

**EVANS & FAIR**

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JIM@EVANSLAWOFFICE.COM

VICTORIA FAIR WOO  
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March 14, 2005

Mr. Michael Green  
Law Office of Michael Scott Green  
86 Washington Ave.  
Milltown, New Jersey 08850

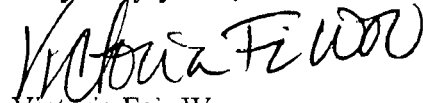
Via Fax: 732.390.0481

RE: Cause No. 819,925, *James T. Evans d/b/a Evans & Fair v. Commerce Commercial Leasing*; In County Civil Court at Law No. 1, Harris County, Texas

Dear Mr. Green:

We spoke several months ago and our office is a former Norvergence customer. We managed to sue our leasing company in Houston before they could sue us in Pennsylvania and they've agreed to jurisdiction here. I try to keep track of the other suits and noted a recent appearance by your firm in New Jersey where the Judge was asking if there was a conspiracy between the leasing companies and Norvergence. We've been able to do a little discovery in our case and I'm forwarding you two documents that I hope will help you on some level as I'm not sure if you have these (or documents similar to them). One is the proposal for a contract between Commerce Commercial Leasing and Norvergence and the other is the actual contract. It is clear to me from reading the documents that CCL was in on the deal from the beginning and they should've known that there was a fraud going on. They were just innocent assignees. If this is true of CCL, I'm sure it's true of others. I hope this helps you. Keep me posted on your case.

Very truly yours,



Victoria Fair Woo

VFW/cc  
Enclosures  
CommerceCommercial/B3.7

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**FACSIMILE COVER SHEET**

*Date: March 14, 2005*

*Page total (including this cover sheet): 15*

*Matter: No. 819,925-Evans v. Commerce Commercial Leasing*

**CONFIDENTIALITY NOTICE:**

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***To:***

***NAME: Michael Green***

***FIRM: Law Office of Michael Scott Green***

***FAX (#): 732.390.0481***

***FROM: Victoria Fair Woo***

***NOTE(S): Norvergence documents***

***PLEASE CALL 713/523-7191 IF THIS FAX IS INCOMPLETE OR ILLEGIBLE.***

**I. General Description**

This program proposal outlines terms whereby Commerce Commercial Leasing VendorLease (CCL) will partner with Norvergence, Inc. (Norvergence) to provide equipment lease solutions to Norvergence's end user customers.

**II. Program Structure**

The structure between Norvergence and CCL will be a leasing program in which CCL will be entering into leases directly with Norvergence's end user customers through referrals generated by Norvergence's direct sales organization. CCL will set a limit for booked lease business through the program at \$ 400,000 per month (\$ 5 million total) for the first 12 months of the program. CCL will monitor the portfolio performance throughout the year to determine volume objectives after the first year of the program.

**III. Equipment Type**

The program is intended to include all new MATRIX system hardware and supporting technology that Norvergence leases to its end user customers.

**IV. Terms**

Base terms provided by CCL to Norvergence's customers will be 61 months (First payment at zero) with a \$ 101 end-of term purchase option to Norvergence.

**V. Lessor**

Commerce Commercial Leasing, VendorLease.

**VI. Lessee**

As determined by Norvergence and CCL.

**VII. Lease agreements**

Lease (Rental) documents will be in Norvergence's name and CCL will perform all billing and collecting services in its own name.

**VIII. Base Lease Commencement Date**

The first day of the month following the delivery and acceptance of all equipment.

**IX. Commerce VendorLease Services Provided to Norvergence**

- ✓ CCL will support the program with Norvergence by providing call center and telesales support.
- ✓ CCL will fund Norvergence upon receiving a complete documentation package including but not limited to signed rental agreement, schedule, delivery and acceptance notice, and personal guarantee document when required.
- ✓ CCL will perform telephone verifications on all installs and will work with Norvergence's operations team to deliver a consistent customer service message.
- ✓ CCL will provide Norvergence's customers with a notice of assignment stating that the rental agreement has been assigned to Commerce.
- ✓ CCL will provide all credit processing.
- ✓ CCL will provide "Application Only" credit decisions for transactions up to \$ 75,000. Transactions over \$ 75,000 will need to have the last 2 years of financial statements and comparative interim statements provided to CCL by the end user for credit decisions.
- ♦ CCL will perform all billing and collecting services.
- ♦ CCL can provide Norvergence's direct sales organization training on the benefits of leasing for end user customers.
- ♦ CCL can offer Norvergence Leasing Sales Kits (Optional).

