

This Settlement Agreement (“Agreement”) is entered into this 30th day of June, 2003 (“Effective Date”) by and between the following parties: Kelly Pierce and Anna Byrne (hereafter “Claimants”) and Bank One, National Association (Columbus), on behalf of itself and its affiliated banks (collectively “Bank One”), for the purposes and on the terms specified herein. This Agreement operates in conjunction with the Confidential Addendum executed herewith.

## RECITALS

This Agreement is based on the following facts:

A. Each Claimant is an individual with a vision impairment who currently has, had, or would like to have one or more bank accounts with Bank One or would like to use Bank One Automated Teller Machines as defined in Section 1.3, via a network system. Each Claimant is an individual with a disability within the meaning of section 3(2) of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, 12102(2) (“ADA”) and 28 C.F.R. §36.104.

B. The law firm of Goldstein, Demchak, Baller, Borgen & Dardarian (“Goldstein, Demchak”) and the attorneys practicing law therein and the Law Office of Elaine B. Feingold (“Feingold”) (collectively “Counsel”) represent the Claimants.

C. Bank One does business in states across the United States, where Bank One owns, operates or leases Automated Teller Machines (“ATMs”), provides written materials related to various consumer banking products, and makes its website available to the public.

D. A dispute has arisen between Claimants on one side and Bank One on the other side, concerning whether Bank One provides Claimants and other vision-impaired persons with legally required access to its ATMs, printed materials, and website (“the Dispute”). The Dispute was brought to the attention of Bank One by written correspondence from Claimants’ Counsel sent in June 1999. Regarding its ATMs, Bank One replied by letter, in July 1999, that it was in compliance with the requirements of the ADA by virtue of, among other things, Braille applications on the ATMs, bank personnel assistance at its staffed locations, and its 24 hour “bank by phone” service. Since that time, the Parties and their respective counsel have met and conferred in good faith and have participated in laboratory and field testing of Bank One Talking ATMs, in efforts to resolve the Dispute.

E. On April 15, 2001, the Parties to this Agreement entered into a Preliminary Agreement (“Preliminary Agreement”) under which over one hundred and thirty (130) Bank One Talking ATMs as defined in the Preliminary Agreement have been installed. In April 2001, pursuant to section 4.2 of the Preliminary Agreement, the Parties began negotiating in good faith regarding outstanding issues set forth in section 4.2 of the Preliminary Agreement. In September 2001, pursuant to section 4.3 of the Preliminary Agreement, the Parties began negotiating in good faith regarding outstanding

issues set forth in section 4.3 of the Preliminary Agreement. This Agreement is the product of those good faith negotiations as required by sections 4.2 and 4.3 of the Preliminary Agreement.

F. The Parties enter into this Agreement to avoid the burden, expense, and risk of potential litigation. In entering into this Agreement, Bank One does not admit, and specifically denies, that it has violated or failed to comply with any provisions of the ADA, any applicable laws of any state relating to accessibility for persons with disabilities to public accommodations, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Bank One of any such violation or failure to comply with any applicable law. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Claimants with respect to technology or the requirements of any applicable law or Bank One's compliance with such applicable law. This Agreement and its terms and provisions shall not be offered or received as evidence for any purpose whatsoever against Bank One in any action or proceeding, other than a proceeding to enforce the terms of this Agreement.

NOW, THEREFORE, the parties hereby agree to the following provisions:

1. Definitions.

1.1 Americans with Disabilities Act or ADA means the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Title III implementing regulations, 28 C.F.R., Part 36, including Appendix A, the Standards for Accessible Design (hereinafter "Standards").

1.2 Auxiliary Aids and Services means qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods of making printed materials available to Persons with Vision Impairments or Blindness.

1.3 Bank One Automated Teller Machine or Bank One ATM means, for the purpose of this Agreement, a self-service, card accessed electronic information processing device that dispenses cash and/or accepts deposits, and is owned, leased or operated by Bank One, and for the primary purpose of conducting certain financial and/or other transactions directly through the device.

