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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on Judiciary, Corrections and
Privacy...**

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**

* Contents organized for archiving by: Stefanie Rose (LRB) (July 2012)

Senate

Record of Committee Proceedings

Committee on Judiciary, Corrections and Privacy

Senate Bill 104

Relating to: renewals and extensions of business contracts.

By Senators Reynolds, Cowles, Kanavas, Lassa, Miller and Roessler; cosponsored by Representatives Van Roy, Ballweg, Gard, Gronemus, Gunderson, Hahn, Hundertmark, Jeskewitz, Kaufert, Kerkman, Krawczyk, Mursau, Musser, Petrowski, Pettis, Townsend, Vos, Vrakas and Wood.

March 08, 2005 Referred to Committee on Judiciary, Corrections and Privacy.

January 11, 2006 **PUBLIC HEARING HELD**

Present: (5) Senators Zien, Roessler, Grothman, Taylor and Risser.
Absent: (0) None.

Appearances For

- Patrick Henneger — Office of Senator Tom Reynolds
- Wayne Corey, Madison — Wisconsin Independent Businesses
- Gary Antoniewicz, Madison — Wisconsin Independent Businesses

Appearances Against

- James Buchen, Madison — WMC

Appearances for Information Only

- None.

Registrations For

- Michael Netz, Madison — Wisconsin Independent Businesses Inc.

Registrations Against

- Jeremy Shepherd, Madison — Wisconsin Bankers Association
- Pete Christianson, Madison
- Joe Strohl, Madison — Time Warner Telecom
- Michelle Kussow, Madison — Wisconsin Grocers Association
- Michelle Kussow, Madison — Waster Quality Association of Wisconsin
- Eric Petersen — DeHart & Darr

- Jodie Tierney, Madison — Cingular Wireless
- Jeff Schoenfeldt — AT&T
- Katie Walby — TDS
- Greg Hubbard — Waste Management
- Suzanne Kelley, Waukesha — GE
- Jason Johns, Madison — National Solid Wastes Management

May 4, 2006

Failed to pass pursuant to Senate Joint Resolution 1.

Kimber Liedl
Committee Clerk





Fourth Floor
1 South Pinckney Street
P.O. Box 927
Madison, WI 53701-0927

Phone • (608) 257-9521
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Gary L. Antoniewicz
Direct Dial Number • (608) 283-1759
gantoni@boardmanlawfirm.com

January 10, 2006

To: The Senate Committee on
Judiciary, Corrections and Privacy

**Re: Support of Senate Bill 104 on
Business Contract Protection**

Dear Senator Zien and Committee Members:

For over twenty (20) years, I have served as legal counsel for the Wisconsin Independent Businesses, Inc. ("WIB") and as part of my responsibilities for WIB, I have daily contact with its small business members to address legal concerns. Senate Bill 104 is an outgrowth from those contacts and is an attempt to address one of the real concerns we are frequently presented with.

The concern is a business that calls and said it signed up for a new service provider believing its old provider's contract had expired at the end of its term. When it notifies the old provider it is informed that the old contract automatically renewed according to fine print in the contract. The result is a small business with two potentially legally enforceable contracts for the same service.

Senate Bill 104 attempts to address this situation very simply by requiring that the provider give notice to the small business of the automatic renewal language 15 to 30 days prior to the notice period for renewal set forth in the contract. The legislation is modeled on what is already required for automatic renewal clauses in residential real estate leases.

Why is this necessary? Shouldn't both sides to a contract be assumed to be knowledgeable of its terms and if one side doesn't like the contract, not sign it? In a perfect world this would be true, that there would be complete freedom of contract without government interference. Unfortunately, this is not a perfect world.

Like many other bills, Senate Bill 104 came to be because of abuses and because there is increasingly a wider disparity of bargaining power between large and small businesses. In certain types of agreements, small business cannot avoid automatic renewal clauses except to do without essential services. These include, without limitation:

1. Waste hauling;
2. Credit card processing;
3. Uniform and shop towel services;

The Senate Committee on
Judiciary, Corrections and Privacy
January 10, 2006
Page 2

4. Computer hardware/software leases;
5. Shop equipment leases.

For examples of the contracts discussed, I have attached two automatic renewal clauses from agreements I reviewed for WIB members. **Attachment 1** is an actual size depiction of agreement terms from the back of the second page of a credit card processing services agreement. The merchant was correctly told at the signing that it was a three-year agreement. What the merchant wasn't told was that it would renew for an additional two-year period unless the merchant sent notice between ninety (90) and one hundred twenty (120) days prior to expiration. (Par. 7.1)