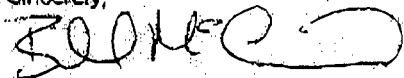
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**XIX. General information**

This proposal is not intended and does not create any binding legal obligation on the part of either party. This proposal is not and should not be construed as a commitment by CCL or any affiliate to enter into the proposed vendor lease program; and CCL shall not be required to enter into the proposed vendor lease program partnership until the completion of all due diligence inquiries, receipt of approvals from all requisite parties, the execution and receipt of all necessary documentation, and the credit approval of Norvergence, Inc. by CCL.

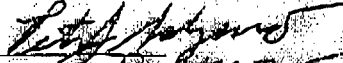
If this proposal meets with your approval, kindly indicate your acceptance by countersigning where indicated below, and providing a commitment fee check in the amount of \$ 5,000 to cover the program set up costs which includes, but is not limited to, vendor qualification, credit and documentation legal review. CCL will reimburse the commitment fee of \$ 5,000 to Norvergence when \$ 1 million in lease volume is booked through the program. If the Program Agreement is not executed between our organizations the commitment fee will be promptly returned to Norvergence. All other terms and conditions notwithstanding; this proposal expires May 15, 2003, unless previously executed.

Sincerely,



Bill McCormick  
Vice President  
Commerce Commercial Leasing Vendor Lease

Norvergence, Inc.  
Approved and Accepted:

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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3.2 Rates. CCL will offer Rental rates terms for each Contract application of 61 months with first payment at zero and remaining payments at .02230 at program inception with payments in arrears which has been mutually agreed upon by both parties. CCL reserves the right to adjust the rental rates on a quarterly basis.

3.3 Documentation Fees. CCL shall receive a documentation fee of \$75 from the Renter/Customer in accordance with the terms of the Rental Agreement.

3.4 Contract Documentation

a. General

1. CCL shall be solely responsible for the review and approval of all documents, including any amendment and stipulations memorializing or otherwise relating to each contract (collectively, the "Rental Documents").

2. Each Equipment invoice must have an Equipment cost equal to or greater than \$5,000.00 and the minimum monthly payment on any transaction must be \$50.00 or more.

3.5 Types of Contracts. Contracts offered to Renters/Customers will be fixed term non-cancelable rental Contracts.

a. Fixed Amount Purchase Option. Nonvergence can repurchase the equipment at the end of the original term of the contract for a \$101 disposition fee. The Renters/Customers do not have the option to purchase the equipment at the end of original term of the contract, nor do they own the equipment at the end of original term.

**SECTION FOUR - ACCEPTANCE OF CONTRACTS**

4.1 Conditions Precedent to Accept a Contract. The obligation of CCL to accept any Contract hereunder shall be subject to the satisfaction of the following conditions precedent:

a. CCL recipient of all required credit information and all Rental Documents, duly executed by the Renter/Customer as may be deemed necessary by CCL in its sole and absolute discretion;

b. CCL's verbal confirmation that the Renter/Customer has accepted the Equipment;

c. CCL's credit approval for the Renter/Customer; and

d. Vendor shall have performed and complied in all material respects with all covenants, agreements, and conditions contained in this Agreement, which are required to be performed or complied with by Vendor as on or prior to the date CCL accepts the Contract.

4.2 Funding

a. CCL will fund Vendor the Equipment cost up to one hundred percent (100%) of the full purchase price for the Equipment, plus up to 20% allowable soft costs. Soft costs may include sales tax.

b. Vendor will provide CCL with an original invoice for the Equipment and each invoice must itemize the Equipment, including the price of each item of Equipment.

**SECTION FIVE - REPRESENTATIONS, WARRANTIES AND COVENANTS**

5.1 Mutual Representations and Warranties. CCL and Vendor each represents and warrants to the other as follows:

a. The execution and delivery of this Agreement and the performance by it of the transactions contemplated hereby have been duly authorized by all necessary corporate action, and this Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms; and

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l. To the best of Vendor's knowledge, as of the date of CCL's acceptance of a Contract for funding, the Contract and all related documents, including any related Guaranty, will be valid and enforceable.

m. CCL shall not be liable for equipment shipped by Vendor to Renter/Customer, whereby CCL has not received and approved a completed document package and approved the renter/customer credit.

n. Vendor agrees to assign CCL any reps and warranties for the equipment purchased by CCL that are provided by the manufacturer, or to assign any equipment reps and warranties that are provided by Vendor so that CCL may pass those reps and warranties directly to the end user.

