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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection (SC-SBEPTCCP)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection

Senate Bill 190

Relating to: renewals and extensions of business contracts.

By Senators Wirch, Lehman, Taylor, Holperin, Lassa and Erpenbach; cosponsored by Representatives Turner, Hubler, Townsend, Vos, Kaufert, Spanbauer, Bies, Kessler, Hilgenberg and Zepnick.

May 04, 2009 Referred to Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection.

July 22, 2009 **PUBLIC HEARING HELD**

Present: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.

Absent: (0) None.

Appearances For

- Gary Antoniewicz, Madison — Midwest Equipment Dealers Association
- Michael Metz, Madison — Wisconsin Independent Business
- Robert Wirch — Senator, 22nd Senate District

Appearances Against

- Dennis Brown, Washington DC — Equipment Leasing and Finance Association
- Pete Christianson, Madison — Veolia Environmental Services, Inc
- Tom Podewils, New Berlin — American Industrial Leasing and Wisconsin Association of Equipment Lessors
- Lynn Morgan — Waste Management, Inc

Appearances for Information Only

- None.

Registrations For

- None.

Registrations Against

- None.

Registrations for Information Only

- None.

September 2, 2009 **EXECUTIVE SESSION HELD**

Present: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.

Absent: (0) None.

Moved by Senator Wirch, seconded by Senator Plale that **Senate Substitute Amendment 1** be recommended for adoption.

Ayes: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.

Noes: (0) None.

ADOPTION OF SENATE SUBSTITUTE AMENDMENT 1 RECOMMENDED,
Ayes 5, Noes 0

Moved by Senator Plale, seconded by Senator Holperin that **Senate Bill 190** be recommended for passage as amended.

Ayes: (5) Senators Wirch, Plale, Holperin, Hopper and Lazich.

Noes: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 5, Noes 0

Michael Tierney
Committee Clerk

Vote Record
**Committee on Small Business, Emergency Preparedness,
 Technical Colleges, and Consumer Protection**

Date: 9-2-09

Moved by: Wich

Seconded by: Plale

AB _____ SB 190 Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt 1
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

- Be recommended for:
- Passage Adoption Confirmation Concurrence Indefinite Postponement
 - Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Robert Wirch, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Jeffrey Plale	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Jim Holperin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Randy Hopper	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Mary Lazich	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>5</u>	<u>0</u>	_____	_____

Motion Carried Motion Failed

Tierney, Michael

From: Tierney, Michael
Sent: Thursday, March 19, 2009 1:56 PM
To: Sundberg, Christopher
Subject: LRB 0915/2 amendment request

Hi Chris –

Could you put together an amendment for LRB 0915/2?

SB 190

On page 3 line 1 we would like to make this provision cover "a contract for the lease of vehicles that are titled under Chapter 341 and registered under Chapter 342". As currently worded only motor vehicles are covered and we would instead like to have motor vehicles and trailers, etc covered.

On page 6 after line 3, can we insert 3 additional ways to provide notice?

- (d) By sending a facsimile to the customer to the customer's last-known facsimile number.
- (e) By sending an email to the customer at the customer's last-known email address.
- (f) By regular US mail provided that the contract does NOT require the customer to notify the seller by certified mail of intent to cancel.

One last question, assuming under (4) a seller chooses not to use the manner of notice provided under (a) or (c) and instead uses the manner provided under (b) or the (d), (e) and (f) we propose above. In the event of a dispute over whether notice was given, if a seller has no proof they sent a regular letter, fax, email or that they walked into the customers place of business and left a notice – what recourse would a seller have to enforce contract terms?

Thank you.

Mike Tierney
Office of Senator Wirth



Tierney, Michael

From: Tierney, Michael
Sent: Thursday, March 19, 2009 2:57 PM
To: 'jim@trailerleasingllc.com'

SB 190?

Dear Mr. Roemer,

I just wanted to let you know that we've spoken with Legislative Attorneys who are in the process of drafting the contract renewal and extension bill. We've asked that bill be drafted so that it does not include leases of any vehicles titled under Chapter 341 and registered under Chapter 342 – this would include trailers.

Thank you for stopping by Senator Wirch's office to share your concern.

Mike Tierney
Office of Senator Wirch





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July 21, 2009

Senator Robert Wirch
Chair
Committee on Small Business, Emergency Preparedness,
Technical Colleges and Consumer Protection
State Capitol
Madison, WI 53703

Re: Midwest Equipment Dealers - Support of Passage of SB 190

Dear Senator Wirch and Members of the Committee:

Our firm represents the Midwest Equipment Dealers Association ("MEDA") comprised of farm, industrial, construction and lawn and garden dealers throughout the state. MEDA supports passage of SB 190 as now before the Committee.

Last winter at area meetings with members we had discussions on this issue. After these meetings, we realized how many members have been affected by hidden automatic renewal clauses in contracts with service providers and office equipment vendors. Numerous horror stories were presented by members as to how they were forced to continue unwanted services for years because they had failed to send a notice during a cancellation window hidden in the contract.

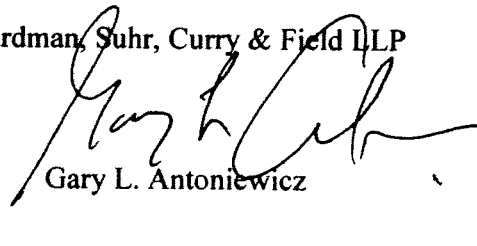
SB 190 does not ban automatic renewal clauses, but it does promote fairness in transactions by imposing notice requirements. It simply provides for notice before a contract automatically renews and provides an opportunity to cancel.

MEDA wishes regulation like this would not be necessary, but it is. Many service providers have made extreme efforts to create contracts hiding renewal clauses and tricking customers into longer terms than initially represented. Such abuses have created the need for SB 190.

MEDA urges passage of SB 190 and believes the time to act has come. Thank you for your support.

Sincerely,

Boardman, Suhr, Curry & Field LLP
By



Gary L. Antoniewicz

GLA/jmc





EQUIPMENT LEASING AND FINANCE ASSOCIATION

**Committee on Small Business, Emergency Preparedness, Technical Colleges
and Consumer Protection
Wednesday, July 22, 2009**

Senate Bill 190

**Statement by
Equipment Leasing & Finance Association**

This statement outlines Equipment Leasing and Finance Association (ELFA) opposition to Senate Bill 190. ELFA is the trade association representing financial services companies and manufacturers engaged in financing the utilization and investment of/in capital goods. ELFA members are the driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. Its over 600 members include independent and captive leasing and finance companies, banks, financial services corporations, broker/packagers and investment banks.

Senate Bill 190 inserts consumer concepts within business-to-business transactions financing equipment, thus intertwining commercial equipment contracts for tangible personal property with statutory models relating to real property for consumers. Although our industry is not engaged in transactions with consumers, the Analysis by the Legislative Reference Bureau reports this bill incorporates landlord-tenant doctrine applicable to residential property into commercial contracts that are based on the Uniform Commercial Code (UCC), which is an inappropriate convergence of unrelated concepts.

Senate Bill 190 creates a hybrid that equates the awareness of business owners entering a commercial equipment lease involving tangible personal property as being on par with consumers renting an apartment. Confusion is further heightened as this bill lacks a provision to clarify it would be operative to contracts entered into after the effective date. Renewal provisions have been widely used in equipment lease financing nationwide for many years without significant complaints or litigation. Please note UCC Article 2A contains detailed provisions regarding equipment leasing.

Equipment leasing and finance companies together with small businesses leasing equipment should discharge their legal responsibilities in a manner reflective of marketplace realities rather than tapping into consumer mandates. This interchanging of legal concepts that are considered mutually exclusive should be avoided in part because to raise capital to invest in new leases for business purposes, lessors frequently assign or package and securitize leases to institutional investors. Many of these leases contain automatic renewal provisions. Senate Bill 190 makes their assignment more complex and inhibits capital formation through assignments and securitization when the economy is facing a tightening of credit. Wisconsin should not make raising capital to invest in financing lessees more complex.

Regarding automatic renewals, ELFA supports clear and transparent disclosure of automatic renewal clauses in leasing contracts. Looking at the notice provisions in Senate Bill 190, they should be modified to function appropriately within the marketplace described by Wisconsin industry members during the hearing. In addition, we are deeply concerned about the provisions in the bill that (i) impose excessive and unreasonable penalties upon lessors, (ii) allow lessees to use equipment without paying for it and retroactively apply the bill to contracts that are already in place which by definition means that completely legal contracts would now be rendered in violation of this bill.

In the 2009 Survey of Equipment Finance activity, equipment financing in the state of Wisconsin grew by 40.7%. When comparing 2007 to 2008, Wisconsin is the 5th fastest growing state. Wisconsin ranks 21 among states in equipment finance volume. In 2008, true leases designed for businesses that seek flexibility to upgrade equipment while maintaining low monthly payments amounted to \$4 Billion out of \$650 nationwide and total equipment volume in Wisconsin within all categories makes up about 1.9% of all equipment financing in the United States. A more inclusive look at difficulties for this capital formation that is associated with Senate Bill 190 brings the following issues to attention:

- Clarify the statute applies only to equipment to be used in Wisconsin (*See first sentence of definition of "Business Contract" and definition of "Customer"*). While it is understood that the sponsor does not want to limit the Bill to services performed in Wisconsin, the Bill should not apply to equipment to be used outside the State of Wisconsin.
- Reduce exemption of contracts for \$250,000+/yr to \$50,000+/yr (*See exemption 1 under definition of "Business Contract"*). Aggregate annual rentals of \$50,000 equates to a monthly rental of nearly \$4,200. Contracts of this size are in almost all cases entered into by sophisticated customers, who, if not represented by counsel, will certainly be sure to carefully read, evaluate and negotiate the contract they are signing. For that reason, contracts of this size should not be covered by the bill.
- The language in the exemption of contracts for \$250,000+/yr refers to "an undetermined amount of business services" or "an undetermined amount of business equipment". This language is somewhat ambiguous and may create confusion. Nearly every lease is for specific items of equipment or services (not an unknown or undetermined amount of equipment or services). We have proposed language to clarify this exemption in that regard. (*See exemption 1 under definition of "Business Contract"*).
- Amend the vehicle exemption to include vehicles titled under Chapter 341 of the Wisconsin Statutes and/or registered under Chapter 342 of the Wisconsin Statutes (*See exemption 3 under definition of "Business Contract"*). This change would clarify that a lease of any titled vehicle (including trailers) would be exempt from the Bill's coverage.
- Clarify what appears to be the intent in exemption 10 to include **all leases** that allow the customer to terminate an auto-renewal provision upon one (1) month's notice (*See exemption 10 under definition of "Business Contract"*).
- Add exemption for a lease to, or purchase of services by, a Federal, state or local government entity (*See new exemption 11 under definition of "Business Contract"*).