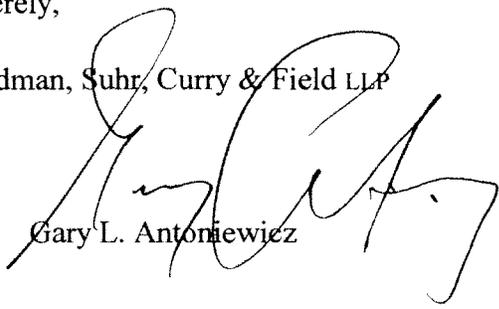
Attachment 2 is the 11th page of a sixteen (16) page agreement for the lease of computer hardware and software together with support services. The initial agreement is for ten (10) years and renews for an additional ten (10) years unless notice of nonrenewal is provided at least six (6) months prior to expiration. Imagine being stuck with the same software for twenty (20) years because you missed a six month advance notice requirement after paying for ten (10) years.

Senate Bill 104 does not prohibit automatic renewals but simply makes a requirement for those seeking to enforce them that a reminder notice of the automatic renewal clause be sent out. Senate Bill 104 is a small, but much needed help for small businesses. Thank you for your support.

Sincerely,

Boardman, Suhr, Curry & Field LLP
By

Gary L. Antoniewicz



GLA/jmc
Enclosures

@PFDesktop\ODMA\WORLD\DOX\F\DOCS\WD\25158\5\A0411773 WPD

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.

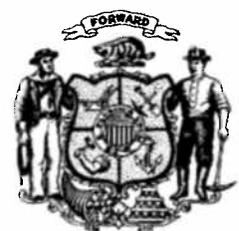
If Dealer purchases all printed forms and supplies (including stock paper, ribbons, print-wheels, etc.) that are used in conjunction with the FDCS In-Dealership Computer System from FDCS, and maintains all CRTs, printers, modems, personal computers, other peripheral equipment, CPUs, disk drives, tape 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.



WISCONSIN STATE LEGISLATURE





EQUIPMENT FINANCE

M&I Equipment Finance Company
250 E Wisconsin Ave Ste 1400
Milwaukee WI 53202-4219
414-272-2374 Direct
414-302-2811 Fax
www.mibank.com

January 10, 2006

Honorable David Zien
Chairman, Committee on Judiciary, Corrections and Privacy
Room 15 South, State Capitol
Madison, WI 53708

Dear Chairman Zien:

I appreciate this opportunity to present some of the difficulties SB 104 presents to the leasing industry. These issues were discussed last year in reference to AB 181; the compromises suggested below were discussed with Chairman Van Roy at that time.

In General:

1. This bill applies commercial real estate statutes to business personal property leases. The two transaction types vary widely.
2. Real estate companies have a limited number of contracts; leasing companies can have tens of thousands of contracts. The requirements are more burdensome for a leasing company to implement.
3. Under "Initial Applicability", it states the act applies to contracts "...renewed on the effective date of this subsection". Existing contracts have renewal terms that have a direct impact on the overall lease pricing. If state law were applied to existing lease contracts, this could impair the obligations of these contracts.

Compromises Suggested:

1. Under Section 1 (2), it was suggested that "but not more than 30 days" be replaced by "but not more than 45 days". The additional time is needed both for the lessee and the lessor's benefit. Often, the lessee will need to go through a lengthy approval process to determine if the contract should be extended or not. Additionally, the lessor needs time to reflect the sale, extension, or return option the lessee chooses.
2. The certified mail requirement is a burden. The cost is over \$4 per letter, and requires time-intensive processing. A lessor can have several hundred extensions per month. The compromise for AB181 was that a letter could be included with the last invoice, by regular mail, which would satisfy the bill notification requirements.
3. The intent of the bill was to prevent automatic, long-term extensions. An amendment was proposed to state that the provisions did not apply if the extension term was one year or less. A twelve-month renewal term is an accepted industry standard to provide options for the lessee to finance the purchase of the equipment.

Please consider amending SB 104 to incorporate the above suggestions. Thank you for the opportunity to comment.

