

149299

Agreement for Lease or Rental of IBM Machines

IBM Branch Office Address:

Agreement No.:

Branch Office No.:

Name and Address of Customer:

Customer No.:

International Business Machines Corporation (IBM) and the Customer agree that the following terms and conditions will apply to any Customer order for lease or rental of IBM machines that is accepted by IBM under this Agreement. Under these terms and conditions, IBM will 1) lease or rent machines to the Customer, 2) provide maintenance service for machines and 3) as available, furnish programming and programming services, all as described herein. The Customer agrees to accept the machines, maintenance service, programming and programming services under the terms and conditions of this Agreement. The Customer further agrees with respect to the machines and programming to accept the responsibility for 1) their selection to achieve the Customer's intended results, 2) their use and 3) the results obtained therefrom. The Customer also has the responsibility for the selection and use of, and results obtained from, any other equipment, programs or services used with the machines and programming.

The term "machines" as used in this Agreement refers to machines and/or their model upgrades and features unless the context requires individual reference to model upgrades and features.

Specific machines, model upgrades and features become subject to this Agreement when either 1) a Supplement to Agreement for Lease or Rental of IBM Machines (Supplement) is signed by the Customer and IBM or 2) other written order is signed by the Customer and accepted by IBM.

CONTRACT PERIOD

IBM will determine the Lease or Rental Contract Period or Periods for which each machine is eligible. The Customer may select the Lease or Rental Contract Period for each machine from the alternatives available.

Lease Contract Period

A Lease Contract Period has a Commencement Date, a Base Term and an Expiration Date each of which will be specified in the Supplement.

Eligible machines become subject to the provisions of a Lease Contract Period when a Supplement listing the machines is signed by the Customer and IBM.

The Commencement Date for a machine being installed will be the day (Monday through Friday) following the day that the machine is installed, as specified by IBM, provided the applicable Supplement is received by IBM on or before such Commencement Date.

The Commencement Date for a machine already installed under a Rental Contract Period will be the day the applicable Supplement is received by IBM. The Commencement Date of a new Lease Contract Period for a machine already installed under a Lease Contract Period or Extension will be the day immediately following the Expiration Date of such Lease Contract Period or Extension, provided that the applicable Supplement is received by IBM on or before such Commencement Date.

The Expiration Date of a Lease Contract Period is determined initially by adding the Base Term to the Commencement Date, and thereafter may be adjusted as described in the Section entitled "Machine Modifications."

A Lease Contract Period may be extended as described in the Section entitled "Lease Contract Period Extension."

Rental Contract Period

A Rental Contract Period has a Commencement Date and is of indefinite duration.

Eligible machines become subject to the provisions of a Rental Contract Period when a written order is signed by the Customer and accepted by IBM.

The Commencement Date for a machine being installed will be the day (Monday through Friday) following the day that the machine is installed, as specified by IBM.

The Commencement Date for an eligible machine already installed will be the day following the Expiration Date of its Lease Contract Period or Extension.

CHARGES

IBM will determine the Monthly Lease Charge or Monthly Rental Charge applicable to the Lease or Rental Contract Period or Periods for which each machine is eligible. In addition, IBM will specify the Plan Offering for each machine as:

Plan A: Each Plan A machine which is installed under a Rental Contract Period is subject to an Additional Use Charge for billable time in excess of 176 hours in any calendar month, as measured by an IBM meter, at an hourly rate which is equal to 1/176th of the Monthly Rental Charge multiplied by IBM's applicable Additional Use Charge Percent then generally in effect. There is no Additional Use Charge for a Plan A machine which is installed under a Lease Contract Period or Extension.

Plan B: For each Plan B machine, the Monthly Lease Charge or Monthly Rental Charge provides the Customer with unlimited use in any calendar month.

Plan C: Each Plan C machine is subject to a Monthly Use Charge which is determined by multiplying the amount of processing performed by the machine, as measured by an IBM meter, by IBM's applicable Monthly Use Charge Rate then generally in effect.

Charges for each machine will begin on the Commencement Date of its Lease Contract Period or Extension or Rental Contract Period.

Lease Contract Period Monthly Charges

For Lease Contract Periods and Extensions, the Customer agrees to pay the applicable Monthly Lease Charge for each machine and, in addition, the applicable Monthly Use Charge for each Plan C machine.

