

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into this 1st day of November, 1999 ("Effective Date") by and between the following parties: Kathleen Martinez, Jose Nieves, Ronald Brooks and Don Brown (collectively the "Claimants") and California Council of the Blind ("Council") and Wells Fargo Bank, N.A. ("Wells Fargo") for the purposes and on the terms specified herein and operates in conjunction with the confidential portions of this Agreement.

## **RECITALS**

This Agreement is based on the following facts:

- A. Each of the Claimants is an individual who is blind or vision-impaired and who currently has, had in the past, or would like to have one or more bank accounts with Wells Fargo or would like to use a Wells Fargo Express automated teller machine via a network system. Each of the Claimants is an individual with a disability within the meaning of Section 3(2) of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, 12102(2) ("ADA"), the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, et seq. ("ADA Regulations"), and the laws of the State of California, including the Unruh Civil Rights Act and Disabled Persons Act (Cal. Civil Code §§ 51, 54.1), Health and Safety Code §19955 and the California State Accessibility Standards contained in Title 24 (collectively referred to as the "State Acts and Regulations").
- B. Council is a non-profit corporation that provides advocacy services on behalf of blind and vision-impaired persons in the State of California, is dedicated to promoting the well-being of blind and vision-impaired persons, and provides information to the general public about the accomplishments, needs and contributions of blind and vision-impaired persons. Council is incorporated and has its place of business in the State of California. Among Council's members, and those on whose behalf it advocates and provides services, are many individuals with disabilities who hold bank accounts with Wells Fargo or who hold bank accounts with other banks and would like to utilize Wells Fargo automated teller machines to access those accounts.
- C. Wells Fargo is doing business in the State of California. Wells Fargo owns, leases or operates banking facilities that are considered to be public accommodations (42 U.S.C. § 12181(7)(F)), subject to the provisions of Title III of the ADA (42 U.S.C. §§ 12181, et seq.), the ADA Regulations, and the State Acts and Regulations.
- D. Wells Fargo provides printed material to its California customers and makes available numerous Express Automated Teller Machines in the State of California.
- E. A dispute has arisen between Claimants and Council, on one side, and Wells Fargo, on the other side, concerning whether Wells Fargo is providing Claimants, Council members, and other blind and vision-impaired persons with legally required access to its printed materials and ATMs in the State of California.

- F. Wells Fargo presently provides Braille instructions to offer additional information for blind and vision-impaired individuals regarding the use of certain ATM functions that cannot be accessed by telephone. Braille is a recognized auxiliary aid under 29 C.F.R. § 36.303(b)(2). Wells Fargo's principal ATM vendors are developing a new combination of hardware and software technologies that has not been commercially tested in the United States to provide instructions for the use of certain ATM functions through voice guidance based on pre-recorded messages. This combination of technologies has not been previously available for use in the Wells Fargo ATM environment.
- G. The parties enter into this Agreement in order to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of potential litigation. In entering into this Agreement, Wells Fargo does not admit, and specifically denies, that it has violated or failed to comply with any provisions of the ADA, the State Acts, 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 Wells Fargo of any such violations or failures 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 or Council with respect to technology, the requirements of any applicable law or Wells Fargo's compliance with such applicable law. This Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding, other than a proceeding to enforce the terms of this Agreement, to establish any liability or admission on the part of Wells Fargo or the existence at Wells Fargo or its Express ATMs of any condition constituting a violation of or non-compliance with the ADA, the State Acts, or other applicable law.

Now, Therefore, the parties hereby agree to the following provisions:

## **1. Definitions.**

As used in this Agreement, the following terms shall be as defined below:

### **1.1 Americans with Disabilities Act.**

“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 ATM Location.**

An “ATM Location” is a street address that includes one or more Wells Fargo Express ATMs (whether inside or outside or both), except in the following circumstances:

- 1.2.1 If a single building has multiple street addresses, the “ATM Location” is the entire building;
- 1.2.2 If a single street address is a large public facility (such as an airport, stadium or shopping mall) and has Wells Fargo ATMs in more than one area, each area containing a Wells Fargo ATM is an “ATM Location”; provided, however, that where a large public facility has multiple buildings (such as airport concourses) and any single building has Wells Fargo ATMs in more than one area, the entire building rather than each area containing the Wells Fargo ATMs will be deemed to be an “ATM Location.”