1.4 Bank One Talking ATM means a Bank One ATM installed pursuant to this Agreement which, by means of an audio enhancement, enables Persons with Vision Impairments or Blindness to independently access Functions on the ATM that are available to sighted persons and that are required to be accessible pursuant to Section 3.2 of this Agreement. Bank One Talking ATMs installed pursuant to this Agreement have the following features: (1) speech output with volume control; (2) Tactilely Discernible Controls, as defined in Section 1.8 herein; (3) private audible output of information by

delivery through an earphone, whose jack will be placed in an easily locatable position and will be a standard, 3.5 millimeter size; (4) ability for the user to correct entries without canceling the entire transaction; (5) audible transaction prompts to enable completion of each Function accessible pursuant to this Agreement; (6) audible operating instructions and orientation to machine layout; (7) audible information regarding all Error Information that the ATM provides to sighted users; (8) ability for the user to interrupt (bypass) audible instructions; (9) ability for the user to repeat audible instructions; (10) confirmation of dollar entry amount in a manner that allows the user to correct an incorrect entry; (11) audible information in both English and Spanish provided that both languages are available on the ATM to sighted users; and (12) audible acknowledgment of all inputs, except that entry of the personal identification number need not be verified audibly with numbers.

1.5 Error Information means information, appearing on either a Bank One ATM screen or on paper dispensed by the Bank One ATM, that is provided to a sighted user and that states reasons why a Bank One ATM is unable to complete a particular Function requested by the user. Provided however, with regard to such information that appears on the paper dispensed by the Bank One Talking ATM, Bank One will provide this functionality by June 30, 2003.

1.6 Function means a task or transaction that a Bank One ATM is capable of performing. Examples of ATM Functions available on Bank One ATMs as of the Effective Date include the ability to dispense cash, accept deposits, provide account balance information before and after a transaction, and transfer money between multiple accounts.

1.7 Persons with Vision Impairments or Blindness means individuals who are blind or have central visual acuity not to exceed 20/200 in the better eye, with corrected lenses, as measured by the Snellen test, or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle not greater than 20 degrees.

1.8 Tactilely Discernible Controls means operating mechanisms used in conjunction with speech output that can be located and operated by feel. When a numeric keypad is part of the Tactilely Discernible Controls used on a Bank One Talking ATM, all function keys will be mapped to the numeric keypad and the numeric keypad will have an "echo" effect such that the user's numeric entries are repeated in voice form, except for the entry of a personal identification number.

2. Geographic Scope of Agreement. This Agreement shall apply to Bank One's provision of ATM services and printed materials, including the Bank One websites whose current addresses are [www.bankone.com](http://www.bankone.com), [online.bankone.com](http://online.bankone.com), [cardmemberservices.firstusa.com](http://cardmemberservices.firstusa.com), [onlinefirstusa.com](http://onlinefirstusa.com) and [www.firstusa.com](http://www.firstusa.com), in every State in the United States, as defined in the ADA, 42 U.S.C. § 12102(3), in which Bank One does business in the areas of ATM services, deposit accounts and/or consumer lending and credit.

### 3. Talking ATMs.

3.1 Installation of Bank One Talking ATMs in 2002. Bank One installed no fewer than two hundred (200) Bank One Talking ATMs at no fewer than two hundred (200) different Bank One ATM locations that are accessible to the public by December 31, 2002. By December 31, 2002, the following states had at least some Bank One Talking ATMs: Arizona, Colorado, Illinois, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Texas, Wisconsin and West Virginia.

3.2 Installation of Bank One Talking ATMs in 2003-2004. By December 31, 2004, Bank One shall install no fewer than one thousand and five hundred (1500) Bank One Talking ATMs at no fewer than one thousand and fifty (1050) different Bank One ATM locations that are accessible to the public. At least three hundred and fifteen (315) of these Bank One Talking ATMs shall be installed in at least three hundred and fifteen (315) locations on or before September 30, 2003; at least five hundred and seventy-eight (578) of these Bank One Talking ATMs shall be installed in at least five hundred and seventy-eight (578) locations on or before December 31, 2003, and at least seven hundred and thirty-five (735) of these Bank One Talking ATMs shall be installed in at least seven hundred and thirty-five (735) locations on or before June 30, 2004.

