

# Fifth Avenue Collection Inc.

## JEWELRY STYLIST APPLICATION FORM

(FILLABLE)

PLEASE PRINT

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone - Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cellular: \_\_\_\_\_  
Fax: \_\_\_\_\_ Email Address: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_

I hereby apply to become a Fifth Avenue Collection Jewelry Stylist.

Signature (of applicant): X Date: X

I sponsor the above-named applicant as a Fifth Avenue Collection Jewelry Stylist and certify that the applicant has met the conditions specified in the confidential Jewelry Stylist Guide.

Signature (of sponsor): Desiree Sims Date: X  
Name of sponsor: Desiree Sims Sponsor's Jeweler Number: R19339

Size of showcase: \_\_\_\_\_ (The size of the showcase may vary by a maximum of 2% in value)

Method of Payment: Certified Check ☐ Bank Transfer ☐ Credit Card ☐

Card Number: \_\_\_\_\_ CV Number: \_\_\_\_\_ Expiry Date (Month/Year) \_\_\_\_ / \_\_\_\_

Cardholder's Name: \_\_\_\_\_ Cardholder's Signature: \_\_\_\_\_

PLEASE PRINT

### JEWELRY STYLIST AGREEMENT

BETWEEN: FIFTH AVENUE COLLECTION LTD.  
("Fifth Avenue")

AND: X  
(the "Jeweler" or "Jewelry Stylist")

#### BACKGROUND:

Fifth Avenue has developed a unique line of fashion jewelry ("FIFTH AVENUE PRODUCTS") and a unique system for selling Fifth Avenue Products (the "FIFTH AVENUE PROGRAM"). The Fifth Avenue Program includes the registered trade-marks "FIFTH AVENUE COLLECTION" (in design) and "BUTLER GEM", and other unregistered trade-marks, trade names, and related logos, designs and slogans (the "MARKS"). Fifth Avenue has also developed and owns the copyright in a confidential Jewelry Stylist Guide which sets out details and trade secrets of the Fifth Avenue Program (the confidential "JEWELRY STYLIST GUIDE").

The Jeweler has completed and submitted a Jeweler Application Form and has agreed to become a Fifth Avenue Jeweler and be bound to the terms of this Agreement if Fifth Avenue accepts the application. This Agreement sets out the conditions by which Fifth Avenue grants the Jeweler the right to purchase Fifth Avenue Products and sell them in accordance with the Fifth Avenue Program.



## TERMS AND CONDITIONS

Unless otherwise defined in the Agreement, all terminologies used in the Agreement shall have the meanings given to them in the confidential Jewelry Stylist Guide. Each party to this Agreement acknowledges receipt of good and valuable consideration and agrees to the following terms and conditions:

1. Fifth Avenue grants the Jeweler a non-exclusive licence and right to purchase Fifth Avenue Products and to use the Fifth Avenue Program, the Marks and the confidential Jewelry Stylist Guide in accordance with this Agreement.
2. Fifth Avenue may amend the confidential Jewelry Stylist Guide from time to time at its sole discretion. The provisions of the confidential Jewelry Stylist Guide, as revised from time to time, shall constitute provisions of this Agreement as though incorporated specifically into this Agreement. When Fifth Avenue makes revisions to the confidential Jewelry Stylist Guide, it will provide these revisions online and a revised copy of the confidential Jewelry Stylist Guide will reside on the Jewelers Only website. The Jeweler will at all times use an up-to-date confidential Jewelry Stylist Guide. In the event of a dispute as to the contents of the confidential Jewelry Stylist Guide, the master copy maintained by Fifth Avenue shall govern.
3. The Jeweler acknowledges that the trademark, reputation, selling techniques (including "The Science of Accessorizing" and "Styling Sessions") and goodwill of Fifth Avenue is based on the quality of goods supplied by Fifth Avenue and the quality of services provided by Jewelers to customers. The Jeweler further acknowledges that the provisions contained in this Agreement are reasonable to protect the trademark, selling techniques (including "The Science of Accessorizing" and "Styling Sessions") reputation and goodwill of Fifth Avenue.
4. The Jeweler will not sell Fifth Avenue Products using any selling techniques, in any places, online, or by any means, which are not part of the Fifth Avenue Program. The Jeweler acknowledges that Fifth Avenue may regulate or limit the sale, exhibition, and display of Fifth Avenue Products in public, service establishments of any kind or online through websites like Amazon and eBay or any other third-party unauthorized reselling site and agrees to obtain written permission from Fifth Avenue in advance of participating, or agreeing to participate, in such a sale, exhibition, or display.
5. The Jeweler will not, directly or indirectly, sell any goods or items of any kind from suppliers other than Fifth Avenue, which compete with Fifth Avenue Products.
6. The Jeweler will not, directly or indirectly, sell Fifth Avenue Products at the same time and place as goods or items of any kind from suppliers other than Fifth Avenue.
7. The Jeweler will purchase from Fifth Avenue all packaging, labeling, visual advertising, and promotional materials which relate to the Fifth Avenue Program.
8. Fifth Avenue will set the wholesale prices to be paid by the Jeweler for Fifth Avenue Products. The wholesale prices of Fifth Avenue Products will be the same for all Jewelers purchasing Fifth Avenue Products for delivery in the same country.
9. The Jeweler will pay the wholesale price that is in effect for a given Fifth Avenue Product at the time the Jeweler's order is accepted by Fifth Avenue as shown on Fifth Avenue's Jeweler's Only Website.
10. The Jeweler does not have the right to establish the prices at which Fifth Avenue Products will be sold or supplied to customers. The price of any given Fifth Avenue Product sold or supplied by the Jeweler (with the exception of promotional items) will be the sale price that is in effect that for Fifth Avenue Product at that time, as shown on the official Fifth Avenue public website.
11. The Jeweler is also responsible for the cost of shipping and any insurance requested by the Jeweler. All amounts payable by the Jeweler for Fifth Avenue Products, insurance and freight must be paid in full prior to shipment. All overdue amounts will bear interest at the rate of 2% per month (24% per annum).
12. Title to, and risk of loss or damages to, all Fifth Avenue Products sold by Fifth Avenue to the Jeweler shall pass to the Jeweler when the Fifth Avenue Products are put into possession of the carrier, at which point Fifth Avenue shall be deemed to have completed good delivery to the Jeweler. All risk of loss or damage in transit or storage shall be borne by the Jeweler.
13. The Jeweler acknowledges that all Fifth Avenue Products may not be available at all times, and that Fifth Avenue may discontinue any Fifth Avenue Product at any time. The Jeweler also acknowledges that all orders placed by the Jeweler are subject to acceptance by Fifth Avenue and that Fifth Avenue reserves the right to reject any order in its sole discretion. The Jeweler hereby expressly releases Fifth Avenue from liability for any loss or damages in any way arising out of or by virtue of the failure of Fifth Avenue to accept any orders or for any delay in filling or shipping any orders.
14. The Jeweler will utilize the marketing methods in the confidential Jewelry Stylist Guide, promote and sell Fifth Avenue Products and conduct all matters relating to the Fifth Avenue Program in a truthful, honest manner, and uphold the highest standards of integrity, honesty and responsibility when dealing with customers and other Fifth Avenue Jewelers. The Jeweler will not engage in any business or advertising practices which may depreciate the reputation and goodwill of Fifth Avenue or which may harm the business of Fifth Avenue or other Fifth Avenue Jewelers.
15. Fifth Avenue will provide the Jeweler with an online confidential Jewelry Stylist Guide, comprehensive training videos, marketing materials, and other sales aids developed by Fifth Avenue from time to time, together with ongoing promotional assistance and regular communication to keep the Jeweler up-to-date with respect to important developments in the Fifth Avenue Program. All financial obligations and expenses associated with the Jeweler's business, including costs incurred to promote the sale of Fifth Avenue Products to customers and potential customers, are the sole obligation of the Jeweler.
16. The Jeweler agrees to pay when due all taxes and applicable fees, and to operate the business in compliance with all applicable laws.
17. The license granted by this Agreement allows use of the Fifth Avenue Program, selling techniques and Marks only in connection with the sale of Fifth Avenue Products in strict accordance with this Agreement. Nothing in this Agreement gives the Jeweler any other rights, title or interest in or to any part of the Marks or the Fifth Avenue Program. The Fifth Avenue Marks shall not be used by the Jeweler without express prior written permission from Fifth Avenue (as described in detail in the confidential Jewelry Stylist Guide). The Jeweler's name must be clearly marked on all documented and electronic representations concerning their business as well as on any stationery, business cards, purchase orders, sales slips, bank accounts, bank checks and other business documents, and directory listing or entries, whether in print or electronic form, in a manner approved in writing in advance by Fifth Avenue, which clearly indicates that the Jeweler is an independent Jeweler operating their business pursuant to a license from Fifth Avenue.
18. The Jeweler agrees that Fifth Avenue may at its sole discretion regulate or limit the Jeweler's use of public and private computer networks and online services, including but not limited to the internet, for any purpose which involves Fifth Avenue Products, the Fifth Avenue Program, or the Marks. Without limiting the generality of the foregoing, the Jeweler agrees not to register, obtain rights to, or otherwise hold or use a domain name, Universal Resource Locator, keyword, or such other instrument which incorporates the Fifth Avenue Marks in whole or in part, or which might in any way be construed as belonging or referring to Fifth Avenue, except with the express prior written permission of Fifth Avenue.
19. The Jeweler acknowledges that Fifth Avenue is the owner of the copyright in the confidential Jewelry Stylist Guide and all other systems, binders, manuals, videos, computer software and files, web pages, and any other materials on printed, photographic, magnetic, optical, electronic, or other media (including all revisions to any of the foregoing), which from time to time form part of the Fifth Avenue Program (collectively referred to as the "Copyrighted Materials"). The Jeweler acknowledges that the Jeweler's right to use the Copyrighted Materials is derived solely from this Agreement and is limited to the conduct of business by the Jeweler under this Agreement. The Jeweler acknowledges that the Copyrighted Materials remain the property of Fifth Avenue. The Jeweler also acknowledges that Fifth Avenue may collect and hold a reasonable deposit for these items while they are in the Jeweler's possession.