### 1.3 Auxiliary Aids and Services.

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

### 1.4 Core Functions.

“Core Functions” means (i) transfers between a user’s Primary Accounts; (ii) deposits, cash withdrawals, and stamp purchases from a user’s Primary Accounts; and (iii) cash withdrawals and stamp purchases from a user’s credit card account when the ATM is accessed through the user’s credit card.

### 1.5 Counsel.

“Counsel” means Saperstein, Goldstein, Demchak & Baller, The Law Office of Elaine B. Feingold, The Disability Rights Education & Defense Fund, Inc., and the attorneys practicing law therein.

### 1.6 Enhanced ATMs.

An “Enhanced ATM” means a Wells Fargo Express Automated Teller Machine that is equipped with a voice guidance system containing the following features: (1) the voice guidance system will deliver, through an easily locatable earphone jack and a private listening device, prerecorded instructions for Core Functions, but only to the extent that the particular Core Function to be accessed is available at the particular ATM Location to users without vision impairments; (2) the numeric keypad will be programmed to enable the performance of all Core Functions when the voice guidance system is activated; (3) 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; and (4) the voice guidance system will provide sufficient information to enable the user to review and correct entries without canceling the entire transaction to the same extent that sighted users of the ATM can so review and correct entries for the particular transaction.

### 1.7 Existing ATM Locations.

“Existing ATM Locations” means all Wells Fargo Express ATM Locations in the State of California existing as of the Effective Date. Wells Fargo will provide Counsel with a list of Existing ATM locations.

### 1.8 Persons with Vision Impairments.

“Persons with Vision Impairments” 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.

#### 1.9 Primary Accounts.

“Primary Accounts” means the designated primary account of each of the following types of accounts: (i) consumer checking; (ii) passbook savings; and (iii) market rate accounts, but only to the extent that the particular Primary Account to be accessed is available at the particular ATM Location to users without vision impairments.

#### 1.10 Subsequently Acquired ATM Locations.

“Subsequently Acquired ATM Locations” means ATM Locations owned, leased or operated by Wells Fargo in California for the first time after the Effective Date.

#### 1.11 Wells Fargo Express Automated Teller Machine or Express ATM.

“Wells Fargo Express Automated Teller Machine” or “Express ATM” means a self-service card accessed electronic information processing device owned, leased or operated by Wells Fargo and installed in public locations for the primary purpose of conducting certain financial transactions directly through the devices. Such financial transactions may include one or more of the following: dispensing cash, accepting deposits, and processing other routine banking transactions for its customers, and for dispensing cash to ATM card and credit card account holders of other financial institutions that settle such transactions via various ATM and credit card networks.

#### 1.12 Wells Fargo’s 24-Hour Telephone Banking.

“Wells Fargo’s 24-Hour Telephone Banking” means both the automated and agent- or operator-assisted toll-free telephone banking customer service that Wells Fargo provides to its consumers 24 hours per day for conducting banking transactions and obtaining information.

## **2. Duration and Geographic Scope of Agreement**

This Agreement shall apply only to Wells Fargo’s provision of Express ATM services and printed materials within the State of California. The term of this Agreement and its provisions shall remain in effect from the Effective Date to the earlier of: (i) the completion of the Rollout Program described in Section 3, below; or (ii) five (5) years after the Effective Date, unless sooner terminated or modified by the parties pursuant to Sections 7 or 8 herein.

## **3. Enhanced ATMs**

### 3.1 Deployment of Enhanced ATMs.

Wells Fargo agrees to work with its principal ATM vendors to develop, test and implement Enhanced ATMs utilizing a collection of the vendors’ commercially available hardware and software technologies. The parties agree that because the combination of the vendors’ hardware and software technologies that is necessary to provide Enhanced ATMs in the Wells Fargo Express ATM environment has not been demonstrated or used in a commercial setting in the United States, the

Bank will proceed with its implementation of this new and untested technology according to a three-stage process. This process shall include a Demonstration Phase, a Pilot Project, and a Rollout Program, each of which is described more fully below:

**3.1.1 Demonstration Phase.**

Subject to the provisions of Section 8 herein, the Demonstration Phase will be conducted in a controlled laboratory setting, which shall commence on the Effective Date. To the extent possible, the laboratory setting shall simulate the environments in which the Enhanced ATM will be used by the public. During the Demonstration Phase, Wells Fargo will work with each of its principal ATM vendors to develop and test an Enhanced ATM for use in the Wells Fargo Express ATM environment. During the Demonstration Phase, and subject to the provisions of Section 8 herein, Wells Fargo personnel will meet with representatives of Claimants, Council, and Counsel (up to a total of seven (7) participating individuals and Counsel at any one meeting) at least every sixty (60) days to demonstrate and report on the progress of this effort and to elicit input regarding the operation, usability and flow of the Enhanced ATM.