3.3 Functions of Bank One Talking ATMs Installed Pursuant to this Agreement. The Bank One Talking ATMs that will be installed during 2002 through 2004 will provide Persons with Vision Impairments or Blindness independent access to the following Functions, to the extent that such Functions are available to sighted persons at the street address at which the Talking ATM is installed: (i) account balance; (ii) transfers between a user's accounts; (iii) deposits to a user's accounts; (iv) cash withdrawals from a user's accounts; (v) cash withdrawals from a user's credit card account when the ATM is accessed through the user's credit card; (vi) deposit/cash back in one transaction; (vii) purchase of postage stamps; (viii) payment in envelope; and (ix) ability to obtain a printed statement or mini-statement.

3.4 Retrofit of Functions of Bank One ATMs with Audio Enhancements Installed Prior to 2002. Bank One will retrofit its audio enhanced ATMs that were installed prior to 2002 with Functions and capabilities of Bank One Talking ATMs on or before June 30, 2003, provided however, the original thirty Bank One ATMs with audio enhancements that were piloted in 2001 will not be retrofitted with volume control.

3.5 Notification of Locations. Bank One will inform Claimants of the address of each Bank One Talking ATM installed pursuant to this Agreement by providing a list of the Bank One Talking ATMs installed during each calendar month by the tenth day following such month. Bank One will also provide Claimants with the following information about these Talking ATMs: (1) Whether the Talking ATM is a drive-up or walk-up ATM; (2) Whether there is also a walk-up ATM at the same banking center address if the Talking ATM is listed as a drive-up ATM, and, if so, whether the walk-up ATM is inside or outside of the banking center.

3.6 Visual and Tactile Signage and Labels. Each Bank One Talking ATM installed pursuant to this Agreement shall have a sign that identifies the machine as a Bank One Talking ATM. Any text in that sign shall be in large print and Braille. Any non-text symbol on the sign shall be tactile. All Bank One Talking ATMs installed pursuant to this Agreement shall have Braille labels identifying the following components: all numeric keys, deposit slot, card slot, cash dispenser and receipt dispenser. Additionally, all function keys utilized in the Talking ATM voice program (such as “cancel,” “correct” and “enter”) shall have tactile markings.

3.7 Availability of Private Listening Devices. The private listening devices necessary to utilize any Bank One Talking ATM shall be readily available and provided free of charge to Persons with Vision Impairments or Blindness. The private listening devices shall be distributed with instructions about how users are to locate the earphone jack and activate the Bank One Talking ATM audio program. Such instructions shall be available in audio and large print.

3.8 Maintenance of Bank One Talking ATMs. Bank One will endeavor in good faith to maintain Bank One Talking ATMs in operable working condition at all times except for isolated or temporary interruptions in service due to maintenance or repairs. Should a Bank One Talking ATM malfunction, Bank One will correct the problem in accordance with Bank One’s standards and schedule for maintaining ATMs at locations containing only one Bank One ATM.

3.9 ATMs Purchased During the Term of this Agreement. If during the term of this Agreement Bank One purchases ATMs, such ATMs will be equipped with the necessary hardware and software to enable the machines to serve as Bank One Talking ATMs. Such machines will be converted to Bank One Talking ATMs as soon as reasonably practicable after installation in a public place.

#### 4. Auxiliary Aids and Services for Printed Material.

4.1 Provision of Auxiliary Aids and Services for Bank One’s Printed Material. Bank One has, through its bank branches and telephone banking operations, implemented Policies, Practices and Procedures to provide Auxiliary Aids and Services to Persons with Vision Impairments or Blindness. Bank One Retail Bank, which includes Bank One’s retail businesses except for credit card services, and its affiliate, Bank One, Delaware, NA, which provides credit card services, shall revise such Policies, Practices and Procedures by (Revised Policies, Practices and Procedures). Bank One Retail Bank shall provide proposed Revised Policies, Practices and Procedures to Claimants on or before the Effective Date; Claimants may provide written comments and suggestions to Bank One within thirty (30) days of receipt, and Bank One Retail Bank will implement such Revised Policies, Practices and Procedures by within thirty (30) days of receipt of the Claimants comments and suggestions. Bank One, Delaware, NA shall provide proposed Revised Policies, Practices and Procedures to Claimants from time to time within ninety (90) days following the Effective Date; Claimants may provide written comments and

suggestions to Bank One within thirty (15) days of receipt, and Bank One, Delaware, NA will then implement such Revised Policies, Practices and Procedures periodically, and in any event, by December 31, 2003. Bank One shall consider and use best efforts to incorporate the substance of any such written comments and suggestions that are consistent with the ADA and this Agreement.

