

# INDEPENDENT SALES DIRECTOR AGREEMENT

THIS AGREEMENT, dated \_\_\_\_\_, by and between MARY KAY INC., (hereinafter called "Company"), a Delaware corporation with its principal offices at 16251 Dallas Parkway, Post Office Box 799045, Dallas, Texas 75379-9045, and the independent contractor (hereinafter called "Sales Director"), whose name and address appear below:

## WITNESSETH:

WHEREAS, Company manufactures and sells at wholesale cosmetics, toiletries and related products (hereinafter called "*Mary Kay*<sup>®</sup> products") under the registered trademarks "MARY KAY" and various other trademarks owned by Company; and

WHEREAS, Sales Director is engaged in business as an independent dealer ("Independent Beauty Consultant") for *Mary Kay*<sup>®</sup> products, purchasing such products from Company and reselling for Sales Director's own account to ultimate consumers of Sales Director's choice and proposes to continue such business; and

WHEREAS, Company, recognizing the increased sales potential and other benefits accruing from development of a strong, highly motivated, national selling force of independent retail dealers, has established a special incentive program (hereinafter called "Sales Director Program") for those Independent Beauty Consultants who particularly distinguish themselves as successful retail sellers and who demonstrate outstanding ability to motivate others to become successful retail sellers of *Mary Kay*<sup>®</sup> products; and

WHEREAS, the Sales Director Program offers to participants the opportunity to earn increased special incentive compensation in the form of commissions and other rights, privileges and benefits more fully described in this Agreement; and

WHEREAS, Sales Director has received and will continue to receive valuable specialized instruction, education and information covering cosmetic products, leadership, business management, motivation, team building information and selling techniques through personal participation in educational programs, classes, business meetings and Seminars conducted by Company in Dallas, Texas; and

WHEREAS, Sales Director desires to participate in the Sales Director Program and is willing to act as a "Business Consultant" to and share the benefits of Sales Director's sales and motivational knowledge and experience with other Independent Beauty Consultants and particularly to offer aid, counsel and inspiration to all Independent Beauty Consultants within a particular retail selling group (hereinafter called "Sales Unit") counseled by Sales Director; and

WHEREAS, Sales Director has demonstrated a very high degree of personal sales ability as a retail seller of *Mary Kay*<sup>®</sup> products and outstanding ability to motivate others to become successful retail sellers of *Mary Kay*<sup>®</sup> products and has qualified for participation in the Sales Director Program and for designation by Company as a "Unit Sales Director";

NOW, THEREFORE, in consideration of Sales Director's meeting the standard of personal performance for qualification and participation in the Sales Director Program, and in further consideration of the premises and the mutual covenants set forth in this Agreement including the provisions of the "General Terms and Conditions," and the "Schedule of Commissions and Bonuses" which are made a part hereof, Company hereby agrees to appoint Sales Director as "Unit Sales Director" and Sales Director agrees to accept such appointment together with all of the rights, benefits, privileges and responsibilities provided hereunder, which appointment shall become fully effective as of the date which appears above when this Agreement is executed by both parties and accepted by Company at its offices in Dallas, Texas.

IN WITNESS WHEREOF, the parties hereto have signed these presents effective as of the day and year first above written.

ACCEPTANCE ACKNOWLEDGED:

MARY KAY INC.

\_\_\_\_\_  
Julia A. Simon, Corporate Secretary

By: \_\_\_\_\_  
Nathan P. Moore, President, North America

INDEPENDENT SALES DIRECTOR: \_\_\_\_\_

# GENERAL TERMS AND CONDITIONS

## SECTION 1. APPOINTMENT AS UNIT SALES DIRECTOR

Company, in sole consideration of Sales Director's meeting standards of personal performance for qualification and participation in the Sales Director Program, and without the payment to Company of any monetary consideration whatsoever given or promised to be given by Sales Director for such designation and rights, hereby names Sales Director as "Unit Sales Director."

## SECTION 2. SALES UNIT DEFINED

For the purposes of this Agreement, a Sales Unit shall be deemed to consist of:

- (i) All active Independent Beauty Consultants personally recruited by an Independent Sales Director; and
- (ii) All active Independent Beauty Consultants recruited by members of an Independent Sales Director's Sales Unit; and
- (iii) In certain cases, active Independent Beauty Consultants from Sales Units which have not maintained the minimum sales necessary for continued recognition as separate Sales Units or whose Unit Sales Directors have relinquished their responsibilities for other reasons, whereupon such Independent Beauty Consultants are transferred by Company to the Independent Sales Director's Sales Unit, provided that a Sales Unit may also be subject to loss of members by transfer when a member qualifies and is appointed as a Unit Independent Sales Director, whereupon such qualifying Independent Sales Director, all the qualifying Independent Sales Director's personal team members and any of their personal team members who were recruited during the qualifying period are transferred to the newly formed Sales Unit.

Only persons residing in the U.S. and eligible U.S. territories and possessions, shall be eligible to become members of an Independent Sales Director's Sales Unit under this Agreement, unless otherwise provided in the Schedule of Commissions and Bonuses.

## SECTION 3. COMMISSIONS AND BONUSES

3.1 In consideration for Sales Director's activities in counseling, motivating and promoting retail sales of *Mary Kay*<sup>®</sup> products by Independent Beauty Consultants, Sales Director shall have the right to receive from Company incentive compensation which shall be in the form of a monthly commission calculated using the total monthly wholesale purchases ("Wholesale Purchase Volume") of all *Mary Kay*<sup>®</sup> products bought for resale by all members, including Sales Director, of the particular Sales Unit counseled and advised by Sales Director. For purposes of calculation of commissions payable hereunder, the monthly Wholesale Purchase Volume of the Sales Unit upon which commissions shall be payable shall be the sum of the net prices paid for all *Mary Kay*<sup>®</sup> products purchased for resale by all members of Sales Director's Sales Unit during a calendar month. Monthly commissions and bonuses, where applicable, shall be paid by Company to Sales Director in accordance with the Schedule of Commissions and Bonuses attached and made a part hereof.