**3.1.2 Pilot Project.**

At the conclusion of the Demonstration Phase, and subject to the provisions of Section 8 herein, Wells Fargo will begin a Pilot Project. At the outset of the Pilot Project, the Enhanced ATMs will be installed at a minimum of twenty (20) Existing ATM Locations. During the Pilot Project, the operational and usability aspects of the Enhanced ATM will be monitored and assessed. Wells Fargo personnel will meet with representatives of Claimants, Council, and Counsel (up to a total of seven (7) participating individuals and Counsel at any one meeting) at least once during the Pilot Project and, if applicable, once every ninety (90) days during the Pilot Project to report on the progress of this effort and to elicit input regarding the operation, usability and flow of the Enhanced ATMs in an actual commercial setting. Together the Demonstration Phase and the Pilot Project shall last not more than twelve (12) months.

**3.1.3 Rollout Program.**

At the conclusion of the Pilot Project, and subject to the provisions of Section 8 herein, Wells Fargo will begin a Rollout Program, during which it will install an Enhanced ATM at the Existing ATM Locations and those Subsequently Acquired ATM Locations that are to be included in this Rollout Program pursuant to Sections 3.1.4(a) and (b) below (together referred to as "Rollout Locations"). The parties agree that the untested nature of this technology, which is not in actual commercial usage in the United States, requires the Rollout Program to occur on a progressive basis. Subject to the terms of this Agreement, Wells Fargo will deploy an Enhanced ATM at the Rollout Locations remaining after the Pilot Project, according to the following schedule:

ATM Rollout Dates/Location Schedule

**ATM Rollout Dates/Location Schedule**

<b>Date (No Later Than)</b>	<b>Number or Percentage of Rollout Locations With Enhanced ATMs</b>
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September 1, 2000	100 ATM Locations
March 31, 2001	200 ATM Locations
June 30, 2001	25%
December 31, 2001	50%
June 30, 2002	60%
December 31, 2002	70%
June 30, 2003	95%
December 31, 2003	100%

Notwithstanding the schedule set forth above, Wells Fargo may defer installation of Enhanced ATMs at up to 2% of Rollout Locations for up to twelve (12) months upon written notification to Counsel pursuant to Section 3.1.10. If Wells Fargo exceeds the rollout percentages for deploying Enhanced ATMs as set forth herein, the excess shall be credited towards Wells Fargo's rollout obligation for the next following rollout deadline(s).

#### 3.1.4 Subsequently Acquired ATM Locations.

A Subsequently Acquired ATM Location shall be considered a Rollout Location if and when it contains one or more Express ATMs which are installed by Wells Fargo (either de novo or as a replacement to an acquired ATM) after the Effective Date. With respect to all other Subsequently Acquired ATM Locations, such ATM Locations may be considered, at the option of Wells Fargo, a Rollout Location pursuant to Section 3.1.3 as of the date of the acquisition or may be exempted from the Rollout Locations upon written notification to Counsel pursuant to Section 3.1.10. Any Subsequently Acquired ATM Locations exempted from the Rollout Locations in Section 3.1.3 shall not be covered by this Agreement or any of its provisions, and Claimants and Council expressly reserve all rights regarding such ATM Locations.

#### 3.1.5 Subsequently Relinquished ATM Locations.

If Wells Fargo ceases to own, operate or lease an ATM Location after the Effective Date, that ATM Location shall no longer be subject to this Agreement as of the date upon which Wells Fargo ceases to own, operate or lease the ATM Location, and such Subsequently Relinquished ATM Locations shall no longer be considered in calculating Wells Fargo's rollout schedule pursuant to Section 3.1.3, above, unless the ATM Location is relinquished to a parent, successor or assign of Wells Fargo, as defined in Section 14.1, herein. Any Existing ATM Location relinquished to a parent, successor or assign of Wells Fargo after the Effective Date shall continue to be subject to Wells Fargo's rollout schedule pursuant to Section 3.1.3, above.