5.3 Representations and Warranties of CCL. CCL represents and warrants to Vendor that as of the date each Contract is accepted by CCL and thereafter as follows:

a. CCL is a duly organized and validly existing limited liability company and has full power to enter into this Agreement and to carry out the transactions contemplated hereby, and is in good standing in the state of its organization.

b. CCL and its agents and employees have not committed and will not commit to any fraudulent act or have not participated and will not participate in any fraudulent act or activity in connection with the execution and performance of the Contract, any related Guaranty, or this Agreement.

c. The conduct of CCL in processing any Contract Application, including the granting or denial of credit, and the servicing of the Contract, and any Guaranty whether in CCL's name or the name of Vendor, has not violated and will not violate in any material respect any federal or state law, rule or regulation.

d. CCL has not taken and will not take any action or omit to take any action that will cause the Contract and all related documents, including any Guaranty, or the collection of Payments due thereunder, to become invalid, or unenforceable.

e. CCL receives any funds that by this Agreement belonging to Vendor CCL will immediately remit such funds to Vendor.

f. CCL has and will conduct all of its activities relative to the Renter/Customer, any guarantor, and the Contract and any Guaranty, including without limitation, the collection of Payments due thereunder, reasonably, fairly, and in good faith.

5.4 Affirmative Covenants of Vendor.

a. From the date hereof until the date on which all obligations of Renters/Customers under all Contracts have been fully paid and otherwise discharged, Vendor shall deliver to CCL the following, which shall be prepared in accordance with generally accepted accounting principles and practices, consistently applied:

1. As soon as available, but no later than ninety (90) days after the close of each of the first three (3) quarters of each fiscal year, Vendor's balance sheet as of the close of such quarter and Vendor's statement of income and retained earnings and of changes in financial position for such quarter and that portion of the fiscal year ending with such quarter, prepared on a consolidated basis and certified by a responsible officer of Vendor as being complete and correct and fairly representing Vendor's financial condition and results of operations;

2. As soon as available, but no later than ninety (90) days after the close of each fiscal year, a complete copy of Vendor's balance sheet as of the close of such year and Vendor's statement of income and retained earnings and changes in financial position for such year, prepared on a consolidated basis by an accounting firm of recognized standard.

2. Made publicly available by the transmitting party;

3. Made available to the recipient from a source under no duty of confidentiality to the transmitting party; or

**SECTION TEN - GENERAL PROVISIONS**

10.1 Independent Contractors. CCL and Vendor are separate entities, who have entered into this Agreement for independent business reasons. Neither CCL nor Vendor have acted, act, or shall be deemed to have acted or act, as an agent for the other, except with respect to those acts of CCL specifically permitted to be taken and actually taken pursuant to and in accordance with the terms hereunder.

10.2 Term and Termination. This Agreement shall be deemed effective upon execution by CCL and Vendor. CCL may immediately terminate the Agreement in the event Vendor fails to comply with any of the representations, warranties and/or covenants set forth herein. The term of this Agreement shall continue from such effective date for twelve (12) months and shall automatically renew for additional twelve-month periods unless earlier terminated by Vendor or CCL. CCL or Vendor may terminate this Agreement at any time by giving the other at least ninety (90) days written notice of such termination, whereupon the obligations of the parties with respect to Contracts not accepted prior to the expiration of such period shall terminate to the extent the same have not been performed or are not required to have been performed prior to such termination.

10.3 Accounting. CCL and Vendor shall cooperate with each other by furnishing, subject to each party's then-current internal policies, such records and supporting material relating to Payments under this Agreement or Payments under the Contracts as may be reasonably requested in the event either party is audited by any taxing authority.

10.4 Assignability. Vendor may not assign, sell, or otherwise transfer any of its rights or obligations without CCL's prior written consent. Notwithstanding the foregoing, Vendor acknowledges and agrees that CCL may, without prior notice to Vendor: (a) assign any and all of its rights and obligations, including, without limitations, any contracts entered into pursuant hereto, under this Agreement to a third party (hereinafter the "Assignee"), and (b) release any and all information received by CCL pursuant to this Agreement, including without limitation, any confidential documents or information that may have been received by CCL from Vendor, to such Assignee.