(2) DISCLOSURE REQUIRED

- Change the threshold for applicability from “30 days” to “one month” (*See 134.49(2)(a)*). This technical change is to acknowledge that not all months are 30 days.
- Provide that a seller can satisfy the disclosure requirement if either (i) the auto-renewal provision is conspicuous or initialed by the customer in the Business Contract or (ii) the customer signs a separate disclosure form (*See 134.49(2)(a)(2)*). A requirement that the customer sign a separate document or initial a page, in addition to the customer’s actual signature on the document, seems unnecessary if the required disclosure itself is conspicuous. For example, a customer’s jury trial waiver (which is an important provision in any contract) generally appears in all caps. There is no reason this same standard should not also apply to an automatic lease renewal provision.
- Inasmuch as the rent during most automatic renewal terms is the same as the rent applicable during the initial lease term (and does not increase), to reflect market practice, it would be appropriate to change Section (2)(b)(3) to allow the disclosure statement to either state what the renewal rent would be or describe the increase in rent should there be one. (*See 134.49(2)(b)(3)*).
- Both in Section (2)(c) and a proposed new Section (4)(b), it should be made clear that if the customer actually elects to renew or extend the contract, whether or not the seller has actually complied with the disclosure or notice requirements of the Bill, the contract should continue in effect and the seller should not be penalized for failing to comply with such disclosure or notice requirements. Customers should not be allowed to use the Bill as a means to rescind its election to renew merely because the seller did not technically comply with the Bill. As currently drafted, the Bill would allow a customer to affirmatively renew the contract, enjoy the use of the equipment and/or services for some period of time after the expiration of the original term of the contract, and then, not only cancel the contract, but possibly recoup any rent paid during the renewal term due to the seller’s technical violation of the Bill’s notice and/or disclosure requirements. This benefit to the customer amounts to unjust enrichment. (*See 134.49(2)(c) and proposed new (4)(b)*).

(3) NOTICE REQUIRED

- Increase outside window for notice from “45” to “90” days (*See 134.49(3)*). This is a more reasonable timeframe within which sellers can be sure to take action to comply.

(4) MANNER OF GIVING NOTICE

- Permit notice also to be given by a recognized overnight courier service (*See 134.49(4)(a)*). Common industry practice permits material and other important notices to be given in this manner.
- As described above, clarify that notice is not required if the customer elects to renew the contract (*See proposed new Section 134.49(4)(b)*).

(5) REMEDIES

- Revise the remedies provision to provide that (i) the auto-renewal would be unenforceable if the seller did not comply with the Bill's notice and/or disclosure requirements and the customer did not otherwise elect to renew the contract, and (ii) in such event, the customer may terminate the contract upon written notice to seller, and claim damages resulting directly from the seller's non-compliance, BUT, customer would still be obligated for payments due during the renewal period (*See 134.49(5)*). In the event of a violation by a seller of the Bill's notice and/or disclosure requirements, the customer should not reap a windfall in the form of the free use of equipment or services during an automatic renewal period. A customer's remedies should be limited to the ability to terminate the renewal period (if it did not otherwise elect to renew the contract) and to make a claim for any actual damages; however, the customer should remain obligated to pay the contractual rent for any period of time that it received the benefits of the use of the equipment or services after the end of the initial term. As drafted, the Bill would allow a customer to enjoy the benefits of services or the use of equipment (as income-producing property in its business) for an indefinite period of time after the initial term ends, and then, whenever it sees fit to do so, terminate the renewal period and sue the seller for double damages, leaving the seller uncompensated for the services or equipment it actually provided to the customer and for which the customer received the benefits). This result would amount to unjust enrichment.

(6) SEVERABILITY

- Clarify that violation of the statute will not affect the enforceability of the remaining provisions of the contract or seller's rights under the contract (*See new Section 134.49(6)*). This is a clarification preventing the Bill to have an effect which we understand was not intended by the sponsors.

SECTION 2. INITIAL APPLICABILITY

- Provide that the statute would apply only to contracts entered into on or after the effective date of the statute (*See Section 2. Initial applicability*). A retroactive application of this Bill would be unduly burdensome on sellers. The Bill should apply only to new leases entered into after the Bill's effective date.

Looking at other states, automatic renewal statutes in Illinois, Missouri and North Carolina pertain only to contracts with consumers for personal, family or household use. Statutes in New York and Rhode Island deal with business contracts but focus on notice to lessees unlike the expansive provisions of Senate Bill 190 outlined above.

I appreciate the opportunity to offer these comments on behalf of the Equipment Leasing & Finance Association (ELFA)

Dennis Brown
Vice President State Government Relations
Equipment Leasing and Finance Association
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WISCONSIN INDEPENDENT BUSINESSES, INC.

P.O. Box 2135 • Madison, WI 53701-2135

(608) 255-0373

SB 190 : SMALL BUSINESS PROTECTION

PREPARED FOR: SMALL BUSINESS, EMERGENCY PREPAREDNESS, TECHNICAL COLLEGES, AND CONSUMER PROTECTION

Senate Bill 190 protects small businesses from hidden automatic renewal clauses in equipment and service contracts. This is an extremely important bill for the small businesses of our state. It is legislation that the small business owners in every legislative district understand.

This legislation evolved from many calls to our WIB member hotline. We have heard many complaints about automatic renewal clauses hidden in contracts. This bill came about because of abuses and the growing disparity in bargaining power between large and small businesses. Small businesses cannot avoid these hidden clauses unless they can do without such essential services as: waste hauling, credit card processing, uniform and towel services, computer hardware/software leases and shop equipment leases.

In this packet we have included some actual examples of these contracts. In one the automatic renewal clause was the 11th page of 16. Notice the size of type in the first example for credit card processing. In addition contract dispute resolution can be extremely difficult. One of the contracts calls for binding arbitration that must take place (by contract) in Collin County Texas.

Small business owners must constantly track the expiration date and the period for giving notice for each of these contracts. A small business can typically have up to 10 of these contracts. It is easy to trap the small business into continuing a contract that is no longer needed or wanted. SB 190 does not eliminate these clauses. It simply requires that the business owner be notified upon signing that the clause exists and that he also be notified before the clause will take affect.

Thirteen states have adopted or are considering some type of automatic renewal clause legislation. It is an issue whose time has arrived and Wisconsin business owners are looking for relief. WIB strongly encourages the committee to pass this much needed legislation to help protect the small business owners of Wisconsin.

Credit Card Processing Agreement

This Credit Card Processing Agreement ("Agreement") is made by and among: (1) the Bank located on the Merchant Processing Application ("Bank"), being either National City Bank of Kentucky of Louisville, Kentucky or Humboldt Bank of Eureka, California or Western National Bank of Houston, Texas; (2) Certified Merchant Services, Ltd. ("CMS") and (3) the business entity located on the Merchant Processing Application ("Merchant"), and a copy of the acceptance of Bank and CMS.

(Merchant desires to accept credit cards validly issued by members of Visa U.S.A., Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard") ("Cards"). CMS and Bank desire to provide credit card processing services to Merchant. Therefore, Merchant, CMS and Bank agree as follows.)

1.0 Agreement

1.1 Exclusivity

Merchant agrees that it will not use the services of any corporation, entity or person other than Bank and CMS for the processing of Card transactions.

1.2 Subcontractors

Merchant acknowledges that Bank and CMS may provide services through contracts or subcontracts with third parties.

1.3 Rules

Visa and MasterCard ("Association") rules ("Rules"), as presently in effect and as they may be amended from time to time, are hereby incorporated into this Agreement by reference and made a part of this Agreement as though fully set forth herein. Merchant acknowledges that all transactions are subject to the Rules and agrees to comply with the Rules as they may exist from time to time, and that any violation of the Rules by Merchant shall constitute a breach of this Agreement and may, at the option of Bank and CMS, be grounds for terminating this Agreement.

2.0 Rights, Duties and Responsibilities of Merchant

2.1 Transactions
Merchant will honor Cards and complete Sales Drafts (defined below) in conformity with the terms of this Agreement and the Rules which among other things include:

(a) Merchant will honor, without discrimination, any Card properly tendered by a Cardholder. "Cardholder" means a person possessing a Card and purporting to be the person in whose name the Card is issued. Merchant will not establish a minimum or maximum transaction amount as a condition for honoring a Card.

(b) If the Cardholder is present at the time of the transaction (a "Card Present Transaction"), Merchant will identify the Cardholder and check the expiration date and signature on each Card. Merchant will not honor any Card if: (i) the Card has expired; (ii) the signature on the Sales Draft does not correspond with the signature on the Card; or (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. Unless permitted under the Rules, Merchant will not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number, as a condition for honoring a Card.

(c) Merchant will use its reasonable, best efforts to recover any Card: (i) on Visa Cards, if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; or (ii) if Merchant is advised by Bank (or its designee), the issuer of the Card or the designated voice authorization center to retain it; (iii) if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen; or its use is not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, printed indent account number and/or encoded account number do not agree, or the Card does not have a MasterCard hologram on the lower right corner of the Card face. Merchant will use reasonable and peaceful means to retrieve any such Card. Nothing in this Agreement shall be construed to create a duty of physical confrontation or risk of harm in order to retrieve a Card. Merchant agrees not to commit any breach of the peace or any cause any injury to real or personal property, and hereby indemnifies Bank and CMS against any claim of injury arising as a result of its attempt to obtain a Card.

(d) Merchant will not add any amount to the posted price of goods or services Merchant offers as a condition of paying with a Card, consistent with the Rules. This paragraph does not prohibit Merchant from offering a discount to include a person to pay by cash, check or other means rather than by using a Card.

(e) Merchant will properly disclose to the Cardholder, at the time of the Card transaction and in accordance with the Rules, any limitation Merchant has on accepting returned merchandise. If Merchant has a policy of permitting returns, exchanges, refunds or adjustments for cash customers, Merchant shall maintain the same policy for persons making purchases using a Card. Merchant may restrict its refund or return policy subject to any restrictions provided by Merchant and its processor at the time of the transaction (such as "No Refunds on Exchanges" or "No Refunds on Exchanges") on all copies of the Sales Drafts in close proximity to the space provided for the Customer's signature. Merchant understands that regardless of proper disclosure of refund policy restrictions, such restrictions are unenforceable if Cardholder initiates a dispute under appropriate federal, state or local laws. If Merchant accepts any goods for return, or any services are terminated or canceled, or Merchant allows any price adjustment on a sale which was originally consummated using a Card, then Merchant must effect such return using a credit voucher with the same Card account used on the original Sales Draft. Merchant may not effect credit using a credit voucher to a purchaser using cash or check. In conjunction with each credit voucher submitted, Merchant shall have sufficient funds available in the Merchant Account or Bank Account in the same location to cover the full amount of the credit voucher and any related fees. Merchant shall not issue a credit voucher or a check which exceeds the total amount of credit vouchers on credit vouchers exceeds the total amount of Sales Drafts, will result in a debit to its Merchant Account.