20. The Jeweler acknowledges that Fifth Avenue possesses various trade secrets and confidential business information comprised of methods, techniques, specifications, materials, procedures, information, systems and knowledge of and experience in the jewelry and direct sales industries (collectively referred to as the "Trade Secrets"). Fifth Avenue will disclose the Trade Secrets to the Jeweler in the Copyrighted Materials and in guidance furnished by Fifth Avenue to the Jeweler in strict confidence during the term of this Agreement. The Jeweler does not acquire any proprietary interest in the Trade Secrets or in any part thereof, other than the right to use the Trade Secrets in accordance with this Agreement. The Jeweler acknowledges that the Trade Secrets are proprietary and confidential.

21. The Jeweler undertakes that for a period of one year after termination of this Agreement, he shall not directly or indirectly for his own act or jointly with any one else, carry on or be engaged, interest or concerned whether financially or otherwise (including a member, partner, director, shareholder, consultant or employee) in any business which carries on business within a radius of 100 km (one hundred kilometres) from any location where the Jeweler previously sold Fifth Avenue products which is the same or similar business to that conducted by Fifth Avenue or in any new business activity carried on which Fifth Avenue can demonstrate is actively contemplated by Fifth Avenue at the date of termination of agreement

22. Following termination of this Agreement, the Jeweler shall not use the Marks, the confidential Jewelry Stylist Guide, the Copyrighted Materials or Trade Secrets. The Jeweler shall not thereafter operate or do business under any name or in any manner that might tend to give the general public the impression that the Jeweler is directly or indirectly associated, affiliated, licensed by or related to Fifth Avenue, and the Jeweler does not directly or indirectly use any Mark, or any other name, logo, signage, symbol, insignia, slogan, advertising, copyright, design, trade secret, process, system, method of operation or format confusingly similar to or colourably imitative of those used by Fifth Avenue. The Jeweler acknowledges the proprietary rights of Fifth Avenue as set out in this Agreement and agrees to return to Fifth Avenue the confidential Jewelry Stylist Guide and all of the Copyrighted Materials upon termination of this Agreement.