3.2 All commissions and bonuses shall be determined based upon all orders received and accepted by Company during the period from and including the first through the last business day of the month unless other dates shall be announced in advance by Company. Postmarked dates of orders shall not be taken into consideration and Company's stamped date of receipt of the accepted order shall be controlling for any determination of the date of receipt of an order under this section.

## SECTION 4. NON-COMMISSIONABLE ITEMS, COMMISSION CHARGE BACKS AND DEDUCTIONS

4.1 The Sales Director Program is intended to promote the development of a strong independent retail selling organization and consumer market for *Mary Kay*<sup>®</sup> products. Therefore, no commission shall be payable on a new Independent Beauty Consultant's purchase of a Starter Kit nor shall any compensation be paid solely for the act of introducing a new Independent Beauty Consultant into the *Mary Kay* organization. No commission shall be payable on the purchase of any sales aids or other items other than products destined for use by consumers or other products specifically designated as commissionable by Company. Further, notwithstanding the fact that commission payments may be initially calculated and paid upon the Wholesale Purchase Volume of a Sales Unit, wholesale purchases by Independent Beauty Consultants are viewed by Company as a measure of the retail sales activity of the individual Independent Beauty Consultant and the Sales Unit as all *Mary Kay*<sup>®</sup> products not sold to consumers are subject to return to the Company for repurchase by it at the election of any terminating Independent Beauty Consultant.

4.2 It is expressly understood and agreed that upon the return of *Mary Kay*<sup>®</sup> products and Company's repurchase of such products from any terminating Independent Beauty Consultant within Sales Director's Sales Unit, the commissions, bonuses or other sums payable to

Sales Director during the month following the month in which the return occurs shall be reduced by 1) the amount of the commissions and bonuses previously paid to Sales Director upon such returned products and 2) the value of any non-cash awards earned by Sales Director related to such returned products , provided that any excess may be offset against amounts payable in later periods.

4.3 It is further expressly understood and agreed that any commissions or other sums payable by Company to Sales Director may be reduced by any indebtedness of whatever nature owing by Sales Director to Company.

#### **SECTION 5. RIGHT TO USE COMPANY NAME, TRADE NAMES AND TRADEMARKS**

5.1 Sales Director shall have the right, subject to the limitations herein, to use the title "Independent Sales Director-Mary Kay" in or on stationery, business cards, office doors and Company-approved advertising materials for the promotion, facilitation, distribution and sale of *Mary Kay*<sup>®</sup> products, but not otherwise.

5.2 The rights granted herein do not include any right to use trademarks of Company, except as specifically set forth herein or as authorized by Company in writing. Each use by Sales Director of Company's trademarks, trade names and trade dress on business cards, letterheads, signs, advertisements, other promotional materials, or otherwise, shall include the words "Independent Sales Director" prominently displayed in the form set forth below (or any such other form as Company shall have previously authorized in writing):

(NAME OF SALES DIRECTOR)

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INDEPENDENT SALES DIRECTOR  
MARY KAY

5.3 Sales Director agrees not to use Company's trademarks or trade names in any type of advertising matter or literature (excluding pre-approved sales literature and advertising formats supplied by Company for such purposes) without first obtaining Company's written permission.

5.4 Sales Director shall not have the right or authority to use Company's name, trade names or trademarks in any manner or fashion which might result in Sales Director's being deemed or represented to be a corporate officer, partner, agent or employee of Company. In particular, neither the Company's corporate name nor any similar name, nor any trademark nor trade name of Company shall be used by Sales Director on any contracts, leases, bank accounts, checks, or trade or credit card account or any other business document of Sales Director.

5.5 Company shall have the right to immediately terminate, without cause and in its sole discretion, any authorization or permission granted to an Independent Sales Director to use the "MARY KAY" mark, or other Mary Kay rights or intellectual property. In addition, any such authorization or permission granted to an Independent Sales Director to use such marks or intellectual property shall end immediately upon the termination of the Independent Sales Director's Independent Sales Director Agreement.

5.6 Sales Director is not authorized to use Company's trademarks in the promotion of another business.

#### **SECTION 6. USE OF COMPANY NAME, TRADE NAMES AND TRADEMARKS IN INTERNET AND DIRECTORY ADVERTISING**

6.1 Sales Director may not use Company trademarks, including the trademark "MARY KAY" except as specifically authorized in writing by Company. Sales Director may only use the trademark "MARY KAY" on the internet (including social media sites such as Facebook, Twitter, LinkedIn, etc.) and in print and on-line directory advertising (*e.g.*, paper Yellow pages, Superpages.com, etc.) as specifically authorized in Company issued guidelines, as amended from time to time.

6.2 Upon the termination of Sales Director's Independent Sales Director Agreement, or upon the request of the Company, Sales Director shall be required to immediately take all reasonable steps requested by the Company to effectuate any such termination of intellectual property rights, including without limitation, steps to secure the immediate removal of any Mary Kay marks or other intellectual property from any website, social media site, print or on-line directory, physical location (*e.g.*, office doors), or other online site, page, link or posting.