(f) Merchant will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Card transaction unless Bank or CMS refuses to accept the Sales Draft or revokes its prior acceptance of the Sales Draft (after receipt of a chargeback or otherwise). Merchant will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if Merchant receives such payments, Merchant will remit them promptly to Bank.

(g) All disputes between Merchant and any Cardholder relating to any Card transaction will be settled between Merchant and the Cardholder. Neither CMS nor Bank bears any responsibility for such transactions.

(h) Merchant is responsible for its employees' actions while in its employ.

2.2 Authorization

Merchant will obtain a prior authorization via electronic terminal or similar device before completing any transaction. Merchant will follow any instructions received during such authorization process. Upon receipt of authorization, Merchant may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, Merchant will be deemed to warrant the true identity of the customer as the Cardholder. Merchant may, however, deny a Card transaction electronically and Merchant's terminal is unable to read the magnetic stripe on the Card, Merchant will obtain an imprint of the Card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Bank and CMS for processing. Each of Merchant's outlets is required to have its own electronic terminal or similar device, and its own printer and manual imprinter with an accurate Merchant plate, for use when its electronic printer is not functional or when the Card's magnetic stripe cannot be read by the electronic terminal. Merchant understands that sales completed at one location may not be processed through a terminal at another location. For electronic commerce transactions, Merchant must attempt to obtain the Card expiration date and forward it as part of the authorization request. Merchant understands that such information does not constitute a guarantee of payment, but only indicates available credit, and may be subject to dispute or chargeback.

2.3 Sales Drafts

(a) Merchant will use a sales draft or other form approved by CMS and Bank ("Sales Draft") to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant's name and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale (including any applicable taxes) or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final. If any such information may not be legibly imprinted, whether or not an authorization has been obtained, Merchant shall complete the Sales Draft.

(b) For Card Present Transactions, Sales Drafts must be signed by the Cardholder in Merchant's presence. Merchant should retain the Card while the purchaser is signing in order to perform signature verification. A transaction may only be completed if the signature on the Sales Draft appears to be the same as the authorized signature on the Card and the Card account number read from the magnetic stripe is the same as that embossed on the front of the Card. If such identification is uncertain, or if Merchant otherwise questions or has suspicions regarding the validity of the Card, Merchant shall contact Bank's voice authorization center for instructions. If the signature panel on the Card is blank, in addition to requesting authorization, Merchant must do all of the following: (a) signature panel bearing the words "USE Lid." or equivalent language; (b) the date of the sale; (c) review positive identification document such as a passport or driver's license that bears the Cardholder's signature; (d) note such positive identification (including any serial number and expiration date) on the Sales Draft; and (e) require the Cardholder to sign the signature panel of the Card prior to completing the transaction. The requirement for the Cardholder's signature on the Sales Draft will only be waived if the Card transaction is a valid mail/telephone order or electronic commerce Card transaction which fully complies with the requirements set forth in this Agreement.

(c) If the following information embossed on the Card and the merchant's name is not legibly imprinted on the Sales Draft, Merchant will legibly reproduce: (i) the Cardholder's name; (ii) the account number; (iii) expiration date; and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions, Merchant will legibly reproduce the name of the bank that issued the Card if it is located on the back of the Card.

(d) For Card Present Transactions, Merchant will deliver a complete and legible copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. For all transactions, Merchant will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction for such longer period as the Rules may require.

(e) If Merchant utilizes electronic authorization and/or data capture services, Merchant will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed. If Merchant provides its own electronic terminal or other device, such terminal may not meet CMS' requirements for processing, information, security or other transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by Merchant to CMS or its designee in the form CMS from time to time specifies, or as required under the Rules. If Bank or CMS requests a copy of a Sales Draft, credit voucher or other transaction evidence, Merchant will provide it within 24 hours following the request. Merchant acknowledges that open batches of transactions that are not properly closed and transmitted to CMS within 45 days shall be automatically purged and erased from the processing system, and are not recoverable. Merchant shall indemnify and hold CMS and Bank harmless for any and all loss sustained by Merchant for said purged transactions. It is Merchant's responsibility to close, balance, and reconcile any batches daily (except on days when Merchant's place of business may be closed), and to detect discrepancies between transactions processed by CMS' processing system and Merchant's processing system. Merchant shall promptly investigate any discrepancies that occur in the normal course of business and that CMS and Bank will use their best efforts to correct discrepancies once notified by Merchant. It is the Merchant's responsibility to monitor and reconcile its Merchant Account vigilantly in order to detect discrepancies in a timely manner. Merchant understands that neither CMS nor Bank has the ability to detect discrepancies.

2.4 Prohibitions

(a) Merchant is not authorized to accept mail or phone order transactions unless specifically authorized by Bank and CMS. Acceptance of such transactions without written authorization from Bank and CMS will constitute a breach of the Agreement.

(b) Merchant may not process for payment any transactions representing the refinancing of an existing obligation of a Cardholder to Merchant, or any other transaction that is not a bona fide sale of goods or services to a Cardholder.

(c) Merchant will not disclose any Cardholder's account number or any credit information relating to any Cardholder's account to any person other than Bank or CMS or as required by law. Further, Merchant will store any material containing Cardholder account information in a secure manner or destroy such information at the proper time in a fashion which renders the data unreadable.

(d) Merchant shall not deposit any transaction for the purpose of obtaining or providing a cash advance. Any such deposits shall be grounds for immediate termination of this Agreement. Merchant shall indemnify and hold Bank and CMS harmless for any and all loss sustained by Bank and CMS as a result of such deposits.

(e) Merchant must notify Bank and CMS in writing, which notice must be received by Bank and CMS within 10 business days of such change, of any change to the information in the Merchant Processing Application, including but not limited to:

(i) Transfer or sale of a substantial part of its total assets, or liquidation;

(ii) A change in the basic nature of its business, including selling products or services not related to its current business;

(iii) Change of ownership or control of its business; or

(iv) Entering into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this

Agreement assumes any interest in Merchant's business. Failure to provide such notice may be deemed a material breach and shall be grounds for termination of this Agreement. If any of the changes listed above occur, Bank and CMS have the option to renegotiate the terms of this Agreement. Merchant shall provide 30 days notice of termination. Merchant is liable to Bank and CMS for all losses and expenses incurred by Bank and CMS arising out of a failure to report changes to Bank and CMS. In addition, Merchant will provide updated information to Bank and CMS within a reasonable time upon request.

(f) Merchant shall not accept or deposit any fraudulent transaction and may not under any circumstance present for processing credit, directly or indirectly, a transaction which originated with any other merchant or any other source, nor may Merchant take a single transaction between 2 or more Sales Drafts or other multiple transactions under this Agreement unless expressly authorized by Bank and CMS in writing. Merchant shall not accept or deposit any fraudulent transaction and may not under any circumstance present for processing credit, directly or indirectly, a transaction which originated with any other merchant or any other source, nor may Merchant take a single transaction between 2 or more Sales Drafts or other multiple transactions under this Agreement unless expressly authorized by Bank and CMS in writing. If Merchant deposits any such transaction, Merchant may be immediately terminated and Bank may hold its Card and/or advance a reserve pursuant to this Agreement.

(g) Merchant will not deposit duplicate transactions. Merchant shall be debited for any adjustment for duplicate transactions as shall be liable for any chargebacks which may result therefrom. Merchant will be liable for any penalty fees relating to Merchant activities assessed by an Association to Bank.

(h) Merchant shall not initiate a sale transaction in an attempt to collect a chargeback.

(i) Merchant shall not present a Sales Draft until the goods have been shipped or the services have been performed as Merchant has otherwise performed all of its principal obligations to the purchaser in connection with the transaction.

2.5 Chargebacks
Merchant shall be fully liable to CMS and Bank for all transactions returned to CMS or Bank for whatever reason, other than known as "chargebacks". Merchant will pay CMS and Bank on demand the value of all chargebacks. Merchant agrees to accept liability for chargebacks and will be liable to Bank and CMS in the amount of any sale for which the Cardholder disputes the validity of the sale. Merchant authorizes CMS and Bank to offset from incoming transactions and to debit Merchant's Bank account, any Reserve Account (defined below), or any other account held at Bank or at any other financial institution the amount of all chargebacks. Merchant will fully cooperate with CMS and Bank in complying with the Rules regarding chargeback Guarantors shall be personally liable for all chargebacks. The Chargeback Fee shall be charged as stated in the Merchant Processing Application/Agreement for each Chargeback received by CMS for Merchant.

2.6 Excessive Activity
Merchant's presentation to CMS of Excessive Activity will be a breach of this Agreement and cause for immediate termination. "Excessive Activity" means, during any monthly period, and for any one of Merchant's terminal identification numbers, merchant identification numbers, chargebacks and/or retrieval requests in excess of one percent (1%) of the average monthly dollar amount of Card transactions or returns in excess of 3% of the average monthly dollar amount of Sales Drafts or sales exceeding 25% of the dollar volume indicated on the Merchant Processing Application. Merchant authorizes Bank and CMS upon the occurrence of Excessive Activity, to take such additional actions as either of them may deem necessary, including but not limited to, suspension of processing privileges or creation or maintenance of a reserve account in accordance with this Agreement.

2.7 Merchant Account
(a) Merchant will establish and maintain with an ACH receiving depository institution acceptable to Bank (the "ACH receiving institution") to facilitate payment for Card transactions (collectively, the "Merchant Account"). Merchant shall maintain sufficient funds in the Merchant Account to accommodate all transactions, including but not limited to fees, fines or chargebacks, contemplated by this Agreement. CMS and Bank may terminate this Agreement if Merchant does not maintain at all times sufficient funds in the Merchant Account. Merchant irrevocably authorizes CMS and Bank to debit the Merchant Account for chargebacks and any other amounts in accordance with the Rules, and for fees and any other penalties or payment under this Agreement and under any other agreement between Merchant and CMS or a CMS affiliate. Merchant also authorizes CMS or Bank's vendors or agents to debit the Merchant Account for any fees due such vendor or agent under this Agreement. Merchant must obtain prior written consent from Bank and CMS to change the Merchant Account. If Merchant does not get that consent, CMS or Bank may immediately terminate this Agreement and may take other actions necessary to protect them and their customers.