#### 3.1.6 Pilot and Rollout Locations.

Of Wells Fargo's Existing ATM Locations selected for the Pilot Project, at least fifty percent (50%) shall be located in the San Francisco Bay Area, and at least twenty-five percent (25%) shall be located in Los Angeles and San Diego Counties. For each of the first two rollout deadlines of Section 3.1.3, above, at

least twenty-five percent (25%) of the Existing ATM Locations at which Enhanced ATMs are installed shall be located in the San Francisco Bay Area.

#### 3.1.7 Comments.

Wells Fargo shall consider all written comments given by Claimants and Council pursuant to Sections 3.1.1 and 3.1.2, regarding the Enhanced ATM's operability, usability and flow provided that such comments and suggestions are consistent with this Agreement and the ADA and the State Acts, and provided further that such comments are communicated by Counsel in writing on behalf of all parties and representatives within five (5) business days after the demonstration or meeting which gives rise to the comments. Within ten (10) business days, Wells Fargo shall provide Counsel with a specific response in writing regarding Wells Fargo's position on each such comment.

#### 3.1.8 Wheelchair Access.

At Existing and Subsequently Acquired ATM Locations included under this Agreement which contain multiple Express ATMs, the Enhanced Express ATM shall be the ATM with the longest hours of operation and shall be wheelchair accessible.

#### 3.1.9 Alternative Technology.

If Wells Fargo should determine to adopt a method other than Enhanced ATMs for providing Persons with Vision Impairments independent access to banking services at Wells Fargo ATMs, Wells Fargo may request in writing that the parties modify this Agreement, provided that such other method: (a) provides independent access to the Core Functions to Persons with Vision Impairments, and (b) shall be implemented pursuant to the schedule contained in Section 3.1, above. Wells Fargo's request for such a modification shall not excuse Wells Fargo's compliance with the terms of this Agreement unless Claimants and Council consent. Within ten (10) business days after Wells Fargo's request, Claimants and Council shall provide a specific response in writing regarding their position on Wells Fargo's request for modification pursuant to this section. Within thirty (30) days after Claimants and Council's receipt of Wells Fargo's request for a modification under Section 3.1.9, the parties shall meet and confer and shall work together in good faith to resolve any disagreements. Failure to reach agreement during such meet and confer shall be considered a dispute to be resolved pursuant to Section 9 of this Agreement.

#### 3.1.10 Rollout Information.

Twice annually during the pendency of this Agreement beginning six months after the Rollout Program commences, Wells Fargo will provide to Counsel the following information (if applicable during the reporting period) about the Rollout Program, in writing:

- (a) the number of Enhanced ATMs placed during each rollout phase;
- (b) the addresses of the ATM Locations that received each Enhanced ATM during each rollout phase;
- (c) the number of ATM Locations Subsequently Acquired by Wells Fargo during the Demonstration, Pilot and each Rollout phase;
- (d) the addresses of all Subsequently Acquired ATM Locations;

- (e) the address of any Rollout Location subject to the 2% provision of Section 3.1.3;
- (f) the address of any Subsequently Acquired ATM Location subject to exemption from this Agreement pursuant to Section 3.1.4; and
- (g) the address of each ATM Location subsequently relinquished during each Rollout phase.

## **3.2 Locating and Identifying Enhanced ATMs.**

### **3.2.1 Signage at Enhanced ATMs.**

Each Enhanced ATM will have a symbol in substantially the form attached as Exhibit A that identifies to Persons with Vision Impairments that the ATM is an Enhanced ATM. Any text in that sign shall be in large print and Braille.

### **3.2.2 Earphone Jacks.**

The earphone jack at each Enhanced ATM will be placed in an easily locatable position.

### **3.2.3 Information Regarding Locations of Enhanced ATMs.**

Wells Fargo's 24-Hour Telephone Banking agents and Wells Fargo's web site will provide information to Persons with Vision Impairments about the locations of the Enhanced ATMs. Wells Fargo shall provide a toll-free telephone number through which Persons with Vision Impairments may acquire this information, and Wells Fargo shall not charge Persons with Vision Impairments any fee for telephone calls seeking information about the locations of the Enhanced ATMs.