6.3 Sales Director agrees that in the event of termination of Sales Director's Independent Sales Director Agreement with Company for whatever reason, or Sales Director's breach of section 6.1 above, any telephone numbers, email or internet addresses, domain names or website accounts, or social media pages/sites employed by Sales Director in connection with the advertisement, promotion, or conduct of Sales Director's Mary Kay business shall, if requested by Company, either be changed, removed, disconnected, terminated or assigned to Company for Company's use or disposition.

In this connection, Sales Director hereby provides consent and authorizes Company to act on Sales Director's behalf in dealing with any telephone company, internet service provider, or social media site ("Service Providers"), with regard to such telephone numbers, email or internet addresses, domain names or website accounts, or social media pages/sites, and Sales Director agrees to hold both Service Provider and Company harmless from any claim of any kind or character whatsoever accruing from the disposition of such numbers, addresses, pages or sites by Service Provider at and in accordance with Company's direction.

## **SECTION 7. SALES DIRECTOR'S SPECIAL RIGHTS, PRIVILEGES AND BENEFITS**

7.1 Sales Director remains an Independent Beauty Consultant and shall continue to have the rights, privileges, benefits and responsibilities of an Independent Beauty Consultant as provided under the terms of Company's most current Independent Beauty Consultant Agreement as amended from time to time, together with all additional rights, privileges, benefits and responsibilities of a Unit Sales Director as provided under this Agreement.

If Sales Director's Sales Unit shall fail to maintain the Minimum Sales Unit Production which Company considers essential to reflect the minimum sales activity of a properly motivated, interactive and viable Sales Unit and this Independent Sales Director Agreement shall for such reason be terminated, the Independent Beauty Consultant Agreement shall not be automatically terminated, but shall continue in effect between the parties until expressly terminated as a separate and independent agreement pursuant to its own terms and conditions.

7.2 Sales Director shall have, in addition to the other rights and privileges set out in this Agreement, the following rights:

- (i) To use approved copyrighted materials of Company, in connection with motivating, inspiring, aiding and counseling other Independent Beauty Consultants regarding their Mary Kay businesses; provided, however, that Sales Director shall not copy or otherwise reproduce in any manner any copyrighted materials of Company without the express written approval of Company, nor use any copyrighted materials of Company in any manner which, in the opinion of Company, would be injurious to, or tend to impair, Company's right therein; and
- (ii) To purchase or otherwise receive such incentive, promotional items and materials, gifts and sales aids as may be made available by Company for Sales Director's use in furthering the success of Independent Beauty Consultants within Sales Director's Sales Unit; and
- (iii) To compete for such team building, sales, incentive, and/or competitive awards as may be offered to Sales Directors by Company from time to time, subject to the rules and regulations established by Company with respect to such competition; and
- (iv) To participate in accordance with conditions set out for participation in any disability or insurance or other benefit programs which might, from time to time, be made available by Company or others for Independent Sales Directors.

7.3 Sales Director expressly acknowledges that by reason of Sales Director's appointment by Company as an independent contractor Sales Director and service with Company in such capacity that Sales Director receives numerous valuable rights, privileges and benefits including, but not limited to, the following:

- (i) Sales Director receives from Company valuable specialized education and instruction covering motivation, selling and team building techniques relating to the direct sales method of product marketing and specific education and instruction concerning cosmetic products and the art of cosmetic application;
- (ii) Sales Director receives increased financial compensation in the form of special commissions and bonuses together with other valuable rights and benefits available only to persons who have been appointed by contract and serve in the position of Independent Sales Director in the Mary Kay independent sales organization;
- (iii) Sales Director is recognized by Company as a leader and motivator of a sales group comprising numerous independent contractors, including salespeople other than individuals personally introduced to the Company by Sales Director, and receives various commissions and bonuses relating to the Wholesale Purchase Volume and sales activities of such sales group;
- (iv) Sales Director receives from Company personal access to Company-compiled information including comprehensive lists of names, addresses, telephone numbers, email addresses and similar personal information, and detailed records of the purchases and sales activity of members of the Mary Kay independent sales organization and other competitively valuable business information not generally known nor readily available to competitors or the general public in similar content, detail and form, and, which Sales Director agrees to treat as confidential and not disclose or utilize for any purposes which conflict with the business interests of the Company, privacy laws, or individual privacy rights; and
- (v) Sales Director receives from Company valuable recognition, publicity and promotional assistance which promote Sales Director's personal image as a successful leader, motivator, salesperson and team builder, and which enhance Sales Director's prestige and influence with members of the Mary Kay independent sales organization.

## SECTION 8. SALES DIRECTOR'S RESPONSIBILITIES

8.1 Sales Director recognizes that Sales Director's earnings as a Unit Sales Director are contingent upon the results of Sales Director's efforts in promoting the sale of *Mary Kay*® products and in inspiring, motivating, counseling and aiding others to become successful sellers of *Mary Kay*® products. Sales Director agrees to assume responsibility for offering effective, conscientious advice and assistance to Independent Beauty Consultants wishing to avail themselves of Sales Director's experience and suggestions for building successful Mary Kay businesses of their own.

8.2 Sales Director agrees to use Sales Director's best efforts to encourage and motivate Independent Beauty Consultants in Sales Director's Sales Unit to aspire to Independent Sales Director status; to work conscientiously and diligently to build a team of suitable Independent Beauty Consultants; and to aid, help, counsel and advise cheerfully, conscientiously and promptly, Independent Beauty Consultants who wish to avail themselves of Sales Director's experience in the sale of *Mary Kay*® products, team building, solving customer problems, or otherwise.