(b) Bank will deposit all net funds evidenced by Sales Drafts to the Merchant Account subject to this Agreement. CMS and Bank have the right to deposit, within their discretion, ordering the Merchant Account with funds evidenced by submitted Sales Drafts. Merchant authorizes Bank or CMS to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry.

(c) Merchant authorizes and appoints Bank to act as its agent to collect Card transaction amounts from the Card issuing bank as the collecting agent. Bank grants Merchant provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and CMS and subject to all chargebacks, returns, fees and fines.

(d) Merchant will promptly examine all statements relating to the Merchant Account and immediately notify CMS in writing of any errors. The written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it. Merchant will promptly examine all statements relating to the Merchant Account and immediately notify CMS in writing of any errors. The written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it. Merchant will promptly examine all statements relating to the Merchant Account and immediately notify CMS in writing of any errors. 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shall not be presented until the goods are delivered or services performed.

2.12 Mail Order
CMS and Bank caution against mail order or telephone order transactions or any other transaction where the Cardholder and Card are not present, due to the high incidence of customer disputes. Merchant may solicit or accept mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone order") only upon CMS' prior written authorization. Merchant's online orders received without prior written consent of CMS or Bank will be a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the Rules. Merchant may be required to use an address verification service ("AVS") on mail/telephone transactions. AVS is not a guarantee of payment, and the use of AVS will not waive any provision of this Agreement or validate a fraudulent transaction. Merchant will obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, Merchant will type or print legibly on the signature line of the Sales Draft the following applicable words or letters: telephone order or "TO"; or mail order or "MO".

2.13 Future Delivery
Merchant will not present any Sales Draft to Bank or CMS for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without CMS' prior written authorization. If Bank or CMS has previously received authorization to process a Sales Draft for future delivery, Merchant may not present any proceeds or credit resulting from such transactions to purchase or furnish goods or services. Merchant will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Sales Drafts or other memoranda taken in connection with future delivery transactions.

2.14 Laws
Merchant will comply with all federal, state, and local laws, rules and regulations, as amended from time to time.

3.0 Rights, Duties, and Responsibilities of Bank and CMS

3.1 Deposits
Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 565, as amended from time to time. Subject to this Section, Bank will deposit to the Merchant Account all net funds evidenced by Sales Drafts (whether evidenced in whole or in part by electronic means) complying with the terms of this Agreement and the Rules and will provide Merchant provisional credit for such funds (less recoupment of any credits, adjustments, fines, chargebacks or fees). If Bank or CMS reasonably believes that a chargeback or credit is likely with respect to any transaction or Sales Draft Bank and CMS have accepted, Bank and CMS may withhold payments due Merchant under this Agreement until such time that (a) Bank is charged back by the issuing bank (in such event, Bank shall retain the funds); (b) the period of time by which the Cardholder may dispute the Sales Draft and the issuing bank may exercise its chargeback rights has expired; and/or (c) Bank and/or CMS determines that a chargeback on the Sales Draft will not occur. Merchant acknowledges that its obligation to CMS and Bank for all amounts owed under this Agreement arise out of the same transaction as Bank's obligation to deposit funds to the Merchant Account.

3.2 Outstanding Transactions (a) In this Section, under no circumstance will Bank or CMS be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Bank and CMS. All sales drafts and deposits are subject to audit and final checking by Bank and CMS, and may be adjusted for Merchant's non-compliance with the Rules and the Agreement, whether or not a transaction is charged back by the Card issuer. Final credit for those conditional funds will be granted within CMS' and Bank's sole discretion.

(b) CMS or Bank may impose a cap on the volume and total amount of Sales Drafts that it will process for Merchant, as established by CMS or Bank. This limit may be changed by CMS or Bank from time to time. If Merchant exceeds the established limit, CMS or Bank may terminate this Agreement or suspend processing Sales Drafts, and either return all Sales Drafts evidencing funds over the cap to Merchant or hold those deposits in a separate Reserve Account. Merchant acknowledges that any monthly volume or dollar limit that will cause the Merchant account to be reviewed and may result in the possible interruption of service and/or the delay of transmission of funds and/or the diversion of funds into a Reserve Account. Merchant hereby indemnifies and holds CMS and Bank harmless for any loss or consequential damages sustained by Merchant as a result of delayed funds.

3.3 Payments
Bank and CMS will accept for purchase all Sales Drafts deposited by Merchant that comply with the terms of this Agreement. Bank will pay to Merchant within 3 business days after the date the Bank receives each transaction, unless Merchant is otherwise notified by Bank or CMS, the total face amount of each Sales Draft, less any credit vouchers, discounts, fees or adjustments determined daily or monthly. All payments, credits and charges are subject to audit and final checking by Bank and CMS, and prompt adjustments may be made for inaccuracies discovered.

3.4 Acceptance
Notwithstanding any other provision of this Agreement, Bank and CMS may refuse to accept any Sales Draft, or revoke its prior acceptance, in any of the following circumstances:

(a) The sale giving rise to such Sales Draft was not made in compliance with all the terms and conditions of this Agreement including Card Association's regulations, and applicable laws and regulations of any government authority; or
(b) The Cardholder disputes higher liability.

In the event of a prior acceptance of a Sales Draft, Bank may withdraw from the Merchant Account or Reserve Account any amount previously paid to Merchant for such Sales Draft.

3.5 Customer Service
Bank and CMS will provide electronic draft capture and monthly activity statements, and will assign customer service phone numbers which will accept all customer service calls and other communications from Merchant relating to the services provided under this Agreement including, but not limited to, disbursement of funds, account charges, monthly statements and chargebacks.

3.6 Account Monitoring
Merchant acknowledges that Bank and CMS will monitor Merchant's daily deposit activity. Merchant agrees that Bank and CMS may, upon reasonable grounds, divert the disbursement of Merchant's funds for any reasonable period of time deemed necessary to investigate suspicious or unusual deposit activity. Bank and CMS will make good faith efforts to notify Merchant of any such diversion. Bank and CMS shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any diversion of funds disbursement. Any funds diverted shall be deposited immediately into a non-interest bearing account at Bank and not be released until such time that questionable/suspicious/fraudulent transactions have been resolved to the Bank's and CMS' satisfaction.

3.7 Warranties
Merchant represents and warrants to Bank and CMS all of the following:
(a) That all representations and statements made by Merchant or on Merchant's behalf in the Merchant Processing Application, or in any other document relating to this Agreement, are true, accurate and complete in all material respects. Merchant hereby authorizes Bank and CMS to investigate and confirm any information related hereto which is provided at any time by Merchant. For this purpose, Bank and CMS may utilize credit bureaus/reporting agencies and/or their own agents. Upon Merchant's request, Bank and/or CMS will provide Merchant with a copy of the results of such investigation.
(b) That Merchant is engaged in the lawful business shown on the Merchant Processing Application and is duly licensed to do so in each business under the laws of the state, county and city in which Merchant is located.
(c) That Merchant has not been involved in any fraudulent or illegal transactions by any financial institution or determined to be in violation of any of the Rules of Visa or MasterCard except as specifically disclosed in the Merchant Processing Application.
(d) That Merchant has the authority to enter into this Agreement and that the person(s) signing for or on behalf of Merchant is/are specifically authorized and directed to do so by Merchant.

(e) That all of Merchant's sales locations engage in the same or substantially similar business activity as that listed on the Merchant Processing Application.
(f) That each Sales Draft submitted hereunder represents the indebtedness of a Cardholder for whom Merchant has provided the goods or services for which the element of credit or any other purpose; represents a transaction which was placed on the Cardholder's or other authorized user of the Card and was not previously charged back by the Cardholder; and is not subject to any defense, dispute, offset or counterclaim which may be raised by a Cardholder. Further, Merchant warrants that any credit voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant.

3.8 Indemnification
Bank and CMS shall have no liability for any negligent design or manufacture of any point-of-sale terminal, (white) or other equipment used by Merchant for the acceptance of credit card transactions. NEITHER CMS NOR BANK MAKE ANY WARRANTIES (IMPLICIT, EXPRESS) OR IMPLIED CONCERNING ANY EQUIPMENT, OR OTHER SERVICE PROVIDED BY OTHERS AND IN PARTICULAR MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

3.9 Indemnification
Merchant hereby indemnifies and holds Bank and CMS and each of them, their parent companies, affiliates and/or subsidiaries and all of its or their officers, agents and/or employees, harmless from and against any and all claims, losses, demands, actions, expenses, damages, liability, and/or causes of action, including (without limitation) attorneys' fees, other costs of defense and/or collection fees, which in any way result directly or indirectly from:
(a) Any breach of this Agreement or of any warranty or representation made to Bank or CMS by Merchant;
(b) Any damage or loss caused by negligence, fraud, dishonesty or willful behavior by Merchant or any of Merchant's employees, agents or other representatives; or
(c) Any contention, whether well-founded, baseless or otherwise, that Merchant violated the law or any MasterCard and/or Visa rule.

3.10 Limitation of Liability
Bank and CMS will use due care in providing services covered by this Agreement and the performance of all services called for in this Agreement shall be consistent with industry standards. The collective liability, if any, of Bank and CMS under this Agreement for any claims, costs, damages, losses and expenses for which it or they may be legally liable, whether arising in negligence or otherwise, shall be limited to the amount of the amount of funds paid by Merchant, less interchange and assessment, over the previous 12 month period, calculated from the date the liability occurred. In no event will Bank or CMS or their agents, officers, directors or employees be liable for indirect, special, or consequential damages.

3.11 Display of Materials; Trademarks
Merchant will prominently display the promotional materials provided by CMS in its place of business, provided, that such displays are not required if Merchant is prohibited from doing so by government regulation or to the extent expressly exempted by MasterCard or Visa, as applicable. All promotional materials supplied to Merchant by CMS are the property of CMS and, upon termination of this Agreement, Merchant will return them to CMS. Merchant shall have the right to use and display the Bank, CMS, Visa or MasterCard names and symbols only while this Agreement is in effect or until Merchant is notified by Bank, CMS, Visa or MasterCard to cease such use and symbols only while this Agreement is in effect or until Merchant is notified by Bank, CMS, Visa or MasterCard to cease such use. Merchant shall have no right to use the proprietary name and/or symbol of Bank unless the materials containing such are provided to Merchant, and/or are approved in advance, by Bank. Merchant's use of Visa, MasterCard or other outside promotional materials will not indicate, directly or indirectly, that Visa or MasterCard endorse any goods or services other than their own and Merchant may not refer to Visa or MasterCard in stating eligibility for its products or services. Nothing herein is intended to restrict Merchant from honoring other credit cards or from entering into any new transaction and purchase. Merchant may display and advertise any other credit card or credit plan, provided, however, that such party shall be maintained between the MasterCard and Visa symbols and any local/regional acceptance mark also displayed. In no event will Merchant advertise or display any promotional material containing the name or symbol of Bank, Visa or MasterCard which states or implies that only Cards issued by Bank will be honored by Merchant.