Rental Contract Period Monthly Charges

For Rental Contract Periods, the Customer agrees to pay the applicable Monthly Rental Charge for each machine and, in addition, the applicable Additional Use Charge for each Plan A machine and Monthly Use Charge for each Plan C machine.

Meter Readings

IBM will install and maintain its meters for Plan A and Plan C machines. For each Plan A machine, where required, and for each Plan C machine, the Customer agrees to furnish a monthly report to IBM showing the meter reading as of the close of the last work day of each calendar month. The Customer agrees to use due care not to interfere with the proper operation of the meters.

Please send all communications to IBM at its branch office listed above unless notified to the contrary.

Increases in Lease Contract Period Monthly Charges

For each year of a Lease Contract Period for a machine, beginning with the Commencement Date designated in the Supplement, and thereafter with each Anniversary Date, there will be a maximum Monthly Lease Charge (Upper Limit) for that year. The Upper Limit for the first year of the Lease Contract Period is the initial Monthly Lease Charge in effect for a machine on the Commencement Date specified in the Supplement. The Upper Limit for each succeeding year is calculated by increasing the Upper Limit for the preceding year by an amount which is derived by multiplying the initial Monthly Lease Charge by the Upper Limit Percent specified in the Supplement. For these calculations, when a machine becomes subject to the provisions of a Lease Contract Period on or after announcement, but before the effective date, of an increase in the Monthly Lease Charge, such increased Charge will be used as the initial Monthly Lease Charge.

For a machine not yet installed, if the Supplement for the machine has been signed by the Customer and IBM, IBM may not increase the Monthly Lease Charge or Upper Limit Percent unless written notice shall have been given to the Customer at least three months before the date of shipment. In the event of such an increase, the Customer may elect to void the Supplement for the affected machine within one month of notification of such increase by IBM.

For a machine which is installed, IBM may increase the Monthly Lease Charge upon three months' prior written notice. Such increased Monthly Lease Charge will be the lowest of 1) the Monthly Rental Charge generally in effect for such machine on the effective date specified in the notice, 2) the Monthly Lease Charge generally in effect for such machine on the effective date specified in the notice for Customers commencing a new Lease Contract Period with the same Base Term or 3) the Upper Limit in effect for that year, and, to the extent that any increase exceeds the applicable Upper Limit, the excess will automatically be effective on ensuing Anniversary Dates.

The Upper Limit Percent specified in the Supplement will not be increased during the Lease Contract Period.

The Monthly Lease Charge for a model upgrade or feature addition may be increased by IBM in the same manner and in accordance with the same Upper Limit calculations as for machines and pursuant to the provisions set forth in the Section entitled "Machine Modifications."

The Monthly Use Charge Rate for each Plan C machine may be increased by IBM in the same manner and in accordance with the same Upper Limit calculations as Monthly Lease Charges.

Except as provided in this Section and in the Section entitled "Lease Contract Period Extension," all increases in the Monthly Lease Charge, Monthly Use Charge Rate and Upper Limit Percent will become effective on the date specified in the notice of such increase.

Increases in Rental Contract Period Monthly Charges

For a machine under a Rental Contract Period, IBM may increase the Monthly Rental Charge, Additional Use Charge Rate or Monthly Use Charge Rate upon three months' prior written notice. The Customer may discontinue any machine included in such notice on the effective date of the increase upon one month's prior written notice. Otherwise, the new Charge and Rates will become effective as specified.

Destination Charges

All destination charges for each machine, model change or feature, both from and to designated IBM locations, and any rigging charges will be paid by the Customer in accordance with IBM's then current shipping and billing practices. The cost of labor for crating and uncrating is a Customer expense except when performed at an IBM location.

Applicable Taxes

In addition to the charges due under this Agreement, the Customer agrees to pay amounts equal to any taxes resulting from this Agreement, or any activities hereunder, exclusive of property taxes and taxes based on net income.

LEASE CONTRACT PERIOD EXTENSION

Unless otherwise specified in the Supplement, the Customer may extend a Lease Contract Period for a machine any number of times for one year and one time for a period of less than one year. The Commencement Date of an Extension will be the day following the Expiration Date of the Lease Contract Period or Extension then in effect.