Christine Jensen
Vice President





**Wisconsin
Manufacturers
& Commerce**

Memo

TO: Wisconsin Senate Judiciary, Corrections and Privacy Committee

FROM: James Buchen, Vice President, Government Relations

DATE: January 11, 2006

RE: Opposition to Senate Bill 104 – Regulation of Business Contracts

Wisconsin Manufacturers & Commerce opposes Senate Bill 104, legislation regulating business-to-business contracts. WMC is concerned that this bill imposes an unnecessary burden on legitimate, above board business-to-business transactions.

Contracts are used to structure a virtually limitless variety of business relationships. “One size fits all” legislation regulating business-to-business contracts ignores the almost unimaginable diversity of the many thousands of contracts executed daily in Wisconsin.

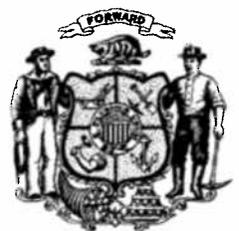
This legislation would establish Wisconsin as an island in the stream of interstate commerce with unique regulation of business contracts. It will substantially add to the cost of doing business for companies, that in some cases, administer hundreds of thousands of business contracts nationwide.

Fundamentally, we do not believe that the business community needs protection from itself. Most business people take responsibility for the decisions they make and the contracts they sign. They do not want government intervention in one of the most fundamental aspects of business-to-business transactions – the right to enter into a contract.

Therefore, we urge you to vote **against** Senate Bill 104.



WISCONSIN STATE LEGISLATURE





POSITION PAPER

From Wayne Corey; Executive Director

SB 104 SMALL BUSINESS CONTRACT PROTECTION

PREPARED FOR : THE SENATE COMMITTEE ON JUDICIARY, CORRECTIONS
& PRIVACY

DATE : January 11, 2006

Senate Bill 104 protects small businesses from automatic renewal clauses hidden in equipment and service contracts. Wisconsin Independent Businesses and the small businesses of our state are grateful to Senator Tom Reynolds and Representative Karl Van Roy for authoring this important legislation. SB 104 is a major bill for the small businesses of our state. It is legislation that will really make a difference for businesses throughout Wisconsin.

This legislation was developed from innumerable calls to our WIB member **HOTLINE** and from the experiences of Senator Reynolds, Representative Van Roy and other small business owners in the legislature. WIB has daily contact with scores of businesses throughout our state. We have had many years of complaints about automatic renewal clauses hidden in contracts for providing services or for the leasing of business equipment.

SB 104 requires only that the equipment or service provider remind their customers in a timely fashion that the automatic renewal clause is about to take effect. .

Big businesses using the automatic renewal technique include those selling credit card processing machines and credit card processing services, business uniform services, waste hauling and disposal companies, specialized computer equipment and software services, telephone system and telephone services, cash transaction machines (cash registers) and industry specific diagnostic equipment.

We have heard some very difficult stories about these contract clauses through the years. Among the most often heard are :

the contract of a credit card processing company is for 36 months (3 years) with automatic renewal for 2 year periods unless notice is given at least 90 days, but not more than 120 days, prior to expiration. This clause is buried in the contract in very fine print.

Ford Dealer Computer Services contracts are for 120 months (10 years) with 120-month (10 years) extensions unless notice is given 180 days prior to expiration.

Business owners must constantly track the expiration date of the contract and the period for giving notice. A small business that typically has up to 10 contracts on equipment and services

finds it almost impossible to keep track of the agreements and notices that go with each contract. Contract dispute resolution is extremely difficult. For example, one credit card processing agreement calls for binding arbitration of any dispute. The arbitration takes place (by contract!) in Collin County, Texas.

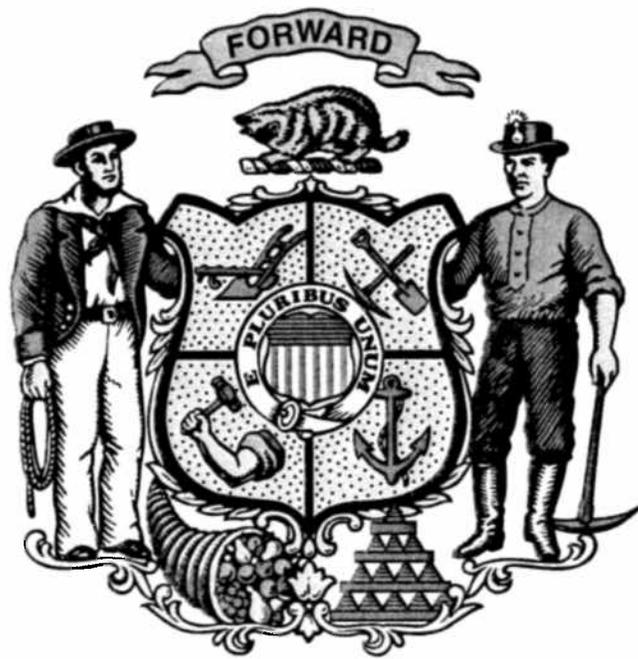
Confusion caused by automatic renewal clauses can cause a small business to have simultaneous contracts with two companies for the same service because the small business bought a replacement contract believing that the original contract expired. And there is no escape from the multiple contracts!

