and transmitted by facsimile transmission and if so executed and transmitted this Agreement shall be for all purposes as effective as if the parties had delivered an executed original Agreement.

25. **Force Majeure**. Notwithstanding anything herein contained to the contrary, KVAR.US LLC shall not be deemed to be in breach of this Agreement nor otherwise be liable to the Distributor in damages by virtue of any failure to perform hereunder caused by any circumstances beyond its control, including, but not limited to fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of terrorism, act of God, any governmental ordinance or law, the issuance of any executive or judicial order, any failure or delay of any transportation agency, any failure or delay in respect to the electrical or equipment or apparatus, or by any laboratory, any failure, without fault, to obtain material, transportation, power, or any other essential thing required in the act of its business or any similar causes. If KVAR.US LLC is affected by any circumstances beyond its control, KVAR.US LLC shall notify the Distributor of the nature and extent thereof; and the time for performance shall be extended accordingly. If the circumstances beyond KVAR.US LLC's control prevail for a continuous period in excess of eight weeks, KVAR.US LLC shall enter into bona fide discussions with the Distributor to alleviate the effects, or to agree upon such alternative arrangements as may be fair and reasonable.

In witness whereof and intending to be legally bound hereby, the parties have duly executed and delivered this Agreement as of the date first written above:

**DISTRIBUTOR:**

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Email address \_\_\_\_\_

Company: \_\_\_\_\_ Title: \_\_\_\_\_

Phone office: \_\_\_\_\_ Phone cell: \_\_\_\_\_ Fax: \_\_\_\_\_

Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Zip: \_\_\_\_\_ Country: \_\_\_\_\_ Shipping Address: (if different) \_\_\_\_\_

\_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Credit Card: \_\_\_\_\_ Exp Date: \_\_\_\_\_ CCID (3 numbers on back) \_\_\_\_\_

**KVAR.US LLC:**

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**Please make copies for yourself. FAX BACK ALL PAGES WITH FAX NUMBER AT THE TOP OF THE PAGE.**

**KVAR.US LLC.  
1001 North Alternate A1A Suite 102  
Jupiter, Florida 33477**

# KVAR.US - A Revolution in Energy Efficiency

## Attachment A

### PANEL UNIT PRICE LIST AND MSRP

AMPERAGE	MODEL	VOLTAGE	Dimensions L x W x H	Weight	PRICE/unit	MSRP
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#### *Commercial Applications*

50	PU3050	240 to 480	6 x 6 x 4	6 lbs	\$ 395.00	
100	PU3100	240 to 480	8 x 6 x 4	6 lbs	\$ 395.00	
200	PU3200	240 to 480	8 x 6 x 4	8 lbs	\$ 795.00	
400	PU3400	240 to 480	10 x 8 x 6	10 lbs	\$ 1295.00	
600	PU3600	240 to 480	16 x 14 x 8	30 lbs	\$ 1995.00	

#### *Residential Home Applications*

50	PU1050	240	6 x 6 x 4	6 lbs	\$100 (1-10 units per order) \$90 (11-100 units per order) \$80 (100+ units per order)	
200	PU1200	240	6 x 6 x 4	6 lbs	\$100 (1-10 units per order) \$90 (11-100 units per order) \$80 (100+ units per order)	
400	PU1400	240	6 x 6 x 4	7 lbs	\$ 675.00	

## **Call for Special Pricing on PU1200 Units**

### DEMONSTRATION KITS AND SIZER SETS

	Dimensions L x W x H	Weight	PRICE/unit
DEMOS	25 x 18 x 13	40 lbs	\$ 650.00
SIZERS – US1, US2 & US3	25 x 25 x 25	90 lbs	\$ 20,000.00

ETC.

3-PHASE HARMONIC ANALYZER - \$3995.00  
 CUSTOM WEBSITE WITH 1 YEAR HOSTING - \$800  
 EXTECH True RMS Power Factor Meter - \$300

Distributor Manual \$100