Sales Director, recognizing that Sales Director will make personal appearances, present speeches, lectures and educational sessions at various Mary Kay-related meetings and may, from time to time, produce and distribute to other members of the Mary Kay independent sales organization Unit newsletters and other appropriate Mary Kay-related sales education, promotional and motivational materials created by Sales Director, hereby irrevocably grants to Company a perpetual and royalty-free right and license to film, videotape, record, photograph, reprint and otherwise use, reproduce, copyright, perform, display, distribute, publish and sell works comprising, using, including, depicting, quoting or derived from any such Sales Director appearances, presentations and materials (collectively "Works"), including Sales Director's name, image, voice, and/or likeness (collectively "Image") in connection therewith, together with the unlimited right to use all or any portion of such Works, with or without the Image, in the original or edited form for any educational, promotional, marketing, advertising or commercial purposes which Company may now or in the future deem appropriate in its sole discretion. Sales Director further hereby forever releases Company from any past, present or future claims, obligations or damages, including any claims to compensation or royalties arising from or related to Company's use of the foregoing rights. This Section 8.2 shall survive the expiration or termination of this Agreement.

8.3 Sales Director understands and agrees that Sales Director will not sell or display *Mary Kay*® products in retail or service establishments (including internet retail or auction sites). Sales Director understands and agrees that Sales Director may not (directly or indirectly through any intermediary or instrumentality) offer for sale, or facilitate the offering of *Mary Kay*® products for sale through establishments or retail websites (including, but not limited to, eBay and Amazon) and that this obligation survives the termination of this Agreement. Sales Director understands this Agreement does not contemplate the offer for sale and sale of any services of the Company; and Sales Director agrees not to represent to anyone that Sales Director is offering for sale and selling any services of the Company. It is expressly understood and agreed that in the event Sales Director knowingly or willfully violates Section 8.3 of this Agreement, the Company may, at its sole discretion, immediately terminate the Sales Director's Agreement. Upon such termination, Sales Director shall forfeit the right to all unpaid compensation. Sales Director's forfeiture of unpaid compensation shall be in addition to all other legal, equitable, or other remedies available to the Company and shall not be to the exclusion of or restrict any such other remedy.

8.4 Sales Director acknowledges that "MARY KAY" and its distinctive logotype designs, together with all other registered and unregistered trademarks from time to time used and claimed as Company-owned trademarks, are trademarks owned by Company as its exclusive property, and Sales Director agrees not to do any act detrimental to the validity of these marks or their ownership by Company or which would be injurious to the goodwill of Company related to these marks. Sales Director agrees to use such trademarks only in such form and manner as may be prescribed by Company in this Agreement or as specifically authorized in writing by Company. Sales Director also agrees to discontinue any use of any trademark, trade name or copyrighted material owned by Company upon receipt of written notice from Company that, in the opinion of Company, such use by Sales Director is injurious to Company's rights, privileges and immunities in respect thereto.

8.5 Sales Director acknowledges Company's exclusive rights to the trademark "MARY KAY" as well as exclusive rights of Company in and to all other trademarks that have been or may hereafter be adopted by Company. Sales Director shall not in any manner represent that Sales Director has any ownership in any Company trademark and specifically acknowledges that any use of any of said trademarks shall not create for Sales Director's favor or benefit any right, title or interest in such trademarks, but all uses by Sales Director of said trademarks shall inure to the benefit of Company. Furthermore, Sales Director agrees to discontinue the use of any trademark or trade name which is the same or deceptively similar to any trademark or trade name of the Company upon receipt of written notice from Company when, in the opinion of Company, such use by Sales Director will in any way impair or tend to impair the Company's rights in, or the goodwill represented by, such trademarks and trade names.

8.6 Sales Director agrees not to directly or indirectly promote, distribute or sell to other members of the Mary Kay independent sales organization, without Company's prior written approval, any products or services which are not produced, sold or endorsed in writing by the Company. Sales Director further agrees not to promote, distribute or sell to anyone any products which are not produced, sold and/or distributed by the Company in a manner which would falsely designate or suggest, or would be likely to suggest or indicate such products as originating with, or endorsed by the Company.

8.7 Sales Director agrees to conduct Sales Director's business in accordance with the highest standards of integrity, honesty and responsibility in all dealings with customers, fellow Independent Sales Directors, Independent Beauty Consultants, Mary Kay employees and the Company, and to constantly emphasize and promote the necessity of good customer relations.

8.8 Sales Director agrees to schedule and hold such meetings, workshops, demonstrations, orientation sessions and other motivational and educational programs as, in the judgment of Sales Director, shall be necessary and appropriate to motivate and aid Independent Beauty Consultants within Sales Director's Sales Unit and those Sales Directors directly developed by Sales Director in attaining proficiency and success in their Mary Kay businesses.

8.9 Sales Director agrees to notify Company in writing and/or recommend that the Independent Beauty Consultant Agreement of any Independent Beauty Consultant be terminated if Independent Beauty Consultant is believed by Sales Director to have engaged in any unfair, unethical or unlawful business practices or other acts in violation of the terms of the Independent Beauty Consultant Agreement with Company which would be materially detrimental to the public image of Company or the goodwill relating to its products, trademarks and trade names, outlining details of specific violations, for Company's consideration and appropriate action. Specifically, Sales Director acknowledges this obligation includes a duty to report credible evidence that any Independent Beauty Consultant is displaying, selling, or facilitating the display or sale of *Mary Kay*® products in or to public, retail or service establishments of any kind (including Internet retail or auction sites).