10.5 Notices. Notices under this Agreement shall be deemed to have been given if by Certified Mail to the other party at the address stated below or such other address as such party may have provided by written notice.

If to CCL:

If to Vendor:

Commerce Commercial Leasing Vendor Lease  
110 Terry Drive - 655 Bus. West Center Drive  
Newtown, PA 18940  
ATTN: MARY GULAK  
Fax: 267-960-4007

Norvergence, INC.  
330 Broad Street  
2nd Floor  
Newark, NJ 07102  
ATTN: Bob Wilcox  
Fax: 73-292-0286

10.6 Miscellaneous. Paragraph headings appearing in this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof. The parties agree that this Agreement has been executed and delivered in, and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. If, at any time, any provisions of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon and shall not impair the enforceability of any provision of this Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and incorporates all representations made in connection with negotiation of the same. The terms hereof may not be amended, supplemented or modified orally, but only by written agreement duly executed by each of the parties hereto. This Agreement and any amendments hereto shall be binding on and inure to the benefit of the parties hereto and their respective

### Certificate of Incumbency and Authority

I, Debra Santa Lucia do hereby certify that I am the duly elected, qualified and acting (Assistant) Secretary of Nov Vantage LLC ("Corporation"), a corporation duly organized and existing under the laws of the State of New Jersey; that the person whose names, titles, and signatures appear below are duly elected (or appointed), qualified and acting officers of said Corporation and hold on the date of this Certificate the offices set opposite their respective names; that the signatures below are the genuine signatures of such officers; that each of such officers is duly authorized for and on behalf of said Corporation to execute and deliver any lease agreement between said Corporation and Owner / Lessor, and all ancillary agreements, documents, and instruments, and, to the extent permitted under applicable law, warrants of attorney for confession of judgment, in connection therewith, including without limitation, schedules and delivery and acceptance certificates (collectively, the "Agreement"), and that the execution and delivery of this Agreement for and on behalf of said Corporation is not prohibited by or in any manner restricted by the terms of said Corporation's Certificate of Incorporation, its by-laws or of any loan agreement, indenture or contract to which said Corporation is a party of under which it is bound. I do further certify that the foregoing authority shall remain in full force and effect, and Owner/Lessor (and any assignee of Owner / Lessor) shall be entitled to rely upon same, until written notice of the modification, rescission or revocation of same, in whole or in part, has been delivered to Owner / Lessor, but in any event, shall be effective with respect to any documents executed or actions taken in reliance upon the foregoing authority prior to the delivery to Owner / Lessor of said written notice of said modification, rescission or revocation.

NAME	TITLE	SIGNATURE
<u>Peter J. Salano</u>	<u>Pres: CEO</u>	<u>[Signature]</u>
<u>Albert Couiza III</u>	<u>Director: Chairman</u>	<u>[Signature]</u>
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation this 9<sup>th</sup> day of July, 2003.

Debra Santa Lucia  
Corporate (Assistant) Secretary

(Corporate Seal)

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permitted successors and assigns. This Agreement may be executed by one or more parties, in any number of separate counterparts, each of which counterparts shall be an original, but all of which when together shall be deemed to constitute one and the same instrument.

10.7 Jurisdiction and Venue. The parties hereto agree to the exclusive jurisdiction of the federal or state courts of the Commonwealth of Pennsylvania in any and all disputes, actions or proceedings arising hereunder. The proper venue for all such disputes, actions, or proceedings shall be Philadelphia County or any other county within the Commonwealth of Pennsylvania, in which either Vendor or CCL (or any of CCL's successors and assigns) or any of its property may be located.

10.8 Waiver of Jury Trial. The parties hereto (by acceptance of this Agreement) mutually hereby knowingly, voluntarily, and intentionally waive the right to a trial by jury in respect to any claim based hereon, arising out of, under or in connection with this Agreement or any other agreements or documents executed or contemplated to be executed in connection herewith, or any course of conduct, course of dealings, statements (whether verbal or written) or actions of any party, including, without limitation, any course of conduct, course of dealings, statements or actions of CCL, or any of its successors and assigns, relating to the administration or enforcement of the Contracts (collectively, "Actions" and singularly, an "Action"). Further, the parties hereto agree that in the event either party commences an Action, the losing party shall pay the costs and expenses, including, but not limited to, attorneys' fees, incurred the prevailing party in prosecuting or defending, as the case may be, such Action.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have caused their duly authorized representatives to execute this Vendor Program Agreement on the date first set forth above.