3.12 Termination
This Agreement shall become effective upon acceptance by Bank and CMS and shall continue in full force and effect for a term of 12 (12) months. This agreement shall auto-renew for successive two (2) year terms thereafter unless written notice of non-renewal by either party (designated in the Summary of Fees) is delivered to the other party by email at least ninety (90) days, but no more than one hundred-twenty (120) days prior to the expiration of the initial or any renewed term.

3.13 Termination
CMS or Bank may terminate this Agreement immediately at any time with or without cause upon providing Merchant with written notice of such termination. Merchant may terminate this Agreement upon 30 days prior written notice to CMS and Bank and payment of the decommission fee (except as set forth in the Summary of Fees) and any other amounts due hereunder.

3.3 Action Upon Termination
In the event of termination of this Agreement for any reason, Merchant authorizes Bank to withhold and discontinue the disbursement of all funds evidenced by Sales Drafts and other payment transactions in process. Collected funds may be placed in the Reserve Account (defined below) until Merchant pays any outstanding charges or losses.
(a) Merchant hereby authorizes Bank, upon termination of this Agreement or at any time upon Bank's and CMS' request an amount reasonably determined by Bank and CMS to be appropriate to protect Bank's and CMS' interests under this Agreement.
(b) Bank and CMS are authorized to debit the Merchant Account from time to time to establish or maintain funds in the Reserve Account. Bank and CMS may deposit into the Reserve Account funds it would otherwise be obligated to pay Merchant, for the purpose of establishing or maintaining the Reserve Account in accordance with this section if it determines such action is appropriate to protect its interest. Bank's and CMS' right to draw upon the Reserve Account shall not be limited by the balance or existence of the Reserve Account. Bank's and CMS' rights with respect to the Reserve Account, including their security interest therein, shall survive the termination of this Agreement. Bank may charge Merchant a monthly fee for maintenance of said Reserve Account, if established.
(c) Merchant may, without notice or demand to Merchant, apply deposits in the Reserve Account against any outstanding amount Merchant owes under this Agreement or any other Agreement between Merchant and Bank/CMS. Also, Bank and CMS may exercise their rights under this Agreement to collect any amounts due to Bank and CMS including, without limitation, rights set-off and recoupment.
(d) In no event will Merchant be entitled to a release of Reserve Account funds before 270 days following the effective date of termination of this Agreement, provided however, that the release of such funds to Merchant shall not relieve Merchant of its liability to CMS or Bank accruing either before or after such release. Bank will have sole control of the Reserve Account. Merchant further acknowledges and agrees that CMS has the right to hold funds of Merchant to cover all liabilities of Merchant to CMS.

3.4 Rights
The rights conferred upon Bank and CMS in this Agreement are not intended to be exclusive of each other or of any other right and remedies of Bank and CMS under this Agreement, at law or in equity. Rather, each and every right of Bank and CMS at law or in equity will be cumulative and concurrent and in addition to every other right.

3.5 Terminated Merchant File
If this Agreement is terminated for cause, Merchant acknowledges that Bank and CMS may be required to report Merchant's business name and the names and other identifiers of its principals to the Combined Terminated Merchant File (CTMF) maintained by Visa and MasterCard. Merchant shall hold harmless Bank and CMS for claims which Merchant may raise as a result of such reporting.

3.6 Submitted Sales Drafts
Notwithstanding any termination of this Agreement, this Agreement shall remain in full force and effect with respect to any Sales Draft which is actually delivered to Bank or CMS by Merchant and not returned to Merchant prior to Bank's extending credit therefor.

3.8 Notices
All notices under this Agreement shall be deemed delivered when mailed, postage prepaid, addressed as follows:

(a) **TO THE MERCHANT:**
HUMBOLDT BANK
P.O. Box 250077
Plano, TX 75026-0077
NATIONAL CITY BANK OF KENTUCKY
1231 Dummet Lane
Louisville, KY 40213-2008

(b) If to Merchant, to any owner or officer stated on the Merchant Processing Application at the Merchant's place of business as also stated on the Merchant Processing Application.

Notice may be sent by facsimile or other electronic means of communication but, if such transmitted notice is by Merchant or Bank or CMS, the original of any such communication shall also be mailed to the intended recipient on the date of the electronic transmission and shall not be deemed received on the receiving party until the mailed copy is received and confirms by that party. If Bank or CMS gives notice by facsimile or other electronic communication to Merchant, service is deemed to have been duly given on the day of such transmission (with confirmed receipt).

10.9 Additional Terms
10.1 Audits
Representatives of Bank and CMS may, during the normal business hours, inspect, audit and make records of Merchant's books, accounts, records and files pertaining to any Card transactions. Merchant will preserve its records of any Card sale and an audit of Credit adjustment thereon for at least 7 years from the date of such sale, credit, refund or adjustment.

Merchant will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Bank and CMS (including without limitation the terms of this Agreement and will safeguard such information and data by using at least the same degree of care that Merchant uses to protect its own confidential information).

10.3 Force Majeure
Bank and CMS shall not be liable for any damages resulting from any performance or non-performance caused by circumstances beyond Bank's and/or CMS' control including, but not limited to, Acts of God, fire, flood, war, government action, labor trouble (including strikes) or other events of similar effect in connection with Bank's and CMS' obligations herein.

10.4 Amendments
Bank and CMS may propose amendments or additions to this Agreement. Bank and CMS may inform Merchant of a proposed change in a periodic statement or other written notice. Merchant will be deemed to have agreed to the change if it continues to present transactions to Bank and CMS after 14 days from the date notice of the proposed change was sent. If Merchant does not agree with a proposed change, it may terminate this Agreement by notifying CMS in writing within 14 days of the mailing of the notice of proposed amended terms. Notwithstanding the previous sentence, CMS is entitled to increase any fee due to it as a result of changes imposed by Visa, MasterCard, or telecommunication vendors without giving Merchant the right to terminate this Agreement.

10.5 Construction
All section headings are for descriptive purposes only, and the language of such section shall control.
10.6 Assignment
This Agreement may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Bank or CMS. Bank and/or CMS may assign this Agreement at any time upon written notice to Merchant.

10.7 Attorney's Fees
Merchant shall be liable for and shall indemnify Bank and CMS for any and all attorney's fees and other costs (including collection costs) and expenses paid or incurred by the Bank and/or CMS or resulting from any breach by Merchant of this Agreement.

10.8 Governing Law, Venue
Any action or proceeding arising out of this Agreement or against Bank or CMS shall be initiated and maintained under the jurisdiction of the state of Texas with venue in the courts of Collin County. This Agreement shall be construed and governed by the laws of the state of Texas. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect.

10.9 Dispute Resolution
Any dispute arising under this Agreement, shall be promptly submitted to binding arbitration in accordance with the rules of the American Arbitration Association in Collin County, Texas and in accordance with the corresponding laws concerning arbitration under Texas law, and judgment upon the award rendered by the arbitrator may be entered and enforced in any court of competent jurisdiction. The arbitrator shall have the right to render equitable, as well as other, awards and relief. Without limiting the foregoing, any party submitting such dispute shall request the American Arbitration Association to: (a) appoint a single arbitrator who is experienced and knowledgeable in the field of industry relating to the subject matter of this Agreement; (b) require all testimony to be transcribed; and (c) require any award or decision to be accompanied by findings of fact and a statement of reason for such award or decision.

10.10 Waiver
Neither the failure nor any delay on the part of Bank or CMS to exercise any right, remedy, power or privilege hereunder shall operate as a waiver or give rise to an estoppel nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the actor specifically stated in such writing.

10.11 Survival
Each and every indemnity provided for in this Agreement shall survive the termination of this Agreement. Further, Sections 2.7, 2.8, 3.8, and all provisions of Section 5.0 and 6.0 shall survive termination of this Agreement.

10.12 Cooperation
Merchant agrees to execute, file and record such statements, notices and certificates as Bank or CMS may reasonably request to preserve and protect Bank's and/or CMS' interests.

10.13 Entire Agreement
This Agreement and all other documents executed or submitted by Merchant in connection herewith, or incorporated herein by reference, constitute the entire agreement between Merchant, on the one hand, and CMS and Bank on the other.

11.0 Fees
11.1 Merchant Fees
Merchant will pay Bank and CMS fees for services, forms and equipment in accordance with the rates set forth on the Merchant Processing Application. Such fees will be calculated and debited from the Merchant Account once each business day or month as determined by CMS, for the previous business day's or month's activity, or will be netted out from the funds due Merchant under this Agreement. CMS may adjust the fees as set forth in Section 10.4. Merchant agrees that all fees and charges are considered accurate and final unless Merchant disputes them in accordance with the provisions of Section 2.7(c). Furthermore, Merchant understands that any credit voucher issued will be subject to a transaction fee and there will be no refund of any fee or charges associated with the original transaction.

11.2 Other Amounts Owed
Merchant will immediately pay CMS or Bank any amount incurred by CMS or Bank attributable to this Agreement, including but not limited to chargebacks, fees imposed by Visa or MasterCard, non-sufficient funds fees, and ACH debts that overdraw the Merchant Account, Reserve Account, or any other account Merchant maintains at Bank or at any other financial institution for an amount Merchant owes CMS or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between Merchant and CMS or Bank, whether the obligation is direct, indirect, primary or secondary, fixed, contingent, joint or several. In the event any such ACH does not fully reimburse CMS or Bank for the amount owed, Merchant will immediately pay CMS or Bank such amount.

11.3 Debit
Merchant authorizes Bank and CMS to debit from the Merchant Account any amounts paid by Bank or CMS to a leasing company on Merchant's behalf, including but not limited to monthly lease payments or other amounts owed by Merchant to the leasing company.

11.4 Taxes
Merchant shall timely pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement.

11.5 Prior Processor Termination Fee Refund
If Merchant incurs a fee for card processing immediately preceding credit card processing agreement in order to sign this Agreement, CMS may, at its sole and exclusive discretion, either reimburse Merchant for such fee up to but not exceeding \$250 via credits posted to their account or cancel the processing agreement with CMS and allow Merchant to transfer back to the previous service provider. Any such reimbursement by CMS will occur after 80 days after the MID issued date, provided that Merchant has given CMS a bank statement evidencing the cancellation fee within 60 days after the MID issued date and Merchant is processing with CMS at the time of the reimbursement.