The significant majority of companies selling services and leasing products with automatic renewal clauses are headquartered outside the State of Wisconsin. Wisconsin small businesses are losing money because of this situation. This legislation will protect them from significant ongoing losses in the future.

SB 104 is important small business legislation. The only possible opposition will come from companies that want to continue to use automatic renewal contract clauses to trap small firms. A hidden automatic renewal clause is unfair to your local businesses. SB 104 will correct the problem. WIB hopes we will have your support.

*For more information : Wayne Corey
608-255-0373 or 800-362-9644*

WIB has served the independent business and farm owners of Wisconsin for 28+ years. WIB provides government relations, legal, employment, tax, accounting and and business operation expertise to 52,000 people with ownership interest in 16,000 businesses and 9,000 farms.



To: Committee on Judiciary, Corrections and Privacy, Wisconsin State Senate

From: Jason Johns

Re: Opposition to SB 104

Date: January 11, 2006

The National Solid Wastes Management Association wishes to express its opposition to SB 104.

What The Bill Does:

- In business to business contracts, where services are provided by one party to the other, and automatic renewal clauses are contained in the original contract, that the business providing the services notify the other party, by registered or certified mail, or delivering notice in person, at least 15 but no more than 30 days prior to the automatic renewal going into effect.
- If a service provider attempts to enforce the contract after automatic renewal, and the provider did not provide notice prior to renewal, the customer may file a claim against the service provider for an amount equal to twice the damages incurred by the customer or an amount that equals twice the amount of periodic payment as specified in the contract.

National Solid Wastes Management Opposes SB 104 for the following reasons:

- Automatic renewal clauses are standard practice in business to business contracts in order to avoid unnecessary attorney's fees incurred by re-evaluating or re-doing contracts that have not changed and were mutually agreed upon by both parties in the original contract.

- Automatic renewal clauses exist in almost all business to business contracts that we have with our thousands of customers. The costs incurred by having to track each and every contract as its renewal clause comes due, create a notice, and deliver the notice by registered or certified mail or in person would be enormous and would result in increased costs to our customers.
- In an instance of dispute between us and a customer as to whether the renewal notice was in fact received, a burden of proof situation is created that would involve additional costs which would again result in increased costs to our customers.

Renewal clauses in business to business contracts are not meant to give one party to the contract any sort of upper-hand in negotiation or performance of the contract. They exist because they are an efficient and well recognized business practice that is beneficial to all parties involved. They are part of contracts entered into by informed and legally capable business entities that have let the market dictate what is good for their business.

Legislative interference in this process is both unnecessary and unduly burdensome.

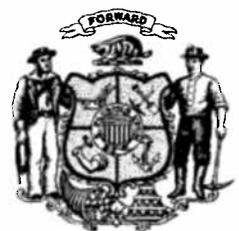
For this reason and those above, we respectfully ask that you oppose SB 104.

Thank you,

National Solid Wastes Management Association



WISCONSIN STATE LEGISLATURE



no date



WASTE MANAGEMENT

W124 N8925 Boundary Road
Menomonee Falls, Wisconsin 53051
262/250-8360
262/251-0240 Fax

TO: Chairman Zien and Members of the Senate Committee on Judiciary, Corrections and Privacy

FR: Greg Hubbard, Broydrick & Associates

RE: Opposing SB 104's Restrictions on Business Contract Extensions

Waste Management respectfully urges the members of the Judiciary Committee to carefully weigh the costly and unnecessary impact of SB 104, a bill interfering with the ability of businesses to voluntarily enter into contracts that automatically renew.

Our contracts are a single 8 1/2" x 11" page. One side is a form for customer information, charges and signatures. The reverse side contains all of the contract's terms and conditions, including a two-sentence paragraph labeled "TERM" establishing an initial contract period and automatic renewal of the contract unless cancelled in writing 90 to 180 days prior to the contract anniversary date.