VENDOR:

COMMERCE COMMERCIAL LEASING VENDORLEASE

SIGNATURE: [Signature]

SIGNATURE: [Signature]

BY: NOVELLANCE, INC.

BY: COMMERCIAL LEASING VENDORLEASE

PRINT NAME: PETER J. SALZANO

PRINT NAME: MARTIN F. BAKER

TITLE: CEO

TITLE: EVP

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Investment." Upon receipt of the Uncovered Investments CCL or, if applicable, its assignee shall deliver to Vendor, without recourse, on an "AS-IS, WHERE IS" basis, a bill of sale and assignment for the Equipment and associated Contract and, in the event that CCL shall have prior thereto repossessed the equipment, the possession of the equipment.

c. If a Renter/Customer defaults on the first Rental payment due, Vendor will, upon demand by CCL, repurchase the defaulted Rental Contracts from CCL. The rate for repurchase will be calculated at the Net Book Value plus One and one half percent (1 1/2%) per month on the defaulted rental obligation. Once Five (5) booked transactions are repurchased by CCL during a twelve (12) month period, the rate for repurchase will be calculated at the Net Book Value plus One and one half percent (1 1/2%) per month on the defaulted rental obligation, plus an additional \$500 fee. Upon receipt by CCL of the Repurchase amount, CCL will deliver to Vendor, without recourse, on an "AS-IS, WHERE IS" basis, a bill of sale and assignment for the Equipment and associated Contract and, in the event that CCL shall have prior thereto repossessed the equipment, the possession of the equipment.

**SECTION EIGHT - INDEMNIFICATION AND LIMITATION OF LIABILITY**

**8.1 Indemnification**

a. Vendor agrees to indemnify and hold harmless CCL and its affiliates, subsidiaries, employees, directors, officers, members, shareholders, and agents, and any participant from any and all losses, claims, liabilities, demands and expenses ("Losses") whatsoever (including without limitation reasonable attorneys' fees) arising in connection with or in any way related to the breach of any of its warranties and representations. This indemnification shall also apply to the assertion of any claims by the Renter/Customer or any third party based upon damage to the environment allegedly caused by the Equipment and/or the assertion of claims based upon a theory of product liability or strict liability and any claim asserted against CCL for United States patent, trademark or copyright infringement.

b. CCL agrees to indemnify and hold harmless Vendor and its current and future successors, assigns, affiliates, subsidiaries, employees, directors, officers, members, shareholders, and agents, and any participants from any Losses sustained by Vendor in connection with or in any way related to any breach by CCL of its representations or warranties.

8.2 Survival of Indemnity. All obligations under this section shall survive any expiration or termination of this Agreement and the termination of any Contract, but in no event longer than the applicable Statute of Limitations.

**SECTION NINE - CONFIDENTIALITY**

**9.1 Confidentiality**

a. Procedures. All documents transmitted by one party to the other during the existence of this Agreement and identified on their face by the transmitting party as confidential to the recipient shall not be disclosed to anyone other than employees or independent contractors of the recipient and/or any subsequent assignee of CCL in the case of any confidential documents or information transmitted by Vendor to CCL. The recipient shall undertake the following procedures to preserve the confidentiality of Confidential Documents:

1. It shall limit the access of Confidential Documents to those who have need to their access; and
2. It shall inform those who use Confidential Documents that they shall maintain such documents as confidential.

b. Excluded Information. Section 9.1 shall not apply to information contained in documents identified as confidential if such information is:

1. Known to the recipient, as shown by its written records, prior to the time of receipt of such information under this Agreement.