The charges, terms and conditions for the ensuing Extension will not be changed by IBM from the date three months prior to the Commencement Date of such Extension through its Expiration Date, except that if such Expiration Date is adjusted as described in the Section entitled "Machine Modifications," the charges during the adjustment period may be increased by IBM in accordance with the Upper Limit

provisions described in the Sections entitled "Increases in Lease Contract Period Monthly Charges" and "Purchase Option." Prior to the Expiration Date of a Lease Contract Period or one-year Extension, IBM will provide the Customer with written notice of all such charges, terms and conditions for the ensuing Extension.

The one-year Extension Period for each machine will commence automatically unless the Customer notifies IBM in writing on or before the Expiration Date of the Lease Contract Period or current one-year Extension that the Customer elects one of the following choices, as available:

- a) to extend for a period of less than one year at the end of which time the machine will be placed under a Rental Contract Period, if available, unless otherwise agreed;
- b) to execute a Supplement for a new Lease Contract Period;
- c) to place the machine under a Rental Contract Period; or
- d) to purchase the machine.

In addition, the Customer may discontinue a machine or feature or request a model downgrade effective on the Expiration Date of a Lease Contract Period or Extension upon one month's prior written notice.

MACHINE MODIFICATIONS

Upon the Customer's written request, IBM will make field installable model or feature changes to a machine installed under this Agreement.

Model Upgrades and Feature Additions

A model upgrade is defined as a model change which results in an increase in the Monthly Lease Charge or Monthly Rental Charge.

Each model upgrade or feature addition to a machine installed under a Lease Contract Period or Extension may be placed either under that Lease Contract Period or Extension or, if available, under a Rental Contract Period.

- a) If placed under the Lease Contract Period or Extension, the model upgrade or feature addition will be installed at IBM's applicable Monthly Lease Charge and Monthly Use Charge Rate, if any, then generally in effect for new orders for such model upgrade or feature having the same Base Term as the installed machine. When a model upgrade is installed under that Lease Contract Period or Extension, such Lease Contract Period or Extension will be lengthened to provide a common Expiration Date for the machine and the model upgrade. When a feature addition is installed under that Lease Contract Period or Extension, such Lease Contract Period or Extension will not be lengthened.

The model upgrade or feature addition will assume the same Anniversary Date (but not the same Commencement Date) and Upper Limit Percent as the installed machine for purposes of determining future increases in the Monthly Lease Charge and any applicable Monthly Use Charge Rate.

- b) If placed under a Rental Contract Period, the model upgrade or feature addition to a machine which is under a Lease Contract Period or Extension will be installed at IBM's Monthly Rental Charge then generally in effect. For a model upgrade or feature addition to a Plan A machine, an Additional charge, as specified by IBM, will apply in lieu of any Additional Use Charge. For a model upgrade or feature addition to a Plan C machine, IBM's applicable Monthly Use Charge Rate then generally in effect will apply. The Expiration Date of the Lease Contract Period or Extension will not be adjusted.

Each model upgrade or feature addition to a machine installed under a Rental Contract Period may only be placed under a Rental Contract Period and will be installed at IBM's Monthly Rental Charge, and Additional Use Charge Rate or Monthly Use Charge Rate, as applicable, then generally in effect.

The Commencement Date for a model upgrade or feature addition will be the day (Monday through Friday) following the day that the model upgrade or feature addition is installed, as specified by IBM, provided IBM has received the Supplement or accepted the written order by that Date.

Model Downgrades and Feature Discontinuances

A model downgrade is defined as a model change which results in a decrease in the Monthly Lease Charge or Monthly Rental Charge.

The downgrade of a model or discontinuance of a feature prior to the Expiration Date of its Lease Contract Period or Extension will be subject to the provisions of the Section entitled "Termination Charges."

The downgrade of a model or discontinuance of a feature installed under a Rental Contract Period will not result in a Termination Charge.

DISCONTINUANCE NOTICE

Subject to the Sections entitled "Increases in Rental Contract Period Monthly Charges," "Lease Contract Period Extension," "Limitation of Remedies" and "Termination Charges," the Customer

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may, at any time after installation, discontinue a processor complex unit upon three months' prior written notice, or discontinue any other machine or any field removable feature or request a field removable model downgrade upon one month's prior written notice.