8.10 Sales Director acknowledges and understands that Sales Director will have access to the personal information of certain individuals as a result of Sales Director's status as a Sales Director. This personal information includes, but is not limited to names, addresses, telephone numbers, e-mail addresses, production information, order/purchase history, recruiter, and family information, as well as other personally identifiable information about Mary Kay Independent Beauty Consultants, Independent Sales Directors, Independent National Sales Directors, and customers and potential customers of *Mary Kay*® products ("Personal Information"). Sales Director agrees and understands the obligation to comply with any and all applicable privacy and data protection laws with regard to Sales Director's collection, use, storage and retention of such Personal Information. Sales Director further agrees and acknowledges, pursuant to the terms of this Agreement, that any and all Personal Information received by Sales Director directly or indirectly from the Company regarding other Independent Beauty Consultants, Independent Sales Directors, and National Sales Directors shall be considered and treated as highly confidential, and shall not be disclosed to others without the express, written permission of the Company. Sales Director agrees that the purpose of receiving Personal Information about other Independent Beauty Consultants from the Company is to facilitate motivation, mentorship, support and collaboration among Independent Beauty Consultants in the operation of a Mary Kay business. The Company may also provide Sales Director access to certain Personal Information of other Independent Beauty Consultants for the purpose of evaluating and/or calculating commissions, non-cash awards or rewards. Sales Director further agrees to use this Personal Information only for the purposes for which it is provided to Sales Director by the Company as described herein. Sales Director agrees that should Sales Director's agreements with the Company terminate for any reason, Sales Director will immediately delete or destroy all Personal Information that Sales Director received directly or indirectly from the Company regarding other Independent Beauty Consultants, Independent Sales Directors, and Independent National Sales Directors in Sales Director's possession, and will otherwise comply with applicable law in the deletion of such information.

Sales Director expressly agrees not to utilize any Personal Information which Sales Director obtains directly or indirectly from the Company for any purpose not specifically authorized under this Section 8.10, both during and after the termination of this Agreement, including, but not limited to, using or knowingly permitting any other person to use such Personal Information (i) to solicit or recruit other Mary Kay Independent Sales Directors, Mary Kay Independent National Sales Directors or Mary Kay Independent Beauty Consultants to sell products or services other than those sold by the Company or (ii) to solicit or induce any Sales Director, National Sales Director or Beauty Consultant to terminate their business relationship with the Company.

Sales Director agrees that Company may have, in addition to any other remedies available at law, an injunction restraining Sales Director from any violation of the terms of this Section 8.10, and that a temporary restraining order may be issued, without prior notice to Sales Director, upon sworn application therefor being made by Company setting forth the facts constituting any such alleged violation.

8.11 In consideration of the commission compensation provided under this Agreement and the other rights and benefits provided

hereunder, Sales Director agrees to continuously and faithfully employ Sales Director's best efforts to promote the sale of *Mary Kay*<sup>®</sup> products during the term of this Agreement.

Sales Director agrees to refrain from (i) soliciting or recruiting other Mary Kay Independent Sales Directors, Mary Kay Independent National Sales Directors or Mary Kay Independent Beauty Consultants to sell products or services other than those sold by the Company or (ii) soliciting or inducing any National Sales Director, Sales Director or Beauty Consultant to terminate their business relationship with the Company, whether such solicitation or inducement be for Sales Director's own account or that of others, for a period of two (2) years following the date of the termination of this Agreement.

Sales Director further agrees to refrain from receiving or accepting, directly or indirectly, any fee, commission, override commission, financial benefit, contract right, monetary or non-monetary reward or other form of compensation from any company engaged in direct selling or network marketing based on or associated with the solicitation, recruitment, enrollment or association by employment, contract or otherwise for such company or business organization of any person whom Sales Director knows or has reason to believe is then under contract as a member of the Mary Kay independent sales organization both during the term of this Agreement and for a period of two (2) years following the date of the termination of this Agreement.

Sales Director agrees that Company may have, in addition to any other remedies available at law, an injunction restraining Sales Director from any violation of the terms of this Section 8.11, and that a temporary restraining order may be issued, without prior notice to Sales Director, upon sworn application therefor being made by Company setting forth the facts constituting any such alleged violation.

## **SECTION 9. TERM OF AGREEMENT**

Unless otherwise terminated pursuant to the provisions hereof, the initial term of this Agreement shall commence on the date first above written and end on December 31 of the same year, and the Agreement shall be automatically renewed each January 1 thereafter for additional periods of one (1) year each.

## **SECTION 10. TERMINATION**

10.1 Either party may terminate this Agreement for any reason by written notice to the other party mailed at least thirty (30) days prior to date of intended termination.

10.2 This Agreement regarding Sales Director's activities may be terminated effective immediately by written notice at Company's option if Sales Director shall fail to comply with any of the terms and conditions of this Agreement or in the event of any of the following specific acts or occurrences:

- (i) If Sales Director shall knowingly submit false or fraudulent information to Company to receive any award, bonus or commission payment based upon Wholesale Purchase Volume, team building or personal sales or knowingly makes any material misrepresentation of fact in connection therewith; or
- (ii) If Sales Director shall knowingly submit or participate in the submission of any order in the name of, or on behalf of, a Beauty Consultant without the express knowledge and permission of that Beauty Consultant; or
- (iii) If Sales Director should do any act detrimental to the reputation of Company or its products or should do any act detrimental to any trademark, trade name or the goodwill connected therewith or any copyright owned by Company; or
- (iv) If Sales Director should fail to pay when due any indebtedness to Company, to other Independent Sales Directors, Independent Beauty Consultants or customers, or engage in credit practices deemed detrimental to the image and goodwill of Company and its associates; or
- (v) If Sales Director should become physically or mentally incapacitated (incapacity being determined in the sole judgment of Company), or withdraw voluntarily or involuntarily from active participation in the conduct of Sales Director's business; or
- (vi) If Sales Director should engage in any activity or conduct in violation of the provisions of Section 8.3, 8.10 or 8.11; or
- (vii) If any dispute, disagreement or controversy should develop between Sales Director and fellow Sales Directors, or between Sales Director and Independent Beauty Consultants in Sales Director's Sales Unit, which in the sole judgment of Company may materially and adversely affect the reputation of Company, the reputation of *Mary Kay*<sup>®</sup> products or the goodwill related to the trademarks or trade names owned by Company; or
- (viii) If Sales Director is found to have violated the law in the conduct of Sales Director's Mary Kay business or should be convicted of any crime which may materially and adversely affect the reputation of the Company or the goodwill related to the trademarks or trade names owned by Company; or
- (ix) If the Wholesale Purchase Volume of Sales Director's Sales Unit for two (2) consecutive calendar months should be less than