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b. Vendor shall promptly fulfill and perform all obligations, covenants, liabilities, warranties and duties, if any, on its part to be fulfilled and performed in connection with a Contract and any other agreements or instruments executed by Vendor with respect to the installation, maintenance, or servicing by Vendor of the Equipment covered by a Contract. CCL or any subsequent assignee shall have no obligation or liability under a Contract and shall not be obligated to perform any of Vendor's obligations thereunder. Vendor's obligations under a Contract may be performed by CCL or any subsequent assignee, however, without releasing Vendor therefrom.

c. Vendor has advised or will advise each Renter/Customer of the availability of the service and maintenance agreements for Equipment covered under any Contract for a term not shorter than the remaining term of such Contract and on such terms and at rates determined by Vendor, Vendor will inform CCL promptly of any default by a Renter/Customer under such maintenance agreement of which Vendor becomes aware.

d. For the term of any Contract, Vendor shall promptly advise CCL of any matter of which Vendor has knowledge that may be detrimental to a Renter's/Customer's financial condition.

e. So long as this Agreement is in effect, Vendor will notify CCL of any change in the persons authorized to represent Vendor in the transactions contemplated hereby and in the event of any such change will provide CCL with updated evidence of authority and specimen signatures for each individual.

**SECTION SIX - CONTRACT SERVICING**

5.1 Service of Contracts. CCL shall provide general administrative services, including billing and collecting all Payments, fulfilling the obligations as Lessor or Owner under the Contracts, the enforcement of CCL's rights under the Contracts, including any Guaranty, and/or this Agreement and the taking of such other actions that may be necessary to protect CCL's rights and interest in and to the Contracts including any Guaranty and/or Equipment. CCL shall invoice each Renter/Customer for all amounts due under a Contract and will direct the Renter/Customer to make payments to the lockbox established in the name of CCL. CCL will provide a "Notice of Assignment" to all rental customers, whereby CCL has taken assignment from Vendor on a rental contract. CCL will service the program with Vendor by providing Telesales and Call Center Support from 8:30 AM to 5:30 PM (EST) Monday through Friday, except for CCL's designated holidays.

6.2 Preferred Source. Vendor designates CCL as a preferred source to provide the leasing services on any of Vendor's prospective transactions and Vendor shall inform its organization that CCL has been designated as a preferred source to provide the leasing services on any of Vendor's prospective transactions.

6.3 Service/Maintenance. Vendor agrees to provide all required service and/or maintenance (facilities) for the Equipment. CCL will require that Vendor bill for maintenance (facilities) separately from the monthly equipment rental invoice provided to the customer by CCL.

**SECTION SEVEN - REPURCHASE OF CONTRACTS**

7.1 Breach of Contracts. If (i) a Renter/Customer asserts against CCL any claim relating to a breach of warranty with respect to the equipment, (ii) the Renter/Customer rescinds a Contract upon a breach of representations, warranties or covenants made by Vendor, or (iii) Vendor breaches any of its representations, warranties or covenants contained in this Agreement, and, as a result of such breach, a Contract becomes in default, Vendor shall have thirty (30) days after receipt of notice from CCL to cure such breach. If Vendor fails in this regard, then Vendor shall repurchase from CCL such Contract, within three (3) business days of the receipt of such a request from CCL for an amount as follows:

a. An amount equal to the sum of the aggregate amount of all amounts presently due, all future unpaid Payments to be made under the Contract until the expiration of the initial term of the Contract, plus the estimated fair market value (ONLY on those contracts that Vendor requests CCL to take an FMV position) of the Equipment at the end of the initial term of the Contract with all accelerated Payments and the estimated fair market value of the Equipment discounted to the date of default at six percent (6%) per year.

b. The amounts set forth in subparagraph a, above shall be referred to as "Unrecovered

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b. It has all governmental approvals, permits, certificates, inspections, consents and franchises necessary to conduct its respective business, substantially as now conducted, and to own, lease, finance and operate its properties as now owned, financed or operated by it, except where the failure to obtain any of the foregoing does not materially and adversely impair the ability of each to operate its business or to perform its obligations under this Agreement.