4.2 Auxiliary Aids and Services Policies, Practices and Procedures. Bank One's Policies, Practices and Procedures shall be consistent with the ADA and shall include processes and procedures to effectively communicate to Persons with Vision Impairment or Blindness. In addition, Bank One shall provide the following:

4.2(a) Scope of Bank One's Obligation to Provide Effective Auxiliary Aids and Services. Bank One will provide Auxiliary Aids and Services for customers of the Bank One Retail Bank and Bank One, Delaware, NA, for all its print materials to Persons with Vision Impairments or Blindness who request Auxiliary Aids and Services in a manner consistent with Section 4.2(d). If more than one Auxiliary Aid or Service is effective to communicate a particular printed material to a Person with Vision Impairment or Blindness, Bank One may select the effective method of its choice, as further set forth in Section 4.2(e) below.

4.2(b) Types of Auxiliary Aids and Services Offered. Bank One shall make available Auxiliary Aids and Services, including Braille, large print, and audio tape cassette, floppy or computer disk, agent or operator assisted and self-service telephone banking operations, and in-person staff assistance. Bank One's web sites may serve as Auxiliary Aids and Services when Bank One's web sites comply with Priorities One and Two of the Web Accessibility Guidelines, as set forth in Section 6 below, or are otherwise accessible to Persons with Vision Impairments or Blindness. Bank One will notify Claimants when such sites comply with Priorities One and Two. Additionally, any third-party vendor that Bank One uses to produce Braille materials pursuant to this Agreement shall be required by Bank One to comply with the Braille Authority of North America's standards for printing Braille materials, currently found at [www.brl.org](http://www.brl.org).

4.2(c) A Reasonable Method or Methods for Persons with Vision Impairments or Blindness to Request Auxiliary Aids and Services. Bank One shall allow Persons with Vision Impairments or Blindness to request Auxiliary Aids and Services through bank branch staff and telephone banking staff for services provided by the bank, and through appropriate telephone banking staff at Bank One, Delaware, and may include offering such services through electronic means.

4.2(d) Time Frame Within which Bank One Must Provide Auxiliary Aids and Services After Receipt of a Request. Bank One's Auxiliary Aids and Services vendor contract(s) will continue to have performance standards for all materials to be produced and sent to the customer within four (4) business days after the request has been transmitted to the vendor by Bank One. Bank One's Policies, Practices and Procedures will provide that the Bank One will transmit the customer's request to the vendor by the end of the next business day following receipt by Bank One. Should Bank One

discontinue its utilization of a third-party vendor for producing Auxiliary Aids and Services during the term of this Agreement, Bank One shall revise appropriate Policies, Practices and Procedures as necessary to continue to provide Auxiliary Aids and Services in a timely manner.

4.2(e) A Method for a Person with Vision Impairments or Blindness to Seek, and for Bank One to Provide, an Auxiliary Aid or Service Other than that Initially Offered by Bank One. Bank One shall establish a method by which Persons with Vision Impairments or Blindness can seek a particular Auxiliary Aid or Service other than that offered by Bank One for a particular type of printed material. The Revised Policies, Practices and Procedures shall establish a procedure for Bank One to accept or reject such requests within a reasonable time frame. Bank One shall not be required to grant any such request if the Auxiliary Aid and Service initially offered is effective to communicate to the Person with Vision Impairment or Blindness.

4.2(f) No Charge for Auxiliary Aids and Services. Bank One will not impose any fees or charges on Persons with Vision Impairments or Blindness for providing any Auxiliary Aids or Services pursuant to this Agreement.

4.3 Fee Waivers. Bank One shall continue to waive fees associated with the use of its live teller assistance, negotiable order of withdrawal accounts, and On-Line Banking for Persons with Vision Impairments or Blindness. Bank One shall also waive fees associated with the use of “bill pay” services for Persons with Vision Impairments or Blindness who cannot effectively utilize raised line checks.

4.4 Raised Line Checks. Bank One will provide raised line checks for demand deposit accounts to Persons with Vision Impairments or Blindness who so request, at a cost not to exceed the cost of the most comparable basic checks.