TERMINATION CHARGES

The Customer will pay IBM as a Termination Charge, upon termination of a Lease Contract Period or Extension for a machine or model prior to the Expiration Date of such Lease Contract Period or Extension, the lesser of:

- a) the Termination Charge Percent specified in the Supplement multiplied by the Remaining Contract Value; or
- b) the Termination Charge Months specified in the Supplement multiplied by the applicable Monthly Lease Charge value as of the date of termination.

The Remaining Contract Value of a machine or model downgrade is determined by multiplying its applicable Monthly Lease Charge value as of the date of termination by the number of months remaining in its Lease Contract Period or Extension. The discontinuance of a feature will not result in a Termination Charge, except that the Monthly Lease Charge of any feature which is on a machine at any time within three months prior to the date of termination of the Lease Contract Period or Extension for such machine will be included in the Monthly Lease Charge value of such machine.

For a machine not yet installed, if the Supplement for the machine has been signed by the Customer and IBM, IBM may not increase the Termination Charge Percent or the Termination Charge Months unless written notice shall have been given to the Customer at least three months before the date of shipment. For a machine which is installed, IBM may not increase such Percent or Months during a Lease Contract Period.

Return of a machine to IBM upon the Customer's request during a Lease Contract Period or Extension for any reason, including machine replacement for model or feature changes which are not field installable, or due to the Customer's failure to comply with any of the terms and conditions of this Agreement, shall be a termination for purposes of this Section.

The purchase of a machine under the provisions of the Section entitled "Purchase Option" will not result in a Termination Charge.

PURCHASE OPTION

The Customer may elect to purchase a machine installed under a Lease Contract Period or Extension by executing an Agreement for Purchase of Installed IBM Machines. Upon request from the Customer, IBM will quote a net purchase option price for such machine including its model upgrades and features as of a specific month that is not more than three months from the date of the request.

The net purchase option price, as calculated for each machine, model upgrade and feature, will be the lower of 1) the Purchase Price stated in the Supplement, as modified in accordance with this Section, less any applicable purchase option credits not to exceed an amount determined by multiplying such modified Purchase Price by the Maximum Purchase Accrual Percent, or 2) IBM's purchase price then generally in effect, less any applicable purchase option credits not to exceed an amount determined by multiplying such purchase price by the Maximum Purchase Accrual Percent. The Maximum Purchase Accrual Percent will be specified in the Supplement.

The purchase option credits are determined by multiplying:

- a) the applicable Monthly Lease Charges paid under this Agreement by the Purchase Option Percent specified in the applicable Supplement; and
- b) applicable monthly charges, if any, paid under other IBM agreements by the purchase option percents applicable under those agreements.

For purposes of this calculation, the period during which monthly charges are eligible for purchase option credits is the period during which the machine has been continuously installed but may not exceed the Maximum Accrual Period. Eligible monthly charges will be applied in the order in which they are first incurred and do not include Additional Use Charges or Monthly Use Charges.

When a machine ceases to be installed under this Agreement, all purchase option credits accrued hereunder with regard to that machine shall expire.

Purchase option credits accrue individually for each machine, model upgrade and feature and only during the accrual period of the machine. Purchase option credits are not transferable to other Customers or between machines, or among a machine, its models and features.

For a machine not yet installed, if the Supplement for the machine

has been signed by the Customer and IBM, IBM may not increase the Purchase Price nor decrease the Purchase Option Percent, Maximum Purchase Accrual Percent or Maximum Accrual Period unless written notice shall have been given to the Customer at least three months before the date of shipment.

For a machine which is installed, IBM may increase the Purchase Price immediately upon written notice, subject to Upper Limits determined in the same manner as for Monthly Lease Charges as described in the Section entitled "Increases in Lease Contract Period Monthly Charges." The Purchase Option Percent, Maximum Purchase Accrual Percent and Maximum Accrual Period for a machine, will not be decreased during a Lease Contract Period.

The Customer may elect to purchase a machine installed under a Rental Contract Period by executing an Agreement for Purchase of Installed IBM Machines, at IBM's then applicable purchase price for such machine. Upon request from the Customer, IBM will quote the applicable purchase price for such machine including its model upgrades and features as of a specific month that is not more than three months from the date of the request.