5.2 Representations and Warranties of Vendor. Vendor represents and warrants to CCL that as of the date each Contract is submitted for approval or assigned to CCL as follows:

a. Vendor is a duly organized and validly existing New Jersey Corporation and has full power to enter into this Agreement and to carry out the transactions contemplated hereby and is in good standing in the state of its organization.

b. To the best of Vendor's knowledge, the Contract and all related documents, including any Guaranty, have been duly authorized, executed and delivered. Vendor shall have no duty to make any inquiry or perform due diligence with respect to the authorization, execution, or delivery of a Contract or a Guaranty. There are no other agreements between Vendor and the Renter/Customer or any guarantor, which will modify, amend or waive any terms or conditions of the Contract or Guaranty. The only expressed or implied warranties or representations made by Vendor or its agents to the Renter/Customer are those contained in the manufacturer's standard product warranty or any maintenance agreement.

c. Vendor and its agents, and employees have not committed any fraudulent act or participated in any fraudulent act or activity in connection with the execution, delivery or assignment of the Contract or any Guaranty or the performance of this Agreement.

d. Ownership of the Equipment shall be vested in CCL upon its initial funding to Vendor, free and clear of any and all liens and encumbrances whatsoever and such sale shall vest CCL with full, complete and unencumbered title to the Equipment and unless otherwise set forth in the Contract, the Equipment shall be new and unused when it is delivered to the Renter/Customer.

e. Vendor will perform such maintenance and service and provide such supplies, other Soft Costs and warranties as agreed to by Vendor and Renter/Customer, for the Equipment and/or as required by the Contract.

f. To the best of Vendor's knowledge, all credit information concerning the Renter/Customer or Renter's guarantor, if any, given to Vendor and relative to CCL's evaluation of such contract application ("Contract Application"), has been disclosed to CCL (including information of any fact or circumstance which would constitute a default under a Contract).

g. All applicable sales, use or property taxes, which may apply to the value, sale or use of the Equipment other than those assessed or imposed at or after the time CCL acquires the Equipment, shall have been paid to the appropriate taxing authority and Vendor will provide CCL with proof of such payment as promptly as possible, but in any event, within one hundred twenty (120) days of acquisition of the Equipment by CCL.

h. To the best of Vendor's knowledge, the Renter/Customer has not been or is not currently in default under the Contract and there has been no event, which with the giving of notice or the passage of time, would constitute an event of default under the Contract.

i. Vendor has not received any payments, or other money from the Renter/Customer or any guarantor of the Contract, which by agreement belongs to CCL (collectively, the "Payments"), and will immediately remit such funds to CCL if any are received; all other Payments remain outstanding and unpaid.

j. To the best of Vendor's knowledge, Vendor's conduct in soliciting, arranging or consummating the Contract or in accepting any Guaranty has not violated in any material respect any federal or state law, rule, or regulation, which will result in the rescission of any Contract.

k. Vendor will not take any action or omit to take any action, which will cause the Contract or any related document, including any Guaranty, to become invalid, cancelable, or unenforceable.

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NOV-23-2004 11:39

FROM: LEASER@2629604001

TO: BALE@36542250

**NORVERGENCE  
PROGRAM AGREEMENT**

This Program Agreement ("Agreement") is entered into as of 5/14/2003 by and between Norvergence, Inc. ("Vendor"), a New Jersey corporation, having a business office located at 350 Broad Street, Newark, NJ 07102 and Commerce Commercial Leasing Vendor Lease ("CCL"), having a lease processing center located at 110 Terry Drive, Newtown, PA 18940.

**Recital of Facts.** This Agreement is entered into in reference to the following facts:

a. Vendor is engaged in the retail sale of certain equipment and in connection therewith, desires to offer its customers the opportunity to rent such equipment (the "Equipment") and desires to offer CCL the opportunity to take assignment of such rental agreements (the "Rental Agreements") with such customers (the "Renters/Customers") for the Equipment. The Rental Agreements together with any guaranties, financing statements, schedules, and any and all agreements, instruments and other documents entered into and executed in connection therewith shall hereinafter be referred to, collectively, as "Contracts" and, individually, as a "Contract";

b. CCL agrees at its sole discretion to enter into Contracts with Renters/Customers, upon terms and conditions contained herein.

THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other valuable consideration received by Vendor, and intending to be legally bound, the parties hereby agree as follows:

**SECTION ONE - CONDITIONS OF AGREEMENT**

As conditions precedent to the effectiveness of this Agreement, Vendor and CCL shall deliver the following documents in form and substance satisfactory to each party:

- a. Duplicate originals of this Agreement duly executed by each party;
- b. A Secretary's Certificate executed by the Secretary or Assistant Secretary of each party certifying that the party is authorized to enter into this Agreement and that that individual executing this Agreement on behalf of the party is authorized to do so.