the Minimum Sales Unit Production defined in the Schedule of Commissions and Bonuses and no extenuating circumstances, as determined in the sole judgement of the Company, be present. (If Company shall determine that extenuating circumstances do exist, it shall, by written notice, advise Sales Director of the particular month or months, during and at the end of which, total monthly Wholesale Purchase Volume of the Sales Unit must again meet the monthly Minimum Sales Unit Production.); or

(x) If, for any reason, Sales Director shall leave and remain outside of the United States, its territories and possessions, for a total of ninety (90) days or more during any period of twelve (12) consecutive calendar months. Termination under this Section 10.2 shall be effective at Company's option upon mailing to Sales Director written notice of termination or at such other subsequent date as may be specified in such notice, except in the case of termination for failure to maintain Minimum Sales Unit Production, in which case termination may be made effective by Company as of the last day of the last full calendar month that Sales Director's Sales Unit failed to meet Minimum Sales Unit Production.

10.3 This Agreement shall terminate immediately upon Sales Director's death, provided that the final commission payment shall be calculated and paid as though such termination became effective on the last day of the month in which the death occurred.

10.4 Upon the termination of this Agreement, any and all rights and privileges Sales Director has in regard to Sales Director activities under this Agreement shall terminate.

10.5 If this Agreement shall be terminated for any reason, the Independent Beauty Consultant Agreement shall not be automatically terminated, but shall continue in full force and effect between the parties until expressly terminated as a separate and independent agreement pursuant to its own terms and conditions.

## **SECTION 11. RELATIONSHIP — INDEPENDENT CONTRACTOR**

11.1 The relationship created and intended to be created is that Sales Director is an independent contractor for commission compensation measured by the results achieved, the measurement of those results being the Wholesale Purchase Volume and team building activity of Sales Director's Sales Unit. This is not a franchise agreement and it is recognized, understood and agreed that Sales Director is not a franchisee, joint venturer with, or partner, agent or employee of Company. Nothing in this Agreement shall be deemed to permit or empower Sales Director to conduct business in the name of, or on account of, Company, or to incur or assume any expense, debt, obligation, liability, tax or responsibility in behalf of, or in the name of Company, or to act in Company's behalf or to bind Company in any way whatsoever. Company shall not have and reserves no right or power to determine or control the manner, means, modes or methods by which Sales Director performs Sales Director's activities or accomplishes Sales Director's objectives hereunder and shall only look to Sales Director for results achieved.

11.2 Sales Director likewise recognizes that those Independent Beauty Consultants forming Sales Director's Sales Unit are each and all independent contractors whom Sales Director serves, at their initiative, as a "Business Consultant," making available to them, at their request, and for their voluntary acceptance or rejection, Sales Director's advice and experience gained as a consistent team builder and proficient seller of Company's products. Sales Director recognizes and acknowledges that Sales Director shall have no right or power to determine or control the manner, means, modes or methods by which Independent Beauty Consultant performs such Independent Beauty Consultant's activities or accomplishes such Independent Beauty Consultant's objectives as an independent purchaser and reseller of Company's products.

11.3 As an independent contractor, Sales Director shall have the obligation to file all necessary income tax returns to reflect all self-employment income in a manner required by any applicable state or federal laws or governmental regulations and in connection therewith Company shall furnish Sales Director with a statement in the form prescribed by law reflecting all compensation including all commissions, non-cash awards or rewards, or other compensation paid by Company to Sales Director or on Sales Director's behalf during the year or other legally prescribed reporting period.

11.4 The parties acknowledge that Sales Director is not an employee and will not be treated as an employee with respect to any services for state or federal tax purposes, or otherwise.

## **SECTION 12. INDEMNIFICATION**

Sales Director acknowledges that Sales Director is an independent contractor and solely responsible for any claims, losses, damages or liability arising out of Sales Director's activities hereunder. Sales Director agrees to indemnify and hold Company harmless from and against any and all such claims, losses, damages or liability, including, without limitation, claims arising out of false or misleading advertising or misrepresentations by Sales Director concerning product effectiveness, earnings opportunity or Sales Director's failure to comply with laws applicable to Sales Director's business. Further, Sales Director agrees to indemnify Company for reasonable costs and



attorneys' fees associated with any litigation (including litigation with third parties) resulting from Sales Director's knowing or willful violation of this Agreement, including, but not limited to, Section 8.3 and/or Section 8.10. Company acknowledges and agrees that Sales Director is an independent contractor and not responsible for any claims, losses, damages or liability arising out of the activities of Company, nor of claims of Independent Beauty Consultants against Company by virtue of its activities, nor for claims alleging inherent product defects, and Company agrees to indemnify and hold Sales Director harmless from any and all such claims, losses, damages or liability for which Company is responsible.

### **SECTION 13. ASSIGNABILITY**

This Agreement, or any part hereof, shall not be assigned or transferred by Sales Director and may be assigned by Company to its successor.