4.5 Complaints Regarding Bank One’s Provision of Auxiliary Aids and Services. Bank One will use best efforts to resolve all complaints from Persons with Vision Impairments or Blindness regarding Bank One’s handling of requests for Auxiliary Aids and Services and/or fee waivers. Upon reasonable request of the customer, the resolution of the customer’s complaint will be provided to the customer in writing, and in an Auxiliary Aid or Service.

4.6 Limitation of Remedies. A breach of this Section 4 shall occur only where Claimants can establish that Bank One has engaged in a pattern or practice of non-compliance with Section 4. The Parties agree that the fact that a Person with Vision Impairment or Blindness is dissatisfied with a particular Auxiliary Aid or Service offered by Bank One shall not constitute a breach of this Agreement. However the Parties recognize that the experience of a Person with Vision or Blindness may be evidence of a pattern or practice of non-compliance. No breach of contract claims related to Bank One’s provision of Auxiliary Aids or Services under this Agreement may be maintained by persons who are not Parties to this Agreement.

5. Instructions for Bank One Personnel.

5.1 Instructions for Banking Center and Telephone Banking Staff Regarding Talking ATMs.

5.1(a) Bank One will (i) instruct Bank One branch staff where Bank One Talking ATMs are installed regarding the location, use and operation of Bank One Talking ATMs; and (ii) instruct such staff in appropriate methods of instructing Persons with Vision Impairments or Blindness how to use Bank One ATMs generally and the Bank One Talking ATMs in particular. Demonstration of Bank One Talking ATMs shall be provided to Persons with Vision Impairments or Blindness upon reasonable request therefor. All requests made to Bank One branch staff at Bank One Talking ATM locations for assistance in using Bank One ATMs generally and in using the Bank One Talking ATMs' basic components and functions will be handled by branch staff.

5.1(b) Bank One branch staff will be provided with information to enable them to inform members of the public regarding: (i) the locations of Bank One Talking ATMs; (ii) how customers can locate Bank One Talking ATMs via the Bank One website and Bank One's telephone banking staff; (iii) how to obtain earphones for use with Bank One Talking ATMs; and (iv) how to report malfunctions or maintenance issues regarding Bank One Talking ATMs.

5.2 Instructions for Bank One Telephone Banking Staff Regarding Talking ATMs. Bank One will instruct appropriate and sufficient telephone banking staff to inform the public regarding: (i) how to locate Bank One Talking ATMs; (ii) how to obtain earphones for use with Bank One Talking ATMs; and (iii) how to report malfunctions or maintenance issues regarding Bank One Talking ATMs.

5.3 Instructions Regarding Auxiliary Aids and Services Policy and Procedure. No later than the date of implementation of the Revised Policies, Practices and Procedures, Bank One shall instruct appropriate staff regarding the Auxiliary Aids and Services Policies, Practices and Procedures. At a minimum, appropriate staff shall be (i) instructed about how to inform customers about how they can request and obtain Auxiliary Aids and Services and to process requests for Auxiliary Aids and Services; (ii) instructed about how to inform customers of relevant Revised Policies, Practices and Procedures and to answer questions and process requests for, Auxiliary Aids and Services and Section 4.3 Fee Waivers, or to refer customers to the appropriate person for such purposes; and (iii) instructed on how to either handle customer comments and complaints regarding Auxiliary Aids and Services or to refer customers to the appropriate person for such purposes.

5.4 Instructions for Banking Centers with Teller Lights. No later than the date of implementation of the Revised Policies, Practices and Procedures, Bank One will instruct branch staff in locations where there is a visual method of signaling customers to the next available teller or service window in appropriate non-visual methods for signaling customers.

5.5 Timing of Instructions. Bank One will implement the obligations set forth in this Section 5 required by in a timely manner.

6. Web Accessibility.

6.1 Priority 1. Bank One will use its good faith efforts to design and generate each page of [www.bankone.com](http://www.bankone.com), [online.bankone.com](http://online.bankone.com), [cardmemberservices.firstusa.com](http://cardmemberservices.firstusa.com), [onlinefirstusa.com](http://onlinefirstusa.com) and [www.firstusa.com](http://www.firstusa.com) so that each substantially complies with Priority 1 of the Web Content Accessibility Guidelines found at [www.w3c.org/TR/WCAG10](http://www.w3c.org/TR/WCAG10) (hereinafter "Guidelines"), by June 30, 2003.