SHIPMENT

IBM agrees to schedule each machine for shipment in accordance with IBM's applicable shipment sequence and will confirm in writing, and amend as necessary, the Customer's schedule. Prior to shipment IBM will make reasonable accommodation to a delay requested by the Customer.

PROGRAMMING

The term "programming" as used in this Agreement shall mean such programming as IBM may make generally available, from time to time, without separate charge, for machines of the types ordered by the Customer under this Agreement. IBM will furnish such programming as may be requested by the Customer.

The term "programming services" shall mean such services as IBM may generally make available without separate charge in connection with programming. IBM will determine the programming services available and their duration.

The terms "programming" and "programming services" do not include IBM programs and services that are available for a separate charge or which are offered under separate written agreements.

ALTERATIONS AND ATTACHMENTS

An alteration is defined as any change to an IBM machine which deviates from IBM's physical, mechanical or electrical machine design whether or not additional devices or parts are required. An attachment is defined as the mechanical, electrical or electronic interconnection to an IBM machine of non-IBM equipment and devices not supplied by IBM.

An alteration to a machine may be made upon prior written notice to IBM. An attachment to a machine may be made without notice to IBM.

The Customer agrees to accept the responsibility for making any such alteration or attachment, its use and the results obtained therefrom, and to pay all charges related to the alteration or attachment as described in the Section entitled "Maintenance Service." The Customer further agrees to remove any alteration or attachment and to restore the machine to its normal, unaltered condition prior to its return to IBM, or upon notice from IBM that the alteration or attachment creates a safety hazard or renders maintenance of the machine impractical.

MAINTENANCE SERVICE

IBM will provide maintenance service to keep each machine in or restore it to good working order and will make all necessary adjustments, repairs and parts replacements. For this purpose, IBM shall have full and free access to the machine. The Customer agrees to provide a suitable installation environment as specified in the applicable IBM installation manual.

The Customer agrees to pay, at IBM's applicable time and material rates then in effect, all charges for maintenance and other service activities, or to pay for loss of or damage to a machine, caused by 1) use of the machine for other than data processing purposes for which designed, or 2) alterations and attachments. The Customer also agrees to pay, at IBM's applicable time and material rates then in effect, all charges for repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls caused by the use of supplies.

All maintenance and other service activities (including but not limited to activities relating to pre-installation planning, inspections, relocation of machines, engineering changes and altered programming) which may be made available by IBM to the Customer at no additional charge or at IBM's then applicable time and material charges,

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in connection with any machines or programming supplied under this Agreement shall be subject to the terms and conditions of this Agreement unless such activities are provided under another written agreement signed by the Customer and IBM.

ADDITIONAL PRODUCTS AND SERVICES

In addition to the machines, programming and services provided under this Agreement, IBM offers other products and services at separate charges under applicable written IBM agreements. IBM and the Customer agree that such products and services cannot be the subject of an oral agreement. The Customer may contract with IBM for any such products or services as available, but only under the terms and conditions of a written agreement signed by the Customer and IBM.

TRAVEL EXPENSE

There will be no charge for travel expense associated with maintenance service or programming service under this Agreement except that actual travel expense shall be charged in those instances where the site at which the machine is located is not normally accessible by private automobile or scheduled public transportation.

RISK OF LOSS OR DAMAGE

During the period a machine, model change or feature is in transit or in the possession of the Customer, IBM and its insurers, if any, relieves the Customer of responsibility for all risks of loss of or damage to the machine, model change or feature except for loss or damage 1) caused by nuclear reaction, nuclear radiation or radioactive contamination for which the Customer is legally liable, and 2) as set forth in the Section entitled "Maintenance Service."

INVOICING

Monthly Lease Charges and Monthly Rental Charges will be invoiced in advance as of the first of each month. Additional Use Charges and Monthly Use Charges will be invoiced in the month following the month in which they are incurred. When a machine, model change or feature is installed for a part of a calendar month, the Monthly Lease Charge or Monthly Rental Charge will be prorated on the basis of a 30-day month. Additional Use Charges will be prorated in accordance with IBM's established practices. Payment will be made within 30 days after the date of invoice. All other charges due hereunder are payable as specified in the invoice.