### **3.2.4 Braille Labels at Non-Enhanced ATM Locations.**

Wells Fargo will maintain its current effort to provide Braille instructions at the ATM describing the use of certain ATM functions. Wells Fargo will also provide Auxiliary Aids and Services for its ATM instruction manuals as described in Section 4.

### **3.3 Provision of Private Listening Devices.**

Wells Fargo shall provide private listening devices free of charge to Persons with Vision Impairments for their use with Enhanced ATMs.

### **3.4 Telephone Banking Fee Waivers.**

After a reasonable request can be processed in the normal course of Wells Fargo's business, Wells Fargo will begin waiving fees associated with the use of its Telephone Banking services for Persons with Vision Impairments.

## **4. Auxiliary Aids and Services for Print Material.**

### **4.1 Provision of Auxiliary Aids and Services for Print Material.**

Within one-hundred-twenty (120) days of the Effective Date, Wells Fargo shall enhance its process for providing Auxiliary Aids and Services to ensure effective communication of printed materials to Persons with Vision Impairments, to the extent required by the ADA and State Acts, as follows:

- 4.1(a) Individuals must identify themselves to Wells Fargo as Persons with Vision Impairments in need of Auxiliary Aids and Services.

- 4.1(b) If more than one Auxiliary Aid or Service is effective to communicate a particular printed material to a Person with Vision Impairment, Wells Fargo shall select the effective method of its choice and shall provide it within a reasonable time period.
- 4.1(c) If a Person with Vision Impairment contends that a particular Auxiliary Aid or Service offered by Wells Fargo does not provide effective communication of the particular printed material, Wells Fargo shall consult with that customer to identify other Auxiliary Aid(s) or Service(s) that will ensure effective communication of the printed information to that customer and shall provide, within a reasonable time period, the Auxiliary Aid or Service of its choice from those formats identified. If a Person with Vision Impairment seeks to obtain a specific Auxiliary Aid or Service other than that selected by Wells Fargo, and Wells Fargo has reasonable cause to believe that the requested Auxiliary Aid or Service is not required under this section, Wells Fargo may require that the Person with Vision Impairment demonstrate a specific need for the requested Auxiliary Aid or Service, provided that the methods for demonstrating that need do not violate the ADA or State Acts.

#### 4.2 Magnifiers.

If Wells Fargo supplies magnifiers as an Auxiliary Aid, Wells Fargo shall describe the magnifier's power or magnification strength.

#### 4.3 Raised Line Checks.

Wells Fargo will provide raised line checks for consumer checking and market rate accounts to Persons with Vision Impairments at a cost not to exceed the cost of the most comparable basic checks.

#### 4.4 No Charge for Auxiliary Aids and Services.

Wells Fargo will not impose any charges or fees on Persons with Vision Impairments for providing any Auxiliary Aids and Services for print materials pursuant to this Agreement.

### **4.5 Limitation on Remedies.**

#### 4.5.1 Effect of Non-Compliance.

A breach of Section 4 shall occur only where Claimants or Council can establish that Wells Fargo has engaged in a pattern or practice of non-compliance with Section 4.1. The Parties agree that the fact that a Person with Vision Impairment is dissatisfied with a particular Auxiliary Aid or Service, or with Wells Fargo's failure to provide a specific Auxiliary Aid or Service to a Person with Vision Impairment, shall not constitute a breach of this Agreement. No breach of contract claims related to Wells Fargo's provision of Auxiliary Aids and Services under this Agreement may be maintained by persons who are not parties to this Agreement.

#### 4.5.2 Reporting.

During the term of this Agreement, Wells Fargo will provide an annual report describing and quantifying the Auxiliary Aids and Services provided pursuant to

this Agreement to the extent that the information is readily available. For example, Wells Fargo will state the number of accounts supported with Braille statements and the number of magnifiers distributed during that year.

## **5. Maintenance of Enhanced ATMs**

Wells Fargo will maintain its Enhanced ATMs in operable working condition at all times except for isolated or temporary interruptions in service due to maintenance or repairs. Should an Enhanced ATM malfunction, Wells Fargo will correct the problem within 24 hours of receiving notice of the problem if Wells Fargo receives notice of the malfunction on Monday through Friday or by the next business day if Wells Fargo receives notice of the malfunction on the weekend.