Our customers do not find this simple contract confusing, misleading or too lengthy to read before signing. They knowingly enter into long-term contracts ensuring their garbage will be collected without interruption and without continually reinstating their waste service. It is not unusual for a customer to use the same waste hauler for decades, but automatic renewal cycles provide periodic opportunities for either party to terminate the contract. Our contract further allows a customer to cancel if services are not provided as guaranteed.

Under SB 104, though, the state's judgment regarding the wisdom of these existing business arrangements would supercede the wishes of the companies that now voluntarily enter into these private contracts. Waste Management would incur significant expense to annually generate certified or registered letters to its 60,000-plus commercial customers, revamp its national customer database to track and trigger contract renewals, and maintain records required to establish compliance with the notification provisions.

Those costs will be borne by all customers, the vast majority of whom have no need or desire for state intrusion into their contracting activity. Thank you for considering our concerns regarding this legislation.



shall not be presented until the goods are delivered or services performed.

2.12 Mail Order
CMS and Bank conduct 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 orders) only upon CMS' prior written authorization. Mail/telephone orders completed 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 constitute a fraudulent transaction. Merchant will obtain the expiration date of the Card for a mail/telephone order and will update the expiration date when obtaining authorization of the Card if the Cardholder or the merchant/merchant's representative displays or prints the Card on the signature line of the Sales Draft 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 given such consent, Merchant represents and warrants to Bank and CMS that Merchant will not rely on 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.
2.15 Rights, Duties, and Responsibilities of Bank and CMS

3.1 Deposits
(a) Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 542, 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 writing or 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 (i) Bank is charged back by the issuing bank (in such event, Bank shall retain the funds); (ii) 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 (iii) 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 arises out of the same transaction as Bank's obligation to deposit funds to the Merchant Account.

(b) How/standing subject to (a) of this Section, under no circumstances 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 inaccuracies. Merchant acknowledges that all credits provided to Merchant are provisional and subject to chargebacks and adjustments in accordance with the Rules and this 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.

(c) 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 exceeding the established limit will cause the Merchant account to be reviewed and may result in the possible suspension of service and/or the delay of transmission of funds and/or the diversion of funds into a Reserve Account. Merchant hereby understands and holds CMS and Bank harmless for any loss or consequential damages sustained by Merchant as a result of delayed funds.

3.2 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 informed 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.

3.3 Acceptance
Notwithstanding any other provision of this Agreement, Bank and CMS may refuse to accept any Sales Draft, or revise its prior acceptance, in any of the following circumstances:
(a) The sales 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 the liability.

In the event of a revocation 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.
3.4 Customer Service
Bank and CMS will provide electronic debit 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.

4.0 Account Monitoring
Merchant acknowledges that Bank and CMS will monitor Merchant's daily deposit activity. Merchant agrees that Bank and CMS may, upon reasonable notice, direct 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 direction. Bank and CMS shall not be responsible for any loss or damage, whether direct or indirect, which is attributable to any diversion of funds or other activity directed by Bank and CMS to investigate suspicious or unusual deposit activity. Bank, and not be released until such time that questionable/suspicious fraudulent transactions have been resolved to the Bank's and CMS' satisfaction.

5.0 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, Bank and/or CMS, and to take any action, including (without limitation) attorneys' fees, other costs of defense and/or collection fees, in any way that may be necessary or prudent to protect and defend Bank and/or CMS.
(b) That Merchant is engaged in the lawful business shown on the Merchant Processing Application and is duly licensed to conduct such business under the laws of the state, county and city in which Merchant is located.
(c) That Merchant has not been terminated from settlement of Card 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 have the authority to do so by Merchant's usual and customary course of action, including (without limitation) attorneys' fees, other costs of defense and/or collection fees, in any way that may be necessary or prudent to protect and defend Bank and/or CMS.

(e) That each Sales Draft submitted hereunder represents the indebtedness of a Cardholder for whom Merchant has provided goods or services; shall not involve any element of credit for any other purpose; represents a transaction which was placed by the Cardholder or other authorized user of the Card and was not previously charged back or delinquent; 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.