124 Gaither Drive
Suite 170
Mount Laurel, NJ 08054
Phone: 888.479.9111
Fax: 888.479.1100

EQUIPMENT LEASE CONTRACT FOR LEASES UNDER \$25,000

Leasing Company ("Lessor," "We" or "Us"): Marlin Leasing Corp.

Leasing Customer (You)

Company Name (Exact business name): Platinum Home Services, Inc.

Address: P.O. Box 1849 Woodruff Vilas NC 54568
Street City County State Zip

Phone: (215) 358-9771 Fax: (215) 358-9771 Corp. Limited Liability Corp. Partnership Prop.

Equipment Location: 616 Elm Street

Vendor: _____ Address: _____

Description of Leased Equipment

PANASONIC COPIER (1918) CONSOLE (DS12) DOC FEEDER (A505)
LAEKM 312913 LACLB 333838 GAMMA 316725

Payment Schedule:

Lease Term (Mos.)	Total No. of Payments	Amount of Each Payment (plus applicable taxes)	Security Deposit	Payment Freq.
<u>36</u>	<u>36</u>	<u>\$ 108.62</u>	<u>\$ 325.86</u>	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Other

Terms of Lease

- You (the customer) want to acquire the above equipment from the above vendor. You want us (the leasing company) to buy it and then lease it to you. The Lease will not begin until we sign it, and once it starts it will continue for the entire term stated above. You will pay us all charges stated above. If you pay late, there will be a late fee of \$20.00 or 15% of the late amount, whichever is more. We may charge you a partial payment to cover the time between delivery and the due date for the first regular payment. Within 15 days after the end of the Lease you must return the equipment to us, in good working condition, at your cost (unless we have given you a purchase option that you exercise). You agree to reimburse us for any cost we incur to re-ship returned equipment. If you do not return it within 15 days, the lease will automatically renew for another 12-month period under the same terms and conditions described in this Lease. To expedite the Lease, you have asked us to accept your faxed signature and have agreed this will be considered as good as your original signature and admissible in court as conclusive evidence of this Lease. You also agree to allow us to adjust the payment amount above if the final equipment cost varies from the amount the payment was based upon.
- You alone selected the vendor and the equipment. You asked us to buy it. We are not related to the vendor and we cannot get a refund. Therefore the Lease cannot be canceled by you for any reason, even if the equipment falls or is damaged and it is not your fault. We are leasing it to you "as is" and we disclaim all warranties, express or implied. You are responsible for all service. The vendor or manufacturer may have given you warranties. You may contact them to get a statement of those warranties, if any. You promise that the equipment will be used only for business and not for personal, family or household purposes.
- If you do not pay us as agreed, you agree that we may (i) repossess the equipment and/or (ii) directly debit (charge) your bank account(s) and/or sue you for all past due rent and other charges and for all rent due in the future to the end of the Lease term. You must also pay our legal and other costs. If we do not repossess, we may also directly debit and/or sue you for the "residual" (end of term) equipment value. This Lease will be governed by New Jersey law. You agree to be subject to suit in the New Jersey courts. We will have title to the equipment at all times. This is a "true lease" and not a loan or installment sale. You also agree this is a "finance lease" under Article 2A of the Uniform Commercial Code (UCC). If this is later determined not to be a "true lease," you grant us a security interest in the equipment. You give us power of attorney to file UCC financing statements at your cost.
- You must pay us for all sales, use, property and other taxes relating to your use or our ownership of the equipment. Unless we have given you a written option to buy the equipment at the end of the Lease for \$1.00, we will be entitled to all tax benefits (such as depreciation, tax credits, etc.). If you do anything to disallow our getting these benefits, you will promptly indemnify (pay) us an equivalent amount. You will also indemnify us for all liabilities and losses to us relating to your use of, or the ownership of, the equipment. This promise will continue even after the Lease has ended. You accept all risks of loss and damage to the equipment. You must keep it insured against all risks of loss in an amount equal to the replacement cost and will have us listed on the policy as the "loss payee." If you do not give us proof of this insurance, we may, at our option, charge you a risk fee or get it insured ourselves and charge you for the cost.
- Because this Lease is based on your own credit rating, you may not assign (transfer) the Lease or your rights to anyone else. You may not sub-lease or rent the equipment to anyone. We may sell or transfer our interests to another person or company, who will then have all of our rights but none of our obligations. Those obligations will continue to be ours. The rights we pass on to the new person or company will not be subject to any defenses, claims or set-offs you may have against us.

Acceptance of Lease Agreement This is a binding contract. It cannot be cancelled. Read it carefully before signing, and call us if you have any questions.

X Scott R. Clarkson SCOTT R. CLARKSON President 2/23/01
Signature of Leasing Customer Print Name of Signer Title Date

X _____
Accepted and Signed by MARLIN LEASING CORP. Print Name of Signer Title Date

Personal Guaranty

I/WE HEREBY PERSONALLY AND UNCONDITIONALLY GUARANTEE ALL AMOUNTS OWED BY THE LEASING CUSTOMER UNDER THIS LEASE. I AGREE THAT YOU MAY EXTEND, TRANSFER AND OTHERWISE AMEND THE LEASE AND I AGREE TO BE BOUND BY ALL SUCH CHANGES. I WAIVE NOTICE OF DEMAND AND DEFAULT. I AGREE THE LEASING COMPANY MAY PROCEED AGAINST ME SEPARATELY FROM THE LEASING CUSTOMER. I CONSENT TO SUIT IN NEW JERSEY COURTS.

SCOTT R. CLARKSON
GUARANTOR #1 (Print Name)

X Scott R. Clarkson 2/23/01
Signature (Individually, No Titles) Date

GUARANTOR #2 (Print Name)
X _____
Signature (Individually, No Titles) Date

Acceptance of Delivery

I AM AUTHORIZED TO SIGN THIS CERTIFICATE ON BEHALF OF THE LEASING CUSTOMER. I CERTIFY TO THE LEASING COMPANY THAT THE EQUIPMENT HAS BEEN DELIVERED AND IS FULLY INSTALLED AND WORKING PERFECTLY.

X Scott R. Clarkson SCOTT R. CLARKSON 2/26/01
Authorized Signature Name and Title (Please Print) Equipment Delivery Date

TERMS AND CONDITIONS OF SERVICE AGREEMENT

TERM. Customer grants to Contractor the exclusive right to collect and dispose of all of Customer's waste materials as warranted below (including recyclables) for an initial term of three years from the effective service date. The term of this Agreement shall be automatically renewed for like terms thereafter unless either party shall give written notice of termination by certified mail to the other at least sixty days prior to the termination of the initial term or any renewal term. In the event Customer terminates this Agreement or if then as provided above or Contractor terminates this Agreement for Customer's non-payment, Contractor as liquidated damages a sum calculated as follows: (1) if the remaining term under this Agreement is six or more months, Customer shall pay its most recent monthly charge multiplied by six; or (2) if the remaining term under this Agreement is less than six months, Customer shall pay its most recent monthly charge multiplied by the number of months remaining in the term.

CHANGES AND COST INCREASES. Because disposal and fuel costs are a significant portion of the cost of Contractor's services provided hereunder, Contractor may increase the Schedule of Charges proportionately to reflect any increase in such costs. The Schedule of Charges may also be adjusted from time to time to reflect increases in the Consumer Price Index. Subject to Customer's approval, the Schedule of Charges may be adjusted for reasons other than increases in disposal or fuel costs or the Consumer Price Index. Those changes in the Schedule of charges requiring Customer approval, and changes to the frequency of collection service or the amount, capacity and type of equipment used may be agreed to verbally, in writing or by the actions and practices of the parties. The parties may incorporate additional waste streams as a part of this Agreement so long as: (1) Customer has executed Generator's Waste Profile Sheet(s) with respect thereto; and (2) Contractor has approved, in writing, handling such waste streams of Customer. This Agreement shall not be affected by any changes in the Customer's Service Address if such new address is located within Contractor's service area.

WASTE MATERIALS. Customer warrants that the waste materials delivered to Contractor will not contain any hazardous, toxic or radioactive wastes or substances as defined by applicable federal, state, local or provincial laws or regulations. Customer acknowledges reading the attached "Contractor's Definition of Special Waste" (dated 02/94), and warrants that the waste materials delivered to Contractor will not contain any Special Waste, as so defined, unless and except: (1) as specifically described in the "Generator's Waste Profile Sheet(s)" either attached hereto and made a part hereof or subsequently provided to and approved, in writing, by Contractor; or (2) incidental amounts of Special Waste, as listed by Customer in the "Incidental Special Waste Types and Amounts" section of this form. Contractor shall acquire title to the waste materials when loaded into Contractor's vehicle; provided, however, that title and liability for its waste materials excluded from this Agreement shall remain with Customer, and Customer agrees to indemnify, defend and hold harmless Contractor against all claims, damages, suits, penalties, fines and liabilities arising out of the breach of the above warranties including, without limitation, liabilities for violation of laws or regulations, for injury or death to persons or for loss or damage to property or the environment.

SPECIAL WASTE. If this Agreement involves Contractor's furnishing of services and equipment for Special Waste, then the following additional terms and conditions shall apply.

Customer warrants that the Special Waste delivered to Contractor has the components and characteristics meeting the description contained in the Generator's Waste Profile Sheet(s).

In the event that such Customer's Special Waste is later determined or defined to be a hazardous, toxic or radioactive waste or substance, or if the storage or disposal facility receiving such Special Waste from Contractor ceases operations or is later prohibited, from receiving such waste, then the portion of this Agreement pertaining to such Special Waste may be immediately terminated by Contractor upon notice to Customer.

Customer agrees to comply with the precautions, conditions and limitations contained in Contractor's written notice of approval of such Special Waste.

If manifests or shipping papers are required by law to accompany the Special Waste to the storage or disposal facility, Customer is responsible for preparing all manifests or papers in form and number required by law.

RESPONSIBILITY FOR EQUIPMENT. The equipment furnished by Contractor hereunder shall remain the property of Contractor, and Customer shall have no interest in such equipment. Customer shall be responsible for all loss or damage to the equipment except for normal wear and tear or for loss or damage resulting from Contractor's handling of the equipment. Customer shall not overload (by weight or volume), move or alter the equipment, and shall use the equipment only for its proper and intended purpose. Customer agrees to indemnify, defend and hold harmless Contractor against all claims, damages, suits, penalties, fines and liabilities for injury or death to persons or loss or damage to property arising out of Customer's use, operation or possession of the equipment. On collection day, Customer shall provide unobstructed access to the equipment. If the equipment is inaccessible, Customer will be notified, and any additional collection service or attempt to provide such service shall be charged as an "extra pick-up."