WARRANTIES

IBM warrants that each machine, model upgrade or feature addition will be in good working order on the day that it is installed and that it will conform to IBM's official published specifications. Thereafter, IBM will make all adjustments, repairs and parts replacements necessary to maintain the machine, subject to the provisions stated in the Sections entitled "Maintenance Service" and "Risk of Loss or Damage."

IBM further warrants that programming designated by IBM for use with a machine and for which programming services are available will conform to IBM's official published specifications when shipped to the Customer if properly used on such machine. Thereafter, IBM will provide programming services, subject to the provisions stated in the Section entitled "Programming."

IBM does not warrant that the functions contained in the programming will operate in the combinations which may be selected for use by the Customer, or will meet the Customer's requirements.

ALL PROGRAMMING FOR WHICH NO PROGRAMMING SERVICES ARE AVAILABLE IS DISTRIBUTED ON AN "AS IS" BASIS WITHOUT WARRANTY.

IBM does not warrant that the operation of the machine or programming will be uninterrupted or error free, or that all programming errors will be corrected.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

PATENT AND COPYRIGHT INDEMNITY

IBM will defend the Customer against a claim that machines or programming supplied hereunder infringes a U.S. patent or copyright, or that the machines' operation pursuant to a current release and modification level of any programming supplied by IBM infringes a U.S. patent. IBM will pay resulting costs, damages and attorney's fees finally awarded provided that:

- a) The Customer promptly notifies IBM in writing of the claim; and
- b) IBM has sole control of the defense and all related settlement negotiations.

If such claim has occurred, or in IBM's opinion is likely to occur, the Customer agrees to permit IBM, at its option and expense, either to procure for the Customer the right to continue using the machines or programming or to replace or modify the same so that they become non-infringing. If neither of the foregoing alternatives is reasonably available, the Customer agrees to return the machines or programming, or written request by IBM. No Termination Charges will be payable on such returned machines, and the Customer will pay only those charges which were payable prior to the date of such return.

IBM has no liability for any claim based upon the combination, operation or use of any machines or programming supplied hereunder with equipment or data not supplied by IBM, or with any program other than or in addition to programming supplied by IBM if such claim would have been avoided by use of another program whether or not capable of achieving the same results, or based upon alteration of the machines or modification of any programming supplied hereunder.

The foregoing states the entire obligation of IBM with respect to infringement of patents and copyrights.

LIMITATION OF REMEDIES

IBM's entire liability and the Customer's exclusive remedy shall be as follows:

In all situations involving performance or non-performance of machines, model upgrades, features or programming furnished under this Agreement, the Customer's remedy is 1) the adjustment or repair of the machine, model upgrade or feature, or replacement of its parts by IBM, or, at IBM's option, replacement of the machine, model upgrade or feature, or correction of programming errors, or 2) if, after repeated efforts, IBM is unable to install the machine, model upgrade or feature or a replacement machine, model upgrade or feature in good working order, or to restore it to good working order, or to make programming operate, all as warranted, the Customer shall be entitled to recover actual damages to the limits set forth in this Section. For any other claim concerning performance or non-performance by IBM pursuant to, or in any other way related to the subject matter of, this Agreement and any Supplement or other order under this Agreement, the Customer shall be entitled to recover actual damages to the limits set forth in this Section.

IBM's liability for damages to the Customer for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to the greater of \$100,000 or twelve Monthly Lease Charges or Monthly Rental Charges for the specific machines that caused the damages or that are the subject matter of or are directly related to the cause of action. Such Charges shall be those in effect for the specific machines when the cause of action arose. The foregoing limitation of liability will not apply to the payment of cost and damage awards referred to in the Section entitled "Patent and Copyright Indemnity," or to claims for personal injury caused solely by IBM's negligence.

In no event will IBM be liable for any damages caused by the Customer's failure to perform the Customer's responsibilities, or for any lost profits or other consequential damages, even if IBM has been advised of the possibility of such damages, or for any claim against the Customer by any other party, except as provided in the Section entitled "Patent and Copyright Indemnity."

The Customer may discontinue a machine forthwith without Termination Charges for failure of IBM to comply with any of the terms and conditions of this Agreement applicable to such machine.

GENERAL

This Agreement is not assignable; none of the machines may be sublet, assigned or transferred by the Customer without the prior written consent of IBM. Any attempt to sublet, assign or transfer any of the rights, duties or obligations of this Agreement without such consent is void.