23. The Jeweler acknowledges that the rights and duties created by this Agreement are personal to the Jeweler and may not be ceded or assigned in any way.

24. Except as otherwise provided in this Agreement, the Jeweler agrees to indemnify and hold harmless Fifth Avenue from any and all claims, demands, actions or liability arising out of the operation of the Jeweler's business. This indemnity shall continue after termination of this Agreement.

25. The parties intend by this Agreement to establish the relationship of distributor and distributee, each as an independent contractor, and it is not the intention of either party to establish a fiduciary relationship, to undertake a joint venture, to make the Jeweler in any sense an agent, employee, affiliate, associate or partner of Fifth Avenue or to confer on the Jeweler any authority to act in the name of or on behalf of Fifth Avenue.

26. The relationship created by this Agreement does not constitute the granting of a franchise to the Jeweler.

27. If either party chooses to terminate this Agreement within three months of its coming into effect, Fifth Avenue agrees to repurchase the Fifth Avenue Products and other items Fifth Avenue initially sold to the Jeweler (the "Initial Showcase") for the wholesale cost paid by the

Jeweler to Fifth Avenue for the Initial Showcase (not including shipping and insurance costs). The Jeweler must deliver the Initial Showcase prepaid to Fifth Avenue. The Initial Showcase must be received by Fifth Avenue within three months of the date the initial Showcase was shipped by Fifth Avenue to the Jeweler. The items making up the Initial Showcase must not have been worn, and must be in their original packaging and be in saleable condition. Fifth Avenue may return any items not meeting these conditions to the Jeweler, at the Jeweler's expense. Fifth Avenue will issue a check for the wholesale cost paid by the Jeweler for the items in the Initial Showcase that meet these conditions by the 15th day of the month following that in which it receives the Initial Showcase.

28. This Agreement and all other documents referred to herein set forth constitute the entire and only Agreement between Fifth Avenue and the Jeweler. There are no representations, warranties, terms, conditions or undertakings or collateral agreements, express, tacit, or implied, between the parties other than as expressly set forth in this Agreement.

29. The terms and conditions of this Agreement shall be governed in terms of the Laws in the country of the United States.

30. The presentation of this Agreement to the Jeweler does not constitute an offer by Fifth Avenue. This Agreement shall only become effective when it has been signed by both the Jeweler and Fifth Avenue.

31. This Agreement may be terminated at any time by either party, forthwith upon giving written notice to the other.

32. Should either party be in breach of the Agreement and remain in default for a period of 7 (SEVEN) working days after receipt of a written notice to remedy the breach, then and in such an event, the aggrieved party shall without prejudice to any other rights it may have in law, be entitled to claim specific performance or cancel this agreement and claim damages. In the event that Fifth Avenue institutes legal action against the Jeweler for breach of any term of this Agreement then the Jeweler agrees to pay Fifth Avenue's legal fees on an Attorney and Client scale.

33. A certificate signed by any Director, Manager, Member or Secretary of Fifth Avenue of the amount due by the Jeweler and date upon which it is payable in terms of this Agreement, shall be prima facie evidence of the amount due.

34. The parties choose their address for service of legal notices for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement, their respective addresses as set out in the Preamble to this Agreement.

35. This Agreement is the entire agreement between the parties and all previous conditions, warranties or representations are expressly excluded from this Agreement. No amendment, waiver or purported cancellation of this Agreement will be valid unless it is produced in writing and signed by both parties.

It is expressly understood and agreed that the rights of termination set forth above are absolute and that both parties have considered the expenditures that will be incurred under this Agreement and the losses that may be incurred in the event the other party exercises its right of termination set forth above. Therefore, in agreeing to the said terms of termination, it is with full knowledge of such possibilities and neither party shall not be responsible to the other party for damage, or otherwise, by reason of the fact of termination or the lack of any prior notice of termination.

IN WITNESS WHEREOF Fifth Avenue and the Jeweler have executed this Agreement on the dates set forth below:

THE JEWELER

Jewelry Stylist's Signature: X

Witness Signature: Desiree Sims

Date: X

FIFTH AVENUE COLLECTION INC.

By: \_\_\_\_\_

(Authorized Signatory)

Date: \_\_\_\_\_