6.2 Priority 2. Bank One will use its good faith efforts to design and generate each page of [www.bankone.com](http://www.bankone.com), [online.bankone.com](http://online.bankone.com), [cardmemberservices.firstusa.com](http://cardmemberservices.firstusa.com), [onlinefirstusa.com](http://onlinefirstusa.com) and [www.firstusa.com](http://www.firstusa.com) so that each substantially complies with Priority 2 of the Guidelines by December 31, 2003.

6.3 Reports. Bank One will, during the term of this Agreement, report to Claimants on a semi-annual basis beginning June 30, 2003, regarding the progress made toward compliance with Sections 6.1 and 6.2. Claimants may submit to Bank One, within thirty (30) days of receipt of each such report, written questions regarding the report, and Bank One will, within thirty (30) days of receipt of such questions, provide answers to Claimants.

6.4 Information to the Public Regarding Web Accessibility. No later than September 30, 2003, Bank One will add one or more pages to [www.bankone.com](http://www.bankone.com) and [www.firstusa.com](http://www.firstusa.com) describing the Bank's efforts to make the Bank One websites accessible to Persons with Vision Impairments or Blindness. The page(s) will include information as to how users can contact Bank One and/or Bank One, Delaware, NA concerning website accessibility issues.

6.5 Third Party Content on Bank One Websites. Bank One will use good faith efforts to include web accessibility as one of its criteria in relevant requests for proposals and other procurement documents involving third party content, which is web pages that are directly linked to pages of [www.bankone.com](http://www.bankone.com), [online.bankone.com](http://online.bankone.com), [cardmemberservices.firstusa.com](http://cardmemberservices.firstusa.com), and [www.firstusa.com](http://www.firstusa.com) within sixty (60) days of the Effective Date.

6.6 Limitation of Remedies. A breach of this Section 6 shall occur only where Claimants can establish that Bank One has engaged in a pattern or practice of non-compliance with Section 6. The Parties agree that if a web site contains Accessibility Errors from time to time that are inconsistent with the Priority levels described in this Section 6, or other access problems from time to time, such occurrences will not necessarily constitute a breach of this Agreement. However, the Parties recognize that repeated Accessibility Errors of the same or similar type may be evidence of a pattern or practice of non-compliance. Furthermore, Claimants will not assert a breach of Section 6

unless a mutually agreed upon web consultant, hired by Bank One, has determined that the challenged web page or portion thereof, does not substantially comply with the applicable Priority 1 or 2 Guidelines. No breach of contract claims related to Bank One's obligations under Section 6 of this Agreement may be maintained by persons who are not Parties to this Agreement.

7. Publicity and Information Regarding Bank One Talking ATMs, Auxiliary Aids and Services Policy and Procedure, and Accessible Website.

7.1 Bank One Website.

7.1(a) Talking ATMs. As of the Effective Date, the Bank One website ([www.bankone.com](http://www.bankone.com)) shall inform users about the locations of Bank One Talking ATMs. Talking ATM information will be updated in the same manner and on the same schedule as other ATM information on the Bank One ATM Locator page. In addition to information provided through the Bank One ATM locator page, the website will allow a user to obtain listings of Bank One Talking ATMs by state on or before June 30, 2003.

7.1(b) Auxiliary Aids and Services. Bank One's Revised Policies, Practices and Procedures, including information regarding how to request and obtain Auxiliary Aids and Services and how to use the complaint procedure provided for therein, will be posted on the website, in an easily locatable manner, within forty-five (45) days of implementation of the Revised Policies, Practices and Procedures. A method for requesting Auxiliary Aids and Services via [www.bankone.com](http://www.bankone.com) will also be provided.

7.1(c) Accessible Website. Information regarding the accessibility of Bank One's website will be provided as set forth in Section 6.3.

7.2 Bank One Branch and Telephone Banking Staff. Commencing on the Effective Date, Bank One shall make the following information regarding Talking ATMs and its Policies, Practices and Procedures available to its branch staff and through Bank One's toll-free telephone banking operations: (i) the address (street name and number) of all Bank One Talking ATMs; (ii) how to obtain earphones for use with Bank One Talking ATMs; (iii) how to report problems with, or provide other comments regarding, Bank One Talking ATMs; and (iv) how to request and receive Auxiliary Aids and Services. Addresses of Bank One Talking ATMs shall be made available to Bank One telephone banking customer service staff within fifteen (15) days after each calendar month following the installation of each new Talking ATM. This information shall be available to Persons with Vision Impairments and Blindness through Bank One's toll-free telephone banking operations during the same hours that Bank One provides its other telephone banking and customer services.