## **6. Training Regarding Enhanced ATMs and Auxiliary Aids and Services.**

Wells Fargo will train its employees who serve the public in California regarding the use and operation of the Enhanced ATMs and the availability of Auxiliary Aids and Services for Persons with Vision Impairments in accordance with its normal training practices. Within ninety (90) days of the Effective Date, Wells Fargo will retain an outside consultant, who will be proposed by Wells Fargo and approved by Claimants, Council and Counsel in their reasonable discretion, to advise Wells Fargo on the development of its training materials and procedures regarding the use and operation of the Enhanced ATMs and the availability of Auxiliary Aids and Services to Persons with Vision Impairments.

## **7. Future Compliance with Statutes, Regulations and Standards.**

### **7.1 Effect of Change in Law or Regulation.**

The parties acknowledge that after the Effective Date, standards for access to ATM services by or the provision of Auxiliary Aids and Services to Persons with Vision Impairments, which are different from Wells Fargo's obligations under this Agreement, may be established by applicable new laws or regulations. In the event of such a change, the parties agree that where the new law or regulation imposes a less rigorous obligation than provided in this Agreement, Wells Fargo's compliance with the new law or regulation will constitute compliance with this Agreement, provided that Wells Fargo follows the procedures set forth in Section 7.2, below. Where the law imposes a more stringent obligation than provided in this Agreement, the parties agree that: (1) nothing in this Agreement shall limit Wells Fargo's obligation to comply with or Claimants' ability to pursue claims under any such applicable laws and regulations that are amended or enacted after the Effective Date of this Agreement; and (2) no action by Wells Fargo, which is permitted or required by such laws or regulations, shall constitute a breach of this Agreement. Prior to the initiation of any litigation raising claims based on a change in the applicable law or regulations after the Effective Date of this Agreement, the Parties will follow the Alternative Dispute Resolution Procedures outlined in Section 9 of this Agreement.

## 7.2 Modification Based on Change of Law or Regulations.

If any party to this Agreement contends that there is a change in any applicable law or regulation, which will necessitate a modification under Section 7.1 because it imposes a less rigorous obligation than provided in this Agreement, that party shall notify counsel for the other parties in writing. The notification will include the way in which the party contends the Agreement should be modified as a result of the change in law or regulation. The proposed modification will become effective thirty (30) days after such notification unless counsel for the other parties object in writing to the proposed modification. In the event of disagreement between the parties over the appropriate modifications to this Agreement as contemplated by this Section, the parties shall meet and confer and shall work together in good faith to resolve the disagreement. Failure to reach agreement during such meet and confer shall be considered a dispute to be resolved pursuant to Section 9 of this Agreement.

## **8. Modification or Termination of Section 3 of the Agreement.**

### 8.1 Commercially Untested Nature of Enhanced ATM Technology.

The parties acknowledge that the technology necessary to provide the Enhanced ATMs provided for in Section 3 of this Agreement has not been tested or demonstrated in a commercially proven application in the United States. Because Enhanced ATMs have not been so tested or demonstrated, the parties acknowledge that:

- 8.1.1 The development, testing, implementation and rollout of the Enhanced ATM may have a substantial adverse effect on the individual performance of a substantial number of Enhanced ATMs or on the overall performance or security of Wells Fargo's ATM operations; or
- 8.1.2 The available technology may not permit Wells Fargo to develop and install an Enhanced ATM that will operate effectively to enable Persons with Vision Impairments to perform the Core Functions.

### 8.2 Notice.

If Wells Fargo concludes, based upon the exercise of its reasonable business judgment and discretion, that the conditions set forth in Sections 8.1.1 or 8.1.2 have occurred or will occur, Wells Fargo shall provide Claimants, Council and Counsel with written notice that states (a) which condition has occurred or will occur; (b) the factual basis for Wells Fargo's conclusion that a condition stated in Sections 8.1.1 or 8.1.2 has occurred or will occur; (c) whether Wells Fargo seeks to modify any portion of Section 3 of the Agreement to address the condition that has occurred or will occur, and if so, what modification Wells Fargo seeks; and (d) whether Wells Fargo seeks to terminate a provision of Section 3 of the Agreement to address the condition that has occurred or will occur, and if so, what provision of the Agreement Wells Fargo seeks to terminate and the reasons therefore.