### **SECTION 14. PARTIAL INVALIDITY**

Each provision of this Agreement is intended to be several. If any term or provision hereof is held to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the other provisions of this Agreement.

### **SECTION 15. WAIVER**

No provision of this Agreement shall be waived or modified by any failure to insist upon same; or in any manner whatsoever other than by an express writing duly signed by the party having the benefit of such provision.

### **SECTION 16. COMPLETE AGREEMENT AND AMENDMENT**

16.1 This Agreement contains the entire agreement between Company and Sales Director relating to Sales Director's appointment as an Independent Sales Director and no representation, inducement, promise, or agreement, oral or otherwise, including terms of any prior Agreement between the parties not embodied herein, shall be of any force or effect. This Agreement may not be amended, modified, or altered in any respect except by a document in writing signed on behalf of Company by an authorized Company officer and shall not be deemed to be changed, modified or altered by reason of any advice, suggestions, manuals or sales aids furnished by the Company to Sales Director.

16.2 Company reserves the right to alter, modify or change this Agreement (including but not limited to the discount, commission, bonus and Minimum Sales Unit Production provisions) from time to time by sixty (60) days prior written notice to Sales Director.

### **SECTION 17. GOVERNING LAW**

**This Agreement is subject to acceptance by Company at its corporate headquarters in Dallas, Texas, and shall be governed by the laws of the State of Texas as to all matters, including but not limited to matters of validity, construction, effect and performance, without regard to its conflict of laws rules. The parties further agree that if any dispute or controversy should arise between them concerning any matter relating to this Agreement that any issues which either party may elect to submit for legal jurisdiction shall be submitted to the jurisdiction of the courts of the State of Texas. In addition, any dispute or controversy arising out of or relating to the use or misuse of Mary Kay® intellectual property or any other dispute involving federal law may, at the sole discretion of the Company, be submitted to the exclusive jurisdiction of the Federal District Court for the Northern District of Texas. The parties agree that the proper venue for any state court action shall be Dallas, Dallas County, Texas and that the proper venue for any federal court action shall be the Dallas Division of the Federal District Court for the Northern District of Texas.**

### **SECTION 18. NOTICES**

Any notice terminating this Agreement by Sales Director or Company must be in writing, at the giver's expense, and may be given by Certified, Registered or regular mail. Sales Director agrees that any written notice from the Company amending the terms of this Agreement may be given (1) by sending an email message containing the amendments to the last business email address that the Sales Director has provided to the Company or (2) by sending a written notice of the amendments by Certified, Registered or regular mail.

Such notices shall be deemed to have been given and received (1) when a Certified or Registered Letter containing such notice, properly addressed, with postage prepaid is deposited in the United States Mail, (2) when it is received by the party to whom it is addressed when sent via regular mail, or (3) in the case of amendments to the Agreement, on the date that the email notifying Sales Director of the amendments is sent.

Such notices shall be given to the parties hereto at the following addresses:

If to Company:	If to Sales Director:
Legal Resources	At the address shown on
Mary Kay Inc.	the first page hereof, or at the
16251 Dallas Parkway	business email address provided
P.O. Box 799045	by Sales Director in the case of
Dallas, Texas 75379-9045	amendments to this Agreement.

The foregoing addresses of the respective parties hereto for purposes of notice hereunder may be changed by any such party by notice to the other party hereto.

**SCHEDULE OF COMMISSIONS AND BONUSES**

**I. SALES DIRECTOR**

**A. MINIMUM SALES UNIT PRODUCTION**

For purposes of this Agreement the “Minimum Sales Unit Production” for Sales Director’s Sales Unit shall be \$4,500 per month, which is the minimum monthly Wholesale Purchase Volume deemed essential to reflect the results expected from Sales Director’s appointment and the minimum sales activity of a properly motivated, interactive and viable Sales Unit.

**B. COMMISSIONS & BONUSES**

**1. SALES DIRECTOR UNIT VOLUME COMMISSION SCHEDULE**

Sales Director shall be entitled to commissions on the monthly Wholesale Purchase Volume of Sales Director’s Sales Unit which shall be payable during the next subsequent month as follows:

MONTHLY UNIT WHOLESALE PURCHASE VOLUME	COMMISSION
\$0 to \$4,499 .....	9%
\$4,500 or more.....	13%

**2. SALES DIRECTOR BONUS SCHEDULE**

**a. SALES DIRECTOR UNIT VOLUME BONUS**

A Sales Director is entitled to a Sales Director Unit Volume Bonus of 10% of the monthly Wholesale Purchase Volume of Sales Director’s Sales Unit, calculated based on the starting point of the applicable \$1,000 tier, beginning at the \$5,000 tier. For example:

MONTHLY UNIT WHOLESALE PURCHASE VOLUME	BONUS
\$5,000 to 5,999.99.....	\$500
\$6,000 to 6,999.99.....	\$600
***	
\$16,000 to \$16,999.99.....	\$1,600
\$17,000 to \$17,999.99.....	\$1,700
***	
\$100,000 to \$100,999.99.....	\$10,000
\$101,000 to \$101,999.99.....	\$10,100
***	

**b. SALES DIRECTOR UNIT DEVELOPMENT BONUS**

A Sales Director is entitled to a Sales Director Unit Development Bonus of \$400 for each month four “qualified” new unit members are added to Sales Director’s Sales Unit, and

After four “qualified” new unit members are added to Sales Director’s Sales Unit, in one month a Sales Director is entitled to a Sales Director Unit Development Bonus of \$100 for each additional “qualified” new unit member added to Sales Director’s Sales Unit during the same month, up to a maximum of ten “qualified” new unit members.