CHARGES AND PAYMENT. Customer shall pay Contractor for its services in accordance with the Schedule of Charges shown on the face of this Agreement. Where the Schedule of Charges specifically indicates "disposal" as a component of the charges, "disposal" shall mean the posted gate rate for disposal at the disposal facility utilized by Contractor plus an appropriate handling charge. Customer shall be liable for all taxes, fees or other charges imposed by federal, state, local or provincial laws and regulations upon the collector, transportation or disposal of Customer's waste materials or the services performed hereunder. Payment shall be made by Customer within 30 days after receipt of an invoice from Contractor. In the event that any payment is not made when due, Contractor may terminate this Agreement on notice to Customer, recover any equipment on the premises of Customer and recover the liquidated damages described above. Contractor may impose and Customer agrees to pay a late fee for all past due payments not to exceed the maximum rate allowed by applicable law.

RIGHT TO COMPETE. Customer grants to Contractor the right to compete with any offer which Customer receives (or intends to make) relating to the provision of non-hazardous waste collection and disposal services upon the termination of this Agreement for any reason, and agrees to give Contractor written notice of any such offer and a reasonable opportunity to respond to it.

PAVEMENT DAMAGE. Contractor shall not be responsible for damage to Customer's pavement or other driving surface resulting from the weight of Contractor's vehicles.

ATTORNEY'S FEES. In the event of a breach of this Agreement, the breaching party shall pay all reasonable attorney's fees, collection fees and costs of the other party incident to any action brought to enforce this Agreement.

MISCELLANEOUS. If any conflicts exist in this Agreement between terms which are printed and those which are typed or written, the typed or written language shall govern. This Agreement shall be binding on the parties and their successors and assigns. The representations, warranties and indemnifications contained herein shall survive the termination of this Agreement.

PROCESSING SERVICE AGREEMENT

AC0925

THIS AGREEMENT is effective this 24th day of February 1991, by and between ACCESS CASH INTERNATIONAL, INC., a Minnesota corporation, 4165 Lexington Avenue No., Arden Hills, MN 55126 (the "Company"), and Jorgas Inc. (the "Merchant").

RECITALS

Merchant owns or leases an automated teller machine ("ATM"). Company is in the business of providing processing services for ATMs. Merchant desires to engage Company to perform certain services as set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and of the covenants and agreements hereinafter contained, it is hereby agreed as follows:

1. **EQUIPMENT.** Merchant shall place a TRITON mini ATM MODEL 9500 on its premises in an indoor location mutually agreed upon and as identified in Exhibit 1 ("Premises").

2. **AVAILABILITY.** Merchant agrees that the ATM shall at all times remain available for use by Merchant's customers during Merchant's normal business hours for the term of this Agreement. However, Merchant shall make the ATM available during reasonable business hours so that Company may perform maintenance or system improvements. Generally, such maintenance should not exceed two (2%) percent of available time per calendar month.

3. **TRANSACTION PROCESSING FEES.** Company agrees to pay Merchant for each transaction made on the ATM. A "transaction" shall mean any cash withdrawal made from a cardholder's account. Company shall pay Merchant \$2.50 per transaction. Payments for transactions will be disbursed monthly by Company to Merchant on or before the 16th of each calendar month following the calendar month in which the transactions occurred. In addition, Merchant shall pay a \$0 monthly processor connection fee. Merchant authorizes Company to deduct such monthly charge from the transaction fee payable hereunder. The transaction fee may be increased or decreased by Company upon at least 45 days prior written notice to Merchant provided such increase or decrease is directly related to a corresponding cost incurred by Company in providing such service.

4. **TRANSACTION SURCHARGES.** In the event Merchant is legally permitted and chooses to impose a surcharge upon each transaction, Merchant hereby authorizes Company to receive, from transaction proceeds processed, a fee equal to twenty (20%) percent of the gross monthly surcharges paid per month. Company agrees that the remaining surcharge revenues shall be remitted to Merchant at the time the transaction fees described in paragraph 3 are paid.

5. **PROCESSING SERVICES.** Company agrees to provide data processing services, through its agreement with Deluxe Data Systems, Inc. or such other processing service as Company, in its sole discretion, may select, to process authorized ATM transactions. Merchant agrees to accurately complete, or has accurately completed, the Access Cash Merchant Application, and has completed and delivered or shall complete and deliver such other documents as are reasonably required to facilitate the implementation and delivery of such processing services.

6. **INVENTORY REQUIREMENTS.** Merchant shall, at its cost and expense, inventory an adequate supply of paper and ribbons at Merchant's Premises, which are available from Company. Merchant shall keep sufficient amounts of cash in ATM at all times, for normal expected transaction usage.

7. **PHONE AND ELECTRICAL REQUIREMENTS.** Merchant shall, at its expense, contract for and provide a local dedicated business telephone line and one (1) dedicated operating electrical power outlet (110V), both within three (3) feet of the ATM site. Merchant shall pay for monthly charges incurred in connection with such telephone line and electrical power usage.

8. **EXCLUSIVITY.** Merchant shall not permit the installation of any other ATM on Merchant's Premises, nor permit the removal of the ATM from the Premises for the term of this Agreement, except as may be agreed by Company in writing or required by any lessor of the ATM.

9. **INSURANCE REQUIREMENTS.** Merchant agrees to protect the ATM from damage, loss, theft or destruction. Merchant shall provide and maintain property insurance against loss, theft, damage or destruction of the ATM in an amount not less than the full replacement value of the ATM. Merchant agrees it shall make no alteration nor addition to the ATM, and

other than authorized representatives of the Company, to perform any service or repair work on the ATM unless it receives Company's prior written authorization.

10. **TERM.** This Agreement shall be for a term of five (5) years from the date of installation, unless amended or terminated by written agreement signed by both Company and Merchant or terminated by Company pursuant to paragraph 13 below. Notwithstanding anything contained herein to the contrary, Company shall have the option, in its sole discretion, to extend this Agreement for additional periods of five (5) years each.

11. **WARRANTIES AND REPRESENTATIONS OF MERCHANT.** Merchant warrants and represents as follows:

a) It is the owner of the Premises or that it holds a lease or option to renew the lease for said Premises of equal or greater length than the initial five-year term of this Agreement.

b) It is engaged in a lawful business and is duly licensed under the laws of the State, County and City in which Merchant and the ATM is located, to conduct such business.

c) It has not been terminated from settlement or card transactions by any financial institution or determined to be in violation of MASTERCARD or VISA rules and regulations.

d) It has the authority to enter into this Agreement with Company and that the person(s) signing for or on behalf of Merchant are specifically authorized and directed to do so by Merchant.

12. **EQUIPMENT RELOCATION.** In the event Merchant transfers or moves its business from the Premises, Merchant shall notify Company not less than thirty (30) days prior to any such event. In such event, this Agreement shall be automatically deemed amended to apply to Merchant's new location for any remaining term(s) of this Agreement.

13. **TERMINATION.** This Agreement and all obligations of the Company hereunder may be cancelled by Company in the event of Merchant's default under the terms of any lease for the ATM or in any event if Merchant fails to comply with the terms of this Agreement. Merchant may terminate this Agreement prior to the end of the then current term, provided Merchant gives Company 180 days advanced notice and pays Company a cancellation fee as follows: 30% of the average monthly charges which have been billed or collected by Company during the six (6) months prior to termination times the months remaining in the then current term of this Agreement. Merchant hereby authorizes Company to collect the cancellation fee on the termination date by electronic fund transfer from Merchant's clearing account.

14. **ATTORNEYS' FEES.** If suit or action is instituted to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to costs, such sums as the court may adjudge reasonable for legal fees at trial and on any appeal therefrom.

15. **COMPANY NOT LESSOR'S AGENT.** Merchant understands and agrees that Company is not an agent of any lessor of the ATM, that it has no authority to act on behalf of or for any lessor, and that it is not authorized to waive or alter any term or condition of any lease for the ATM.

16. **COMPANY'S LIMITED LIABILITY TO MERCHANT.**

a) Company will use ordinary care in providing transaction processing service and will, at Company's expense, correct any errors that are due solely to Company's personnel. However, the expense of correcting such errors incurred by Company shall be the only responsibility of Company occasioned by its performance or non-performance of its obligations under this Agreement, and Merchant agrees to accept the correction of errors by Company as its sole and exclusive remedy. Merchant may not assert any claim against Company after one (1) year from the date that Merchant has or should have had knowledge of facts giving rise to such claim or any loss.

b) Company shall have no liability to third parties for any damages incurred by such third parties arising out of the performance or non-performance of services under this Agreement, and Merchant agrees to and hereby shall indemnify and hold Company harmless of, from and against any and all liability, claims, causes of actions or expenses relating thereto including Company's attorneys' fees in connection therewith.



**Dealer
Computer
Services**

FORD DEALER COMPUTER SERVICES, INC.

This Agreement is between: Glacier Valley Ford & Mercury, Inc.
 Name
615 South Blvd
 Address
Baraboo, WI 53913
 City State Zip

hereinafter referred to as Dealer, and FORD DEALER COMPUTER SERVICES, INC., hereinafter referred to as FDCS.

THIS AGREEMENT IS SUBJECT TO ARBITRATION UNDER APPLICABLE STATUTE.

SECTION 1. DEFINITIONS.

Application Program - A series of programs which enable the computer to perform a specific task such as the processing of a payroll.

Documentation - All information in human-readable form, including specifications, manuals, books, pamphlets, enhancement notifications, utilities, report generators, documents, drawings, and other tangible items which explains the capabilities of the Software and provides operating instructions for using the Software to obtain desired results.

Enhancements and/or Modifications - Any modification or addition that, when made or added to the Licensed Software, materially changes its utility, efficiency, functional capability, or application.

Equipment - All of the computer equipment listed in Schedule A and/or Schedule C, which is sold and/or maintained by FDCS.

FDCS In-Dealership Computer System - The FDCS computer system for automobile dealerships including but not limited to all Equipment, Software, and communications devices.

Firmware - Micro-programs which enable various types of equipment to function with FDCS Software.

Foreign Device - A foreign device is defined as any device that was not sold by FDCS or Ford Motor Company Dealer Computer Services division, unless specifically provided for in this Agreement.

Licensed Copy - All FDCS authorized copies, in any format, of the Licensed Software in the possession of Dealer.
Licensed Software - All Software, as defined herein, a license for which is granted to Dealer pursuant to Section 5 of this Agreement.

On-Line Parts and Vehicle Locator Service - Service which enables Dealer to inquire into other FDCS clients' parts and vehicle inventory records and vice versa in order to locate a given parts or vehicle inventory item rapidly so that it may be readily purchased from the closest point.

Operating System - A series of programs which enable the computer to perform its general internal supervisory processes that are not specific to any Application Program. These processes include communications, database, and print spooling functions.

Program - A series of instructions that tell the computer how to perform a task.