### 8.3 Performance Suspended.

Delivery by Wells Fargo to Claimants, Council and Counsel of Wells Fargo's written notice shall suspend for forty-five (45) days Wells Fargo's performance of its executory obligations under the portion of Section 3 of the Agreement that Wells Fargo seeks to modify or terminate. Any such suspension shall not constitute a breach of Section 3 of this Agreement, shall not excuse the continued performance of the Agreement by Claimants and Council during the suspension period, and shall not excuse Wells Fargo's continued performance during the suspension period of all other portions of the Agreement not affected by the suspension.

#### 8.4 Meet and Confer and Parties' Right to Terminate.

Within thirty (30) days after Claimants', Council's and Counsel's receipt of Wells Fargo's written notice, the parties shall informally meet and confer to attempt to reach an agreement regarding the matters stated in the notice. Prior to the meet and confer, upon Claimant's or Council's reasonable request, Wells Fargo will provide Claimants and Council with reasonably sufficient information and related documents for them to assess the matters stated in Wells Fargo's notice. If the parties are able to agree upon the matters stated in Wells Fargo's notice, they shall work together in good faith to agree upon an appropriate amendment to Section 3 and the other sections governing the Enhanced ATMs (the "affected portions of this Agreement"). If within fifteen (15) days after the meet and confer the parties are unable to agree upon the matters stated in Wells Fargo's notice or upon an appropriate amendment to the affected portions of this Agreement, either party may elect in writing to terminate the affected portions of this Agreement, which termination shall be effective ten (10) days after the other party's receipt of written notice of termination, unless during such ten (10) day period the parties have agreed upon an amendment to the affected portions of this Agreement.

#### 8.5 Modification.

If the affected portions of this Agreement are amended pursuant to mutual agreement under Section 8.4, the parties shall proceed with this Agreement as so amended. If the affected portions of the Agreement are not amended, the parties shall remain bound to perform the remaining portions of the Agreement.

#### 8.6 Effect of Termination.

If the parties are unable to agree upon an amendment to the affected portions of this Agreement, and the affected portions of this Agreement are terminated pursuant to Section 8.4 then Claimants and Council shall have the right to file a lawsuit to assert any and all claims against Wells Fargo accruing after the Effective Date of the Agreement arising from Wells Fargo's provision of ATM services in violation of the ADA and/or violation of the State Acts and regulations, and any and all claims arising from Wells Fargo's breach of this Agreement. If the Court concludes that Wells Fargo properly exercised its business judgment in concluding that one or more of the conditions in Sections 8.1.1 or 8.1.2 have occurred or will occur, then Claimants' and Council's claim for relief shall accrue only as of the date of such termination and arise from Wells Fargo's provision of ATM services in violation of the ADA and/or violation of the State Acts and regulations. If the court concludes that Wells Fargo did not exercise its reasonable business judgment and discretion in concluding that one or

more of the conditions in Sections 8.1.1 or 8.1.2 have occurred or will occur, then Claimants' and Council's claim for relief shall accrue as of the Effective Date of the Agreement and arise from Wells Fargo's provision of ATM services in violation of the ADA and/or violation of the State Acts and regulations, and from Wells Fargo's breach of this Agreement.

## **9. Additional Provisions Regarding Notification of Non-Compliance, Dispute Resolution and Judicial Enforcement.**

Any dispute between Claimants or Council and Wells Fargo regarding the terms of this Agreement or its implementation (other than those arising under Section 8 above) or prior to the initiation of any litigation pursuant to Section 7 of this Agreement shall be subject to the following dispute resolution process:

### **9.1 Notification of Non-Compliance and Opportunity to Cure.**

If at any time a party believes that the other party has not complied with any provision of this Agreement, that party shall notify the other party in writing describing the alleged act of non-compliance. Such notice shall be deemed to include a demand to immediately cure the non-compliance. The party allegedly in non-compliance shall respond in writing to the notice within ten (10) days of its receipt. The response shall describe the steps that the party will take, if any, to cure the non-compliance. Within ten (10) days of the response to any notice provided pursuant to this subsection, the parties shall meet and confer by telephone or in person to attempt to resolve the issue. The party allegedly in non-compliance will not be deemed to be in breach of the Agreement unless the Parties fail to resolve the dispute in the meet and confer process described in Section 9.3, below.