6.0 Limitation of Liability; Indemnification
Bank and CMS shall have no liability for any negligent design or manufacture of any point-of-sale terminal, table, or other equipment used by Merchant for the acceptance of credit card transactions. NEITHER CMS NOR BANK MAKE ANY WARRANTIES WHATSOEVER, 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.
6.2 Indemnification
Merchant hereby indemnifies and holds Bank and CMS and each of them, their parent companies, affiliates and subsidiaries and all of its or their officers, agents and employees, harmless from and against any and all claims, losses, damages, suits, judgments, and/or costs of action, including (without limitation) attorneys' fees, other costs of defense and/or collection fees, in any way that may be necessary or prudent to protect and defend Bank and/or CMS.

(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.

7.0 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 conform 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 liable, whether arising in negligence or other tort, contract, or otherwise, will not exceed aggregate amount of fees paid by Merchant, less interchange and assessments, 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.

7.0 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 trademarks of MasterCard and Visa and other symbols only while this Agreement is in effect or until Merchant is notified by Bank, CMS, Visa or MasterCard to cease such usage, whichever is earlier, and then only in compliance with applicable Visa and MasterCard Rules concerning such usage. 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 cards' promotional materials will not indicate, directly or indirectly, that Visa or MasterCard endorses 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 credit plan, provided, however, that visual parity shall be maintained between the MasterCard and Visa symbols and any logo/graphics account 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.

8.0 Term; Termination
This Agreement shall become effective upon acceptance by Bank and CMS and shall continue in full force and effect for a term of thirty-six (36) months. This agreement shall auto renew for successive two (2) year terms thereafter unless written notice of non-renewal by the party desiring not to renew is delivered to the other parties hereto at least ninety (90) days, but no more than one hundred-twenty (120) days prior to the expiration of the initial or any renewal term.

12. 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 deconviction fee (except as set forth in the Summary of Fees) and any other amounts due hereunder.

8.3 Action Upon Termination
In the event of termination of this Agreement for any reason, Merchant authorizes Bank to withhold and discontinue its disbursement of all funds evidenced by Sales Drafts and any 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 a write-in Bank's and CMS' sole discretion, to establish and maintain a deposit account ("Reserve Account") at Bank in 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, with or without prior notice to Merchant. 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 the Merchant Account is insufficient to protect its interests, Bank's and CMS' right to draw on the Reserve Account pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Account. Bank and CMS' right 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) Bank 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 release Merchant of its liability to CMS or Bank accruing either before or after such release. Bank will have sole control of the Reserve Account. Merchs further acknowledges and agrees that CMS has the right to hold funds of Merchant to cover all liabilities of Merchant to CMS.

8.4 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.

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

8.6 Substantiated Sales Disputes
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 card processor.

8.6 Notices
All notices under this Agreement shall be deemed delivered when mailed, postage prepaid, addressed as follows:
(a) CMS/CERTIFIED MERCHANT SERVICES
P.O. Box 765077
Plano, TX 75265-0077
NATIONAL CITY BANK OF KENTUCKY
1231 Dummet Lane
Louisville, KY 40213-2008
(b) If 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 (i) Bank or CMS, the actual or any such communication shall also be mailed to the intended recipient on the date of the electronic transmission and (ii) shall not be deemed served 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).

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

10.2 Confidentiality
Merchant will not use for its own purposes, will not disclose to any third party, and will remain 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 circumstance beyond Bank's and/or CMS' control including, but not limited to, Acts of God, fire, flood, war, government action, labor trouble or shortage, or other events of similar effect in connection with Bank's and CMS' obligations herein.

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 an increase imposed by Visa, MasterCard, or telecommunication vendor without giving Merchant the right to terminate this Agreement.

10.5 Construction
All section headings are for descriptive purposes only, and the language of each 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 and 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 Arbitration
Any action or proceeding arising out of this Agreement by 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 of such nature, and subject to the award by the arbitrator may be enforced and entered as a judgment in any court of competent jurisdiction. The arbitrator shall have the right to render exclusive, 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 constitute an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder be deemed to constitute any occurrence or 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 order 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 2.0, 2.1, 2.2, 3.0, 3.1, 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 Best 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 on each business day or month ending by CMS, for the previous business day's or month's activity, or will be billed out from the funds due Merchant under this Agreement. Merchant shall also pay the fees as set forth in Section 10.6. Merchant agrees that all fees and charges are considered accurate and final unless Merchant disputes them in accordance with the provisions of Section 10.9. Furthermore Merchant understands that every 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, fines imposed by Visa or MasterCard, non-optional funds fees, and ACH debits that overdraw the Merchant Account, Reserve Account, or any other account Merchant maintains at Bank or at any other financial institution for any amount Merchant owes CMS or Bank under this Agreement, or any other contract, note, guaranty, instrument or dealing of any kind now or later entered into between Merchant and CMS or Bank, whether the obligation is direct, indirect, primary, 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 Debits
Merchant authorizes Bank and CMS to debit from the Merchant Account any amounts paid by Bank or CMS to a lessor company on Merchant's behalf, including but not limited to monthly lease payments or other amounts owed by Merchant to the lessor 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 cancelling Merchant's 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 the amount of the previous service provider. Any such reimbursement by CMS will occur after 90 days after the M/D issued date, provided that Merchant has given CMS a bank statement evidencing the cancellation fee within 60 days after the M/D 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 (DS 72) DOC FEEDER (A505)
LAEK M 312913 LACLB 333838 GAMMA 316725