Machines under this Agreement are to be located only in the United States and Puerto Rico. The Customer agrees to keep IBM informed of the location of each machine. Each machine remains IBM's property and may be removed by IBM at any time after discontinuance of the machine. IBM shall have full and free access to each machine for this purpose.

IBM may, upon three months' prior written notice to the Customer, discontinue a machine or feature or downgrade a model under a Rental Contract Period at any time, or under a Lease Contract Period or Extension on its Expiration Date. IBM may discontinue a machine forthwith for failure of the Customer to comply with any of the terms and conditions of this Agreement applicable to such machine.

The Agreement may be terminated by either party, upon one month's prior written notice, following the discontinuance of all machines and fulfillment of all obligations hereunder.

Subject to the terms of the following paragraph, IBM may, upon twelve months' prior written notice, modify the terms and conditions of this Agreement, except that IBM may, upon three months' prior written notice, modify the terms and conditions of the Sections entitled "Charges," "Termination Charges," "Purchase Option," "Lease Contract Period Extension" and "Machine Modifications."

Any such modification will apply on the effective date specified in the notice to all Rental Contract Periods, to current Lease Contract Periods or Extensions upon their Expiration Dates, provided such occur on or after the effective date, and to new Lease Contract Periods or Extensions which commence on or after the date of the notice. Otherwise, the Agreement or any Supplements can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of the Customer and of IBM, and variance from the terms and conditions of this Agreement and any Supplements in any Customer order or other written notification will be of no effect.

IBM is not responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control.

No action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has arisen, or, in the case of nonpayment, more than two years from the date of the last payment.

This Agreement will be governed by the laws of the State of New York.

THE CUSTOMER ACKNOWLEDGES THAT HE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. FURTHER, THE CUSTOMER AGREES THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

Received by IBM at _____
Branch Office Name/Number

By _____
Manager's Signature

Manager's Name (Type or Print)

On _____
Date

Accepted by:
International Business Machines Corporation

By _____
Authorized Signature

Name (Type or Print)

Title

On _____
Date

Customer

By _____
Authorized Signature

Name (Type or Print)

Title

On _____
Date

International Business Machines Corporation

Armonk, New York 10504

Supplement to Agreement for Lease or Rental of IBM Machines

Branch Office Address:

Reference Agreement No.:

This Supplement No.:

Name and Address of Customer:

Branch Office No.:

Customer No.:

The following machines are subject to the referenced Agreement for Lease or Rental of IBM Machines:

Item No.	Qty	Machine Type*	Model	Description	Feature Qty. (Each Machine) Number	Monthly Lease Charge (Unit Price)	Feature Single Use Charge (Unit Price)	Purchase Price** (Unit Price)
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Item No.	Plan C Monthly Use Charge Rate	IBM Plant Order Number(s) (On-Order Machine)	Serial Number(s)*** (Installed Machine)	Upper Limit Percent (5% Unless Noted)	Termination Charge Percent (25% Unless Noted-5 Months)	Purchase Option Percent	Base Term (24 Months) (Unless Noted)	Commencement Date***	Expiration Date***
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(* Denotes processor complex unit. (**) Maximum Purchase Accrual Percent: 50%. (***) Serial number(s), if not shown, and date(s) will be entered by IBM upon commencement of the Lease Contract Period(s) and a completed copy of this Supplement will be returned to the Customer.

THE CUSTOMER ACKNOWLEDGES THAT THE CUSTOMER HAS READ THE AGREEMENT FOR LEASE OR RENTAL OF IBM MACHINES TOGETHER WITH THIS SUPPLEMENT AND AGREES TO BE BOUND BY THEIR TERMS AND CONDITIONS. FURTHER, THE CUSTOMER AGREES THAT THE AGREEMENT AND THIS SUPPLEMENT ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND THIS SUPPLEMENT.

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Authorization to lease the above listed machines under the terms of the Agreement for Lease or Rental of IBM Machines is hereby given.

International Business Machines Corporation

By _____
Manager's Signature Date

Customer
By _____
Authorized Signature Date

Manager's Name (Type or Print)

Name (Type or Print)

Please send all communications to IBM at its branch office address listed above unless notified to the contrary.