7.3 Press Release. At the request of either Party, Parties may issue a joint press release announcing the installation of the Bank One Talking ATMs installed pursuant to Section 3.1 of this Agreement, the implementation of the Bank's Auxiliary

Aids and Services Policy, and such other matters provided both Parties agree in writing to the content of any such press release.

7.4 Outreach. Bank One may develop and implement an outreach program to help build awareness in the blindness community regarding Bank One's Talking ATMs and other accessible banking programs, including but not limited to Bank One's provision of Auxiliary Aids and Services and accessible web site. At a minimum, Bank One will distribute information to media and organizations serving Persons with Vision Impairments or Blindness. Upon reasonable request made by Claimants no more than twice annually, Bank One will inform Claimants of its outreach efforts and consider in good faith all suggestions by Claimants that are consistent with this Agreement.

8. Right to Seek Modification Under Certain Limited Circumstances.

8.1 Pursuant to the terms of Section 8, herein, Bank One may seek modification of Section 3 herein under the following circumstances:

8.1(a) The development, testing, implementation and installation of the Bank One Talking ATMs has a substantial adverse effect on the individual performance of a substantial number of Bank One Talking ATMs or on the overall performance or security of Bank One ATM operations;

8.1(b) The available technology does not permit Bank One to develop and install Bank One Talking ATMs that will operate effectively to enable Persons with Vision Impairments or Blindness to independently use the Bank One Talking ATMs; or

8.1(c) There is a method other than Bank One Talking ATMs for providing Persons with Vision Impairments or Blindness independent access, by means of an audio enhancement, to banking services at Bank One ATMs to the same extent that such access is provided by Bank One Talking ATMs, and such method can be implemented pursuant to schedules contained in Section 3 herein or a mutually agreed extension thereto.

8.2 Suspension of Performance Under Certain Limited Circumstances Following Notice of Modification Pursuant to Section 10.1(a) and 10.1(b). Delivery by Bank One to Claimants of Notice of Proposed Modification pursuant to Section 9.1(a), below, based upon the conditions stated in Sections 8.1(a) or 8.1(b), above, shall suspend for forty-five (45) days Bank One's performance of its executory obligations under the portion of Section 3 herein that Bank One seeks to modify. Any such suspension shall not constitute a breach of Section 3 herein and shall not excuse Bank One's performance during the suspension period of all other portions of this Agreement not affected by the suspension.

9. Procedures in the Event of Disputes or Requests for Modification.

9.1 Notice.

9.1(a) Notice of Proposed Modification. If Bank One initially concludes, based upon the exercise of reasonable business judgment and discretion, that the conditions exist under which modification of this Agreement is allowed, as set forth in Section 8.1(a) or 8.1(b), or 8.1(c) herein, it shall provide Claimants with a written Notice of Proposed Modification containing the following information:

9.1(a)(1) Which conditions set forth in Section 8.1(a) or 8.1(b) have occurred; or, in the event of a modification pursuant to Section 8.1(c), what alternative technology it proposes;

9.1(a)(2) The factual basis for Bank One's initial conclusion that the conditions in Section 8.1(a) or 8.1(b) have occurred; or, in the event of a modification pursuant to Section 8.1(c), the details of the alternative technology and the method by which it provides independent access to ATM Functions required by this Agreement within the time frames set forth herein.

9.1(b) Notice of Non-Compliance. If at any time a party believes that the other party has not complied with any provision of this Agreement, that party shall provide the other party with Notice of Non-compliance containing the following information:

9.1(b)(1) the alleged act of non-compliance;

9.1(b)(2) a reference to the specific provision(s) of this Agreement that are involved;

9.1(b)(3) a statement of the remedial action sought by the initiating party;

9.1(b)(4) a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

9.2 Meet and Confer. Within ten (10) days of receipt of a Notice provided pursuant to Section 10.1 herein, Claimants and Bank One shall informally meet and confer and attempt to resolve the issues raised in the Notice.