Payment Schedule:

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

1. 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 refurbish 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.

2. 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.

3. 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.

4. 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.

5. 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

Sep-02-04 16:01 From-

T-108 P.002/003 F-487

Waste Management - River Falls / *Oscoda St Clair Valley*
Commercial/Residential Service
250 Summit Street
River Falls, WI 53082

SERVICE AGREEMENT NON-HAZARDOUS WASTES

GENERAL CUSTOMER INFORMATION

ACCOUNT NUMBER AND SERVICE TYPE: *RC 0544164*

LOCATION: *Country Side Veterinary Clinic*

STREET NAME: *1231 N. Knowles Ave*

CITY: *New Richmond, WI*

STATE: *WI* COUNTY: *58017*

INDUSTRY SECTOR: *597*

CONTACT: *Mary Bernd*

PHONE: *762-5600*

SERVICE START/DELIVERY DATE: *7-15-95*

SERVICE EFFECTIVE DATE: *7-15-95*

SERVICE SPECIFICATIONS

QTY	DESCRIPTION/COMMENTS	TESTED	LEAK	REPAIR	REPLACE	OTHER	UNIT	Y	T	H	F	S	W	W	W
1	2yd 2x	X	X												
1	2-yard R/C M.P. C.B. 1x	X	X												
1	90 gallon GTP 1x	X	X												

DATE: 7-22-95

THIS IS A LEGALLY BINDING CONTRACT, AND CONTRACTOR AGREES TO PROVIDE AND CUSTOMER AGREES TO ACCEPT THE SERVICES AND EQUIPMENT AT THE CHARGES AND FREQUENCY INDICATED ON THIS AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS SPECIFIC ON THE REVERSE SIDE.

BILLING

NAME: *Same*

ADDRESS: _____

STREET NUMBER: _____ STATE: _____ COUNTRY: _____

CITY: _____ STATE/PROVINCE: _____ ZIP/POSTAL CODE: _____

PHONE: _____

CONTACT: _____

MAJOR ACCOUNT: _____ RELATED ACCOUNT: _____

PURCHASE ORDER NUMBER: _____

SCHEDULE OF CHARGES

DESCRIPTION	UNIT	RATE
850 1-2yd Trucks 2x	X	80 ⁰⁰
858 1-2yd R/C M.P. C.B. 1x	X	76 ⁰⁰
857 1-90 gallon G-TOP 1x	X	18 ⁰⁰

ADDITIONAL INSTRUCTIONS/COMMENTS: *Reduce will probably be 1x/yr or low after 7-15-95*

INCIDENTAL SPECIAL WASTE TYPES AND AMOUNTS

THE TERMS AND CONDITIONS ON REVERSE SIDE AND THE ATTACHED CONTRACTOR'S DEFINITION OF SPECIAL WASTE ARE PART OF THIS AGREEMENT.

CUSTOMER AUTHORIZED SIGNATURE: *Mary Bernd*

CONTRACTOR REPRESENTATIVE'S SIGNATURE: *Larry Wilber*

PRINT NAME: *MARY BERND*

TITLE: *Office manager* DATE: *12-20-94*

CALLING DATE: *12-30*

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 on or after as provided above or Contractor terminates this Agreement for Customer's non-payment, Customer shall pay to 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.

CHARGES 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 of 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 the 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 requires 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 "dispose" as a component of the charges, "dispose" 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 model 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 1.25 per transaction. Payments for transactions will be disbursed monthly by Company to Merchant on or before the 10th 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 each 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 shall not permit anyone

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.

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.

Attachment 2