ORDINANCE NO. 149299

An Ordinance authorizing a rental agreement with IBM Corporation to furnish computer equipment for the Bureau of Police for the remainder of Fiscal Year 1979-80; authorizing the drawing and delivery of warrants; authorizing negotiation of lease or rental agreements for Fiscal Year 1980-81 and succeeding years as appropriate; and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. The Police Bureau requires a replacement for its present minicomputer to perform data entry into the CRISS computer system and for data processing within the Bureau in accordance with the Bureau's Five Year Data Processing Plan, and for which additional monies were budgeted in the FY 1979-80 budget.
2. The Purchasing Agent was authorized to advertise for bids for the subject computer equipment by Ordinance No. 148901 which resulted in solicitation for Bid No. 72.
3. The IBM Corporation submitted the lowest responsible bid for Bid No. 72.
4. The bids were submitted for individual pieces of equipment with alternative financing plans that were in some cases higher and in other cases lower than originally planned.
5. That it is in the best interests of the Bureau and the City to negotiate further with IBM Corporation among the various available options to select the optimum contractual agreement for Fiscal Year 1980-81 and succeeding years and to review alternative financing arrangements that will not exceed \$98,000 annually during any two year period.
6. That the period from March 19, 1980 to June 30, 1980 will allow sufficient time for the Bureau and the City to negotiate a reasonable price and an appropriate lease or rental period with IBM.
7. Funds are available within the present appropriation of the Police Bureau for rental of this equipment for the remainder of Fiscal Year 1979-80.
8. The Bureau of Computer Services and the Purchasing Agent concur with the Bureau of Police in this action.

NOW, THEREFORE, The Council directs:

- a. The Auditor and Commissioner of Public Safety are authorized to execute a monthly rental agreement for the remainder of Fiscal Year 1979-80 with IBM Corporation for the subject computer equipment in accordance with specifications filed with the Purchasing Agent under Bid No. 72.

ORDINANCE No.

- b. The Mayor and Auditor are hereby authorized to draw and deliver warrants, chargeable to the 1979-80 Budget; Bureau of Police, AU 100, RU 117, BUC 11700055, Object Code 230; when demand is presented, approved by the proper authorities.
- c. The Purchasing Agent, with assistance from the Bureau of Computer Services and the Bureau of Police, is authorized to negotiate with IBM Corporation to establish the optimum rental and/or lease agreements for acquisition of the subject computer equipment for Fiscal Year 1980-81 and succeeding years as appropriate; such extended rental or lease agreement shall not exceed a total cost of approximately \$ 98,000 annually during any two year period.
- d. The Bureau of Police will return on or about July 1, 1980 with an Ordinance for authorization of lease or rental of the subject computer equipment for Fiscal Year 1980-81 and succeeding years.

Section 2. The Council declares that an emergency exists because a delay in proceeding with this rental may result in additional expense, and will unnecessarily deprive the Bureau of Police of the advantages of this new equipment; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **MAR 19 1980**

James M. [Signature]
Mayor of the City of Portland

Commissioner Charles Jordan
March 12, 1980
M. A. Sims: aft

Attest:

Serge [Signature]
Auditor of the City of Portland

Calendar No. 950

ORDINANCE No. 149299

Title

An Ordinance authorizing a rental agreement with IBM Corporation to furnish computer equipment for the Bureau of Police for the remainder of Fiscal Year 1979-80; authorizing the drawing and delivery of warrants; authorizing negotiation of lease or rental agreements for Fiscal Year 1980-81 and succeeding years as appropriate; and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie	1	
Jordan	1	
Lindberg	1	
Schwab	1	
McCready		1

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

INTRODUCED BY
<i>Commissioner JORDAN</i>

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety <i>Charles Jordan</i>
Utilities
Works

BUREAU APPROVAL
Bureau: Police
Prepared By: <i>M. A. Sims</i> Date: 3/12/80
Budget Impact Review: <i>Rec'd 3/14/80</i> <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: <i>B. R. Baker</i> B. R. Baker, Chief of Police

NOTED BY
City Attorney
City Auditor
City Engineer <i>[Signature]</i>

Filed MAR 14 1980

GEORGE YERKOVICH
 Auditor of the CITY OF PORTLAND

By *[Signature]*
 Deputy

065011