9.3 Informal Discovery. As part of the meet and confer process, the parties shall exchange relevant documents and/or other information and engage in informal discovery in an attempt to resolve the issues raised in the Notice provided pursuant to Section 9.1 herein. Such informal discovery may include, but is not limited to, interviewing witnesses and experts and exchange of additional information or supporting documentation. Any disagreement about information to be provided shall be handled pursuant to the provisions of this section.

9.4 Submission to Binding Arbitration.

9.4(a) If the matters raised in a Notice provided pursuant to Section 9.1 herein are not resolved within thirty (30) days of the initial meet and confer required by Section 9.2 herein, either party may submit the unresolved matters to binding arbitration as set forth in this section.

9.4(b) Arbitration shall be administered by the American Arbitration Association under its Commercial Arbitration Rules, except as otherwise set forth in the Confidential Addendum executed concurrently herewith, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

9.4(c) The terms of this Agreement, and the provisions thereof, shall be interpreted and applied pursuant to the ADA, and, if the ADA does not provide guidance, pursuant to the laws of the State of Illinois.

## 10. Miscellaneous Provisions.

10.1 Force Majeure. The performance of Bank One under this Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God, terrorism or war, strikes or lockouts, or unavailability of parts, equipment or materials through normal supply sources. If Bank One seeks to invoke this section, it shall notify Counsel in writing as soon as reasonably possible, specifying the particular action that could not be performed and the specific reason for the non-performance. Counsel and Bank One will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this section, or any future action to be taken, that remains after the meet and confer session will be handled as a dispute pursuant to Section 9 herein.

10.2 Modification in Writing. No modification of this Agreement by the Parties shall be effective unless it is in writing and signed by authorized representatives of all the parties hereto.

### 10.3 Agreement Binding on Assigns and Successors; No Third Party Beneficiaries.

10.3(a) Assigns and Successors. This Agreement shall bind any assigns and successors of Bank One. Upon reasonable request by Claimants' Counsel, Bank One shall notify Counsel in writing of the existence, name, address and telephone number of any assigns or successors of Bank One.

10.3(b) No Third Party Beneficiaries. The Settlement Agreement is for the benefit of the Parties hereto only and no other person or entity shall be entitled to rely hereon, receive any benefit here from, or enforce against either party any provision hereof. The Parties specifically intend that there be no third party beneficiaries to this Agreement.

10.4 Integrated Agreement. This Agreement and the Confidential Addendum executed concurrently herewith constitutes the entire Agreement relating to the subject matters addressed therein.

10.5 Rules of Construction. Each party and its legal counsel have reviewed and participated in the drafting of this Agreement; and any rule of construction to the effect that ambiguities are construed against the drafting party shall not apply in the interpretation or construction of this Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of this Agreement. The recitals are integral to the construction and interpretation of this Agreement and are therefore incorporated into this Agreement in their entirety.

10.6 Notice or Communication to Parties. Any notice or communication required or permitted to be given to the parties hereunder shall be given in writing by U.S. mail, return receipt requested, and either fax or email, addressed as follows:

To Claimants:

Linda M. Dardarian  
c/o Goldstein, Demchak, Baller, Borgen & Dardarian  
300 Lakeside Drive, Suite 1000  
Oakland, CA 94612  
Fax No.: (510) 835-1417  
email: ldar@gdblaw.com

Elaine B. Feingold  
Law Office of Elaine B. Feingold  
1524 Scenic Avenue  
Berkeley, CA 94708  
Fax No.: (510) 548-5508  
email: lfeingold@california.net

To Bank One:

Bank One Corporation  
Attn: Randall C. Neidenthal, Senior Counsel  
1111 Polaris Parkway  
Mail Code: OH1-0152  
Columbus, Ohio 43271-0152

Bank One Corporation  
Dean A. Kontul, Senior Vice President  
National ATM Manager  
1111 Polaris Parkway  
Mail Code: OH1-0242  
Columbus, Ohio 43271-0242

10.7 Triplicate Originals/Execution in Counterparts. All parties shall sign three copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

PARTIES:

BANK ONE, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Charles W. Scharf  
Executive Vice President

CLAIMANTS

\_\_\_\_\_  
Kelly Pierce

\_\_\_\_\_  
Anna Byrne