NUMBER OF “QUALIFIED” NEW UNIT MEMBERS EACH MONTH	BONUS
4.....	\$400 total
5-10.....	\$100 each

A “qualified” new unit member is one whose initial order with the Company is \$600 or more in wholesale Section 1 products, and it is received and accepted by the Company in the same or following calendar month that the team member’s Independent Beauty Consultant Agreement is received and accepted by the Company.

The Sales Director Unit Development Bonus is earned in the month in which the appropriate number of new qualified unit members’

initial minimum \$600 wholesale Section 1 orders are received and accepted by the Company. The Sales Director Unit Development Bonus will be paid on the basis of wholesale orders and Agreements received and accepted by the Company by the close of business on the last working day of each month.

c. SALES DIRECTOR PERSONAL TEAM-BUILDING BONUS

A Sales Director is entitled to a \$100 Sales Director Personal Team-Building Bonus for each “qualified” new personal team member added to Sales Director’s Sales Unit. A qualified new personal team member is one whose initial order with the Company is \$600 or more in wholesale Section 1 products, and it is received and accepted by the Company in the same or following calendar month that the team member’s Independent Beauty Consultant Agreement is received and accepted by the Company. The Sales Director Personal Team-Building Bonus will be paid on the basis of wholesale orders and Agreements received and accepted by the Company by the close of business on the last working day of each month.

d. SALES DIRECTOR STAR CONSULTANT BONUS

A Sales Director is eligible to receive a bonus based on the number of Star Consultants in the Sales Director’s Sales Unit at the end of each Star Consultant Contest Quarter. If an Offspring Sales Director Debut occurs during a Star Consultant Contest Quarter, Star Consultant achievers who started the Star Consultant Contest Quarter in the Senior Sales Director’s Sales Unit will count for both the Senior Sales Director and the Offspring Sales Director for purposes of this bonus during the applicable Star Consultant Contest Quarter.

NUMBER OF STAR CONSULTANTS PER STAR CONSULTANT CONTEST QUARTER	BONUS
5.....	\$300
6 or more.....	\$50 per each additional Star Consultant

A “Star Consultant” is an Independent Beauty Consultant who places a minimum of \$1,800 in wholesale Section 1 orders which are postmarked during the applicable Star Consultant Contest Quarter. “Star Consultant Contest Quarter” is 1) December 16 – March 15; 2) March 16 – June 15; 3) June 16 – September 15; and 4) September 16 – December 15.

II. SENIOR SALES DIRECTOR AND EXECUTIVE SENIOR SALES DIRECTOR

A. **QUALIFICATION:** Sales Director shall have the opportunity to earn additional incentive compensation by inspiring, motivating, counseling and aiding a member of Sales Director’s Sales Unit to meet the qualification requirements for Unit Sales Director. Sales Director shall thereby become entitled to receive from Company additional monthly cash commission payments based upon the Wholesale Purchase Volume of the Sales Unit (“Offspring Sales Unit”) formed by a Sales Director developed directly out of Sales Director’s Sales Unit, so long as such Offspring Unit shall remain an active Sales Unit and so long as the Senior Sales Director meets a minimum of \$4,500 per month of Personal Unit monthly wholesale production. Sales Director shall be designated “Senior Sales Director” as to any such newly formed Offspring Unit and may thereafter qualify as an “Executive Senior Sales Director” pursuant to the following qualification requirements:

1. Senior Sales Director: To be qualified as a Senior Sales Director and receive commissions on Offspring Sales Units, Sales Director must have at least one active, first-line offspring Sales Director
2. Executive Senior Sales Director: To be qualified as an Executive Senior Sales Director and receive commissions on Offspring Sales Units, Sales Director must have at least five active, first-line offspring Sales Directors.

B. SENIOR SALES DIRECTOR AND EXECUTIVE SENIOR SALES DIRECTOR OFFSPRING SALES UNIT COMMISSION SCHEDULE

Personal Unit Monthly Wholesale Production	Number of Offspring Units	Offspring Commission*
Tier 1 \$4,500 to \$11,999	One to three	4.0%
	Four to six	4.5%
	Seven or more	5.0%

Tier 2	\$12,000 or more	One to three	5.0%
		Four to six	5.5%
		Seven or more	6.0%

**\*Special Provisions:**

1. Global Leadership Development Program Offspring Sales Units are included for purposes of calculating the Number of Offspring Units.

2. A Senior Sales Director or Executive Senior Sales Director shall be paid at the Tier 2 offspring commission rates for three months after the debut of a new U.S. Offspring Sales Unit. Thereafter, the Senior Sales Director's or Executive Senior Sales Director's U.S. personal Sales Unit's monthly wholesale production determines the tier at which Offspring Sales Unit commission is earned.

C. EXECUTIVE SENIOR SALES DIRECTOR PERSONAL TEAM MEMBER COMMISSION.....13% Commission

**QUALIFICATION:** To qualify to receive an Executive Senior Sales Director Personal Team Member Commission of 13% on the monthly Wholesale Purchase Volume of Sales Director's personal team members (recruits), Sales Director must be an active Executive Senior Sales Director who has five or more personal team members (recruits) who each place a minimum of \$225 wholesale Section 1 order in a calendar month, plus

1. Personal production of \$600 wholesale Section 1 or more in that same calendar month,

OR

2. One new qualified personal team member whose minimum \$600 wholesale Section 1 order is received in that same calendar month. (A qualified personal team member is one whose initial order with the Company is \$600 or more in wholesale Section 1 products and it is received and accepted by the Company in the same or following calendar month that the team member's Independent Beauty Consultant Agreement is received and accepted by the Company.)