

# Getty Advance LLC

Merchant Name:

Business Name:

Fee Amount: \$

Merchant Address:

City:

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

Bank Name:

Routing Number:

Account Number:

1. **GETTY ADVANCE LLC (GETTY ADVANCE)** finds factors (Factors) wishing to purchase future accounts receivables (Receivables) from merchants accepting credit card payments for their goods and services. Getty Advance also finds and identifies merchants wishing to sell Receivables to Factors and to assess if the Factors wish to purchase Receivables from these merchants based on information supplied by Merchant (Information).

2. Merchant represents and warrants that it has submitted accurate and truthful information to Getty Advance upon which Getty Advance has reasonably and justifiably relied. Based upon the Information, Getty Advance has identified a Factor who in reasonable and justifiable reliance upon such Information, has offered to purchase the Merchants Receivables. Merchant has accepted such offer and the terms of the transaction are governed by a separate agreement (Factoring Agreement).

3. In consideration for Getty Advance's successful and exclusive efforts in finding and identifying a Factor offering to purchase Merchants Receivables (Services) Merchant shall pay Getty Advance the fee (Fee) listed above. Getty Advance may also accept other remuneration from Factor for its Services. Payment of the Fee as well as all costs for credit card processing and equipment which Merchant may order above shall be made by ACH or check debits described herein.

4. Merchant hereby authorizes Getty Advance LLC, a third-party processor, to initiate Debit entries into Merchants bank account for the amount and on the date listed above.

5. If Merchant defaults on payment of the Fee, Merchant authorizes Getty Advance to make all collection efforts required in its sole discretion including the use of collection agencies and the reporting of default of payment to credit reporting agencies. Merchant shall also pay late fees, collection costs and legal fees resulting from such default.

6. Merchant has not and will not attempt to circumvent Getty Advance to directly enter into any current or future transaction with any Factor found or identified by Getty Advance in the course of its Services to avoid payment of Fees to Getty Advance. Any additional transaction or sale of Receivables by Merchant to Factors found or identified by Getty Advance shall require an additional Fee.

7. Getty Advance is not a factor, lender, investor, bank, or credit card processor. Getty Advance has not offered any funds, loans or advance to Merchant. The Services have not established a fiduciary or agency relationship between Getty Advance and Merchant or Factor and Merchant waives all rights arising from any such fiduciary or agency relationship and holds Getty Advance harmless from any alleged breach of fiduciary or agency duties.

8. Getty Advance has not made and Merchant has not reasonably or justifiably relied upon any representation, promise, warranty or inducement other than those expressly contained herein.

9. In consideration for the sum of ten (\$10.00) dollars and other good and valid consideration acknowledged by Merchant as having been received, Merchant hereby releases and holds harmless Getty Advance and its officers, agents, employees, heirs and assigns from any claim arising out of this Agreement or the Factoring Agreement. Under no circumstances will Getty Advance be liable to Merchant for any sum greater than the Fee paid by Merchant to Getty Advance. Merchant also warrants and represents that it will hold Getty Advance harmless and defend and indemnify Getty Advance for any claims brought or threatened alleging that the Information furnished by Merchant was false, inaccurate or misleading.

10. Getty Advance and Merchant shall hold this Agreement, the Factoring Agreement and the Information confidential and not disclose same for any purpose other than the purpose set forth herein.

11. If Merchant is a legal entity, Merchant represents that the transaction contemplated herein, and the execution and delivery of this Agreement and the Factoring Agreement, have been duly authorized by all necessary partnership, corporate or trust proceedings and actions, including, without limitation, action by its directors, if the party is a corporation.

12. In the event that any provision of this Agreement is unenforceable, the remaining provisions of this Agreement shall be enforced to the maximum extent permitted by law consistent with the fundamental intent of the parties. Getty Advance's waiver of a breach or default of any provision herein shall not constitute a waiver of any succeeding breach of the same or other provisions; nor shall Getty Advance's delay or omission to exercise any right, power, or privilege it has or may have operate as a waiver of any breach or default by Merchant.

13. Merchant has had the opportunity to seek independent legal counsel in connection with this Agreement and the Factoring Agreement and represents it has done so or has voluntarily declined to do so and has entered this Agreement and the Factoring Agreement free of coercion, duress or fraud.

14. This Agreement shall be governed in accordance with the laws of the State of New York. Any dispute arising out of this Agreement shall be subject to the courts of general jurisdiction of New York. Should Getty Advance prevail in any suit commenced to enforce Getty Advance's rights under this Agreement, Merchant shall pay Getty Advance's expenses incurred in connection with the action, including reasonable attorney's fees.

15. This Agreement shall be construed as mutually drafted and any negative construction against Getty Advance is waived. This Agreement may be signed in counterpart and a duplicate or faxed copy shall be considered a valid original. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter. No modification of this Agreement shall be effective unless in writing signed by both parties.

16. I acknowledge that I am subject to a \$25 reject fee if items are returned for insufficient funds

By signing below, the individual(s) represents that (s)he is an owner or senior officer of the Merchant, that (s)he will benefit from the Services provided to the Merchant, and that (s)he consents to the terms of this Agreement. In order to induce Getty Advance to provide the Services and enter into this Agreement, each Guarantor hereby personally guarantees Merchants full performance under this Agreement, and amendment or extension thereof, including all fees, costs, and chargeback liabilities and indemnity obligations whenever so incurred by Merchant. If there is more than one Guarantor, each such Guarantor shall be jointly and severally liable. Getty Advance may proceed against any Guarantor with or without joining or first proceeding against the Merchant entity or any other persons. Each Guarantor waives every kind of notice to which the undersigned might be entitled and agrees that the undersigned's liability shall not be affected by any act or omission of Getty Advance, or indulgence granted by Getty Advance, respecting Merchant. The undersigned individual(s) further unconditionally authorizes Getty Advance, or its agents to investigate the information and references contained herein, and to obtain additional information about the Guarantors from credit bureaus and other lawful sources (including persons and companies named in this the application), and including obtaining reports from consumer reporting agencies on such individuals(s). If an undersigned individual asks Getty Advance whether or not a consumer report was requested, Getty Advance will tell such person and, if Getty Advance received a report, Getty Advance will give such person the name and address of the agency that furnished same.

Guarantor's Signature 1: \_\_\_\_\_ Date: \_\_\_\_\_

Print Guarantor's Name: \_\_\_\_\_

Guarantor's Signature 2: \_\_\_\_\_ Date: \_\_\_\_\_

Print Guarantor's Name: \_\_\_\_\_