### **9.2 Notice of Dispute.**

If after compliance with Section 9.1, above, Claimants, Council or Wells Fargo have reason to believe that a dispute exists, the initiating party shall give prompt written notice to the other party, including: (a) a reference to the specific provisions of the Agreement that are involved; (b) a statement of the issue; (c) a statement of the remedial action sought by the initiating party; and (d) a brief statement of the specific facts, circumstances and any other arguments supporting the position of the initiating party.

### **9.3 Meet and Confer.**

Within two weeks of receipt of the notice provided by Section 9.2, Claimants, Council and Wells Fargo shall informally meet and confer and attempt to resolve the dispute.

### **9.4 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 in dispute. Such informal discovery may include, but is not limited to, interviewing witnesses and experts and requesting additional information or supporting documentation. Any disagreement about information to

be provided shall be handled pursuant to the provisions of Sections 9.2 through 9.5, herein.

**9.5 Right to File Complaint.**

If the meet and confer does not resolve the dispute within sixty (60) days of the first meet and confer session, or if the meet and confer reaches an impasse before the expiration of the sixty (60) day period, the initiating party may file a complaint in United States District Court for the Northern District of California or state court in the County of Alameda or the City and County of San Francisco to enforce the Agreement or to enforce any change in applicable law or regulations pursuant to Section 7.1. Where a dispute has arisen related to the compliance of Claimants or Council with the provisions contained in Sections 22.4 or 23, Wells Fargo shall have the right to seek injunctive relief immediately from a state or federal court.

**10. Law Governing Interpretation and Application of Agreement.**

The terms of this Agreement, and the provisions thereof, shall be interpreted and applied pursuant to the laws of the State of California and the ADA.

**11. 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 facsimile and certified United States mail, addressed as follows:

To Claimants and Council:

c/o Saperstein, Goldstein, Demchak & Baller  
1300 Clay Street, 11th Floor  
Oakland, CA 94612  
Fax No: (510) 835-1417

To Wells Fargo:

Wells Fargo Bank, N.A.  
Attn: Teresa Lai, Esq.  
633 Folsom Street, 7th Floor  
San Francisco, CA 94107  
Fax No.: (415) 975-7819

and

Wilson, Sonsini, Goodrich & Rosati  
Attn: Fred W. Alvarez, Esq.  
650 Page Mill Road  
Palo Alto, CA 94304  
Fax No.: (650) 565-5100

**12. Publicity/Ongoing Information to Persons with Vision Impairments.**

Wells Fargo, Claimants and Council and their respective counsel have agreed upon a joint statement regarding the provisions of this Agreement, a copy of which is attached hereto as Exhibit B. The parties agree that statements made to the press and to third parties will be consistent with the joint statement.

### **13. 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.

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

#### 14.1 Assigns and Successors.

This Agreement shall bind any assigns and successors of Wells Fargo and Council. Counsel shall be notified in writing within thirty (30) days of the existence, name, address and telephone number of any successors and assigns of Wells Fargo.

#### 14.2 No Third Party Beneficiaries.

This 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 herefrom, or enforce against either party any provision hereof. The parties specifically intend that there be no third party beneficiaries to this Agreement, including, without limitation, the members of the Council.

### **15. Force Majeure.**

The performance of Wells Fargo 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, strikes or lockouts, unavailability of parts, equipment or materials through normal supply sources, Year 2000 problems arising from the fact that many computer programs were written using 2 digits rather than 4 to define the applicable year and/or without accounting for the fact that the Year 2000 is a Leap Year, or the failure of any utility to supply its services for reasons beyond the control of Wells Fargo. If Wells Fargo 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 Wells Fargo 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 of this Agreement.

### **16. Integrated Agreement.**

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

## **17. 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 the Agreement. The Recitals are integral to the construction and interpretation of this Agreement and are therefore incorporated into this Agreement in their entirety.

## **18. Triplicate Originals/Execution in Counterparts.**

All parties and Counsel shall sign three copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

[Signatures]