**SECTION TWO - CUSTOMER REFERRALS**

Vendor agrees that, subject to the provisions of Section 6.2 hereof, it shall refer current or future customers who may have an interest in renting Equipment to CCL for consideration of such customers as prospective Renters/Customers. The parties hereto agree that none of the prospective Renters/Customers, as used herein a "Customer," is defined as an individual who incurs an obligation including but not limited to a rental obligation, primarily for personal, family, or household purposes.

**SECTION THREE - CONTRACT APPLICATION ORIGINATION**

3.1 **Credit Review.** CCL requires complete credit and financial information on each prospective Renter/Customer in order to complete its credit review. For each proposed Contract application, Vendor shall provide CCL with or assist CCL in obtaining the following:

- a. A full and complete description of the Equipment;
- b. The economic terms of the proposed Contract;
- c. A complete and legible copy of the Contract application;
- d. All pertinent details and other such credit and financial data as CCL might require;
- e. CCL will provide "Application Only" credit decisions on transactions up to \$75,000.

**X. Representations made by Norvergence to Commerce**

- Norvergence will commit to providing CCL monthly lease volume at a rate of \$ 400,000 per month on average for the first year of the program.
- Norvergence will assign its reps and warranties on the equipment to CCL in the Program Agreement.
- CCL will require that Norvergence bill for facilities separately from the monthly equipment lease invoice sent to the end user customer by CCL.
- Norvergence will make available to Commerce it's sales organization, operational personnel, finance personnel, and any other support function for the purposes of communication as it relates to successfully managing the Vendor Leasing Program.
- Norvergence will commit to repurchasing leases from CCL for First payment defaults. The rate for repurchase will be 1 and 1/4 % per month of the outstanding balance on the defaulted lease obligation for the first 1% of defaults on booked leases in a 12-month period. Beyond the initial 1% of default repurchases in a 12-month period, Norvergence will pay an additional \$ 500 fee per repurchase per month.

**XI. Tax Benefits**

For the account of the Lessor (CCL) or Lessee.

**XII. Base Lease rate to Norvergence's end user customers**

- A lease rate is defined as the factor that Norvergence can use to calculate the monthly payment on a given transaction (less applicable taxes) for a given term.
- CCL will offer Norvergence a 61-month lease rate factor. The 61-month lease rate is based on receiving payments in arrears, with the first payment at zero and the remaining 60 payments at 0.2230.

**XIII. Lease Agreements**

The lease agreements will be "Triple-Net Leases" in which the lessee will be responsible for all expenses relating to the equipment including, but not limited to, equipment maintenance, insurance coverage, and all taxes (e.g. sales, use and personal property).

**XIV. Documentation Fee**

Commerce charges a standard \$ 75 documentation fee to process transactions for end user customers.

**XV. Insurance**

Lessee shall bear all risk of loss, damage, and liability to the equipment and the lessee shall be responsible to keep the equipment insured in an amount and in a form acceptable to CCL. Commerce will accept a verbal communication from the end user customer that they have insurance and will ask the customer to provide proof of insurance within 30 days of the notice of assignment. If proof of insurance is not received within that 30-day period, Commerce can and will provide insurance at the customer's expense.

**XVI. Warranties**

Lessor shall lease the equipment to lessee without representation or warranty on an AS IS BASIS. However, lessor shall assign to lessee all warranties, guarantees, and services provided by the manufacturer(s) to the extent they are assignable.

**XVII. Equipment specifications**

With respect to the equipment, each lease transaction will not become final until, among other things, assignee verifies the equipment specifications including, but not limited to: Model number, serial number, number of units, and installation costs; and approves the final equipment configuration.

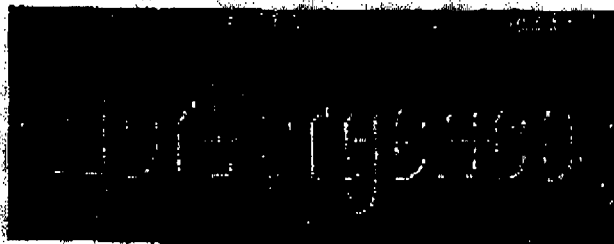
**XVIII. Business Information**

Norvergence will make available to CCL copies of its fiscal year end and Interim financial statements as well as other business information requested by CCL on a regular basis.





**A Commercial Leasing Program Proposal  
 Prepared Exclusively For Norvergence**



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