Remedial Maintenance - Maintenance service on Equipment for failures which have occurred as a result of routine normal use and excluding any failures as described in Section 4(G) "Exclusions to Remedial Maintenance."

Site Ready Agreement - Form prepared by FDCS and acknowledged by Dealer describing the specifications for Dealer's computer location and environment.

Software - A general term used to describe all Programs used inside the computer and peripheral devices to make them perform any function. This term includes Operating System, Application Programs, Documentation, corrections or Modifications, Enhancements, microsoftware, and Firmware used within the central processing unit or within any peripheral device, terminal, or printer attached to the system.

B. Dealer On-Line Parts and Vehicle Locator Service Responsibilities.

- As a part of this Agreement, Dealer acknowledges and agrees to accept the following responsibilities:
1. Dealer is responsible for reporting all data circuit failures, as they occur, to FDCS. FDCS will coordinate all repairs to the data circuit with the applicable communications company.
 2. Dealer will cooperate with FDCS as necessary in making tests to isolate any problems with the data circuit.

C. Permission to Disclose Dealer Data.

The very essence of the On-Line Parts and Vehicle Locator Service is the sharing of data regarding parts and vehicle inventories among the clients of FDCS. Dealer therefore authorizes FDCS to provide Dealer's parts and vehicle inventory data to all other clients of FDCS; however, Dealer acknowledges that only parts inventories of Ford and Lincoln/Mercury franchises controlled by the Parts Inventory Control Software of the FDCS In-Dealership Computer System can be accessed through the On-Line Parts Locator Service.

D. Disclaimer of On-Line Parts and Vehicle Locator Service Warranties and Limitation of Liability.

FDCS represents that so long as Dealer pays the charges stated in Schedule E for connection to the On-Line Parts and Vehicle Locator Service, FDCS will make every reasonable effort to provide access to the On-Line Parts and Vehicle Locator Service during the term of this Agreement. However, Dealer acknowledges and agrees that providing this Locator Service is an undertaking of the highest technical complexity. Dealer further acknowledges and agrees that in order for FDCS to provide this Locator Service, FDCS requires the services of other subcontractors, including Ford Motor Company and various communications companies, and the agreements that FDCS has with these subcontractors may not provide any recourse to FDCS in the event such subcontractor fails to perform as required.

DEALER THEREFORE RELEASES FDCS FROM ANY LIABILITIES WHATSOEVER FOR FAILURE TO PROVIDE ACCESS TO THE ON-LINE PARTS AND VEHICLE LOCATOR SERVICE (DOWN-TIME), FOR ANY FAILURE BY THIRD PARTIES, OR FOR ANY OTHER REASON BEYOND FDCS' REASONABLE CONTROL.

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE MADE BY FDCS WITH RESPECT TO THE ON-LINE PARTS AND VEHICLE LOCATOR SERVICE OR ANY OTHER SERVICES CONTEMPLATED HEREIN.

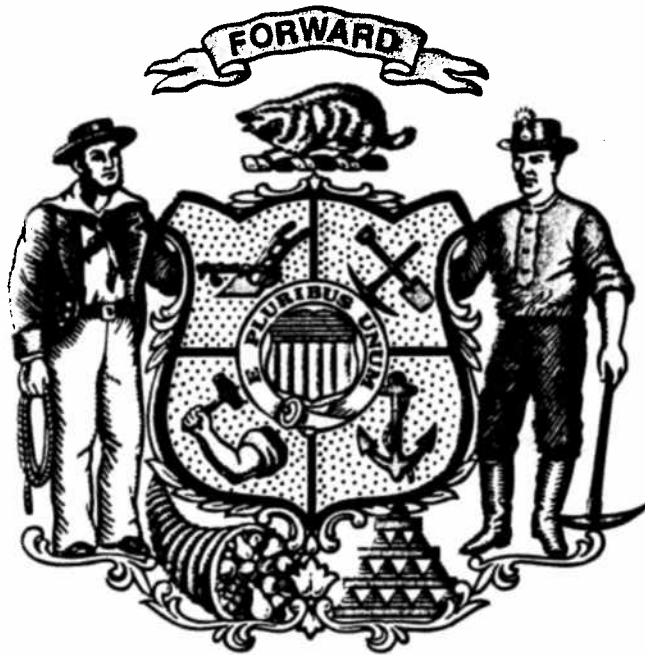
NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, FDCS SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO DEALER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. DEALER'S SOLE AND EXCLUSIVE REMEDY HEREUNDER SHALL BE RESTORATION OF THE PARTS AND VEHICLE LOCATOR SERVICE.

SECTION 9. DISCOUNT.

If Dealer purchases all printed forms and supplies (including stock paper, ribbons, print-wheels, etc.) that are used in conjunction with the FDCS In-Dealership Computer System from FDCS, and maintains all CRTs, printers, modems, personal computers, other peripheral equipment, CPUs, disk drives, tape drives, and power conditioners attached to the FDCS In-Dealership Computer System with FDCS, a discount as stipulated in Schedule C will be given on all Monthly Maintenance Charges for Equipment.

SECTION 10. TERM AND EXTENSION OF AGREEMENT.

The term of this Agreement shall be for one hundred twenty (120) months from the date when the computer system is operational ("Original Term"), such date to be conclusively designated by FDCS. Following the expiration of the Original Term, this Agreement shall automatically be extended for like periods ("Extension Term"), unless either party gives the other written notice to terminate one hundred eighty (180) days prior to the expiration of the Original Term or the then current Extension Term.



Date?

SB 190 – contract extension and renewal bill

A contract that automatically renews or extends can be of benefit of both parties involved in the business contract.

The problem is that too many small business owners in our state are finding that rather than being used to the benefit of both parties – a contract that renews or extends is often used to take advantage of the small business owner.

This bill has 2 simple requirements - that terms of the contract be properly disclosed and that the small business owner is notified when their opportunity to terminate is approaching.

If a contract renews or extends that fact must be disclosed in the contract language and/or in a separate statement.

Prior to renewing, notification must be made using anyone of the methods listed in the bill.

We exempt a wide variety of contract types in the bill either because they are for businesses that are already regulated or because they lease a product where this really isn't an issue – trailer leases for example.

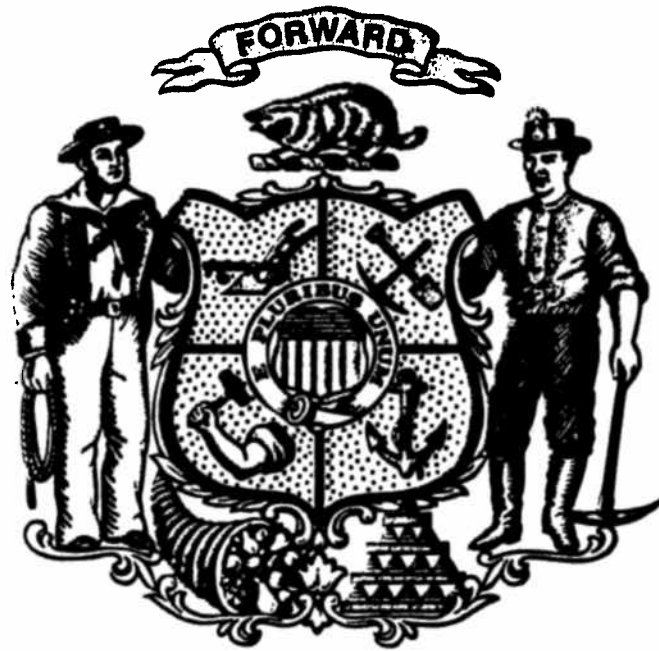
We also exempt any contract that enables a customer to terminate with 30 days notice when the contract has been renewed or extended.

This bill, like versions introduced in prior sessions, does not cover contracts made between a business and the personal use consumer. It only covers business-to-business contracts.

Also, under the bill, contract disputes would be settled here and not arbitrated in another state. Additionally, clauses that allow companies with poor service or products to match a competitor price in order to keep a contract in effect would not be allowed.

For the small business owner victimized by companies that use these contracts to take advantage, the losses can be staggering. Small business owners make their living by providing products and services that earn the loyalty of customers. Companies that enter into contracts with small businesses need to know that they must provide goods and services that will earn the loyalty of the small business owner if they want the contract to continue and that they cannot simply rely on gotcha clause in a contract.

Bill passed last session on voice vote.



Date?

SB 190 : SMALL BUSINESS PROTECTION

PREPARED FOR: SMALL BUSINESS, EMERGENCY PREPAREDNESS, TECHNICAL COLLEGES, AND CONSUMER PROTECTION

Senate Bill 190 protects small businesses from hidden automatic renewal clauses in equipment and service contracts. This is an extremely important bill for the small businesses of our state. It is legislation that the small business owners in every legislative district understand.

This legislation evolved from many calls to our WIB member hotline. We have heard many complaints about automatic renewal clauses hidden in contracts. This bill came about because of abuses and the growing disparity in bargaining power between large and small businesses. Small businesses cannot avoid these hidden clauses unless they can do without such essential services as: waste hauling, credit card processing, uniform and towel services, computer hardware/software leases and shop equipment leases.

In this packet we have included some actual examples of these contracts. In one the automatic renewal clause was the 11th page of 16. Notice the size of type in the first example for credit card processing. In addition contract dispute resolution can be extremely difficult. One of the contracts calls for binding arbitration that must take place (by contract) in Collin County Texas.

Small business owners must constantly track the expiration date and the period for giving notice for each of these contracts. A small business can typically have up to 10 of these contracts. It is easy to trap the small business into continuing a contract that is no longer needed or wanted. SB 190 does not eliminate these clauses. It simply requires that the business owner be notified upon signing that the clause exists and that he also be notified before the clause will take affect.

Thirteen states have adopted or are considering some type of automatic renewal clause legislation. It is an issue whose time has arrived and Wisconsin business owners are looking for relief. WIB strongly encourages the committee to pass this much needed legislation to help protect the small business owners of Wisconsin.



TESTIMONY

SB 190? Date?

Good afternoon Mr. Chairman and members of the committee. My name is Mike Metz and I am with Wisconsin Independent Businesses.

Each member of the committee has, in the packet we distributed, our reasons for strongly supporting this bill and examples of contracts with these hidden clauses.

I will not take your time to read it to you but I would like to say that this is legislation whose time has come. Last session this idea had strong, bi-partisan support and passed in the Senate on a voice vote before dying in the Assembly.

Other states either have or are considering legislation to curb the abuses these hidden automatic renewal clauses can cause. This legislation is important to and will help protect the small businesses owners of Wisconsin. WIB strongly urges the committee to support and pass this important small business legislation.

Thank you. I will try to answer any questions the committee may have.