

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into this day of September, 2001 ("Effective Date") by and between the following parties: Alice Marjorie Donovan (hereafter "Claimant") and Union Bank of California, N.A. and Union BankCal Corporation ("UBOC") for the purposes and on the terms specified herein and operates in conjunction with the Confidential Addendum to this Agreement.

### **RECITALS**

This Agreement is based on the following facts:

- A. The Claimant is an individual who is blind and who currently has a bank account with UBOC. 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 the Title III regulations implementing the ADA contained in 28 C.F.R. " 36.101, et seq. ("ADA Regulations").
- B. UBOC does business in California, Washington and Oregon. UBOC provides printed material to its customers and potential customers and makes available numerous Automated Teller Machines throughout the states in which it does business.
- C. A dispute has arisen between Claimant on one side and UBOC on the other side, concerning whether UBOC provides Claimant and other blind and vision-impaired persons with legally required access to its printed materials and ATMs ("the Dispute").
- D. The parties enter into this Agreement in order to resolve the Dispute and to avoid the burden, expense, and risk of potential litigation. In entering into this Agreement, UBOC 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 UBOC 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 Claimant with respect to technology, the requirements of any applicable law or UBOC'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 UBOC in any action or proceeding, other than a proceeding to enforce the terms of this Agreement or the Confidential Addendum executed herewith.

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

## **1. Definitions.**

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

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

Automated Teller Machine Location means a location identified on the Branch and ATM Locator page of UBOC’s website, whose current website URL is www.uboc.com. If this page is discontinued during the term of the Agreement, ATM Location means a location that would have appeared on the Branch and ATM Locator page as that page was constituted as of the Effective Date.

1.3

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

Counsel means The Law Office of Elaine B. Feingold and the attorneys practicing law therein.

1.5

Existing ATM Locations means all UBOC ATM Locations existing as of the Effective Date. As of the Effective Date there are approximately 320 Existing ATM Locations.

1.6

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

1.7

Geographic Area means every State in the United States in which UBOC does business.

1.8

Legitimate Safety Requirements has the same meaning as that term has in 28 C.F.R. ‘36.104 (Definition of Undue Burden)

1.9

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.

1.10

Rollout Locations means Existing ATM Locations and Subsequently Acquired ATM Locations, but does not include (i) ATM Locations where Talking ATMs are deployed during any Pilot Project or (ii) ATM Locations at which, at the time of the Effective Date, the only UBOC ATMs are ATMs manufactured by Fujitsu Corporation. As of the Effective Date, there are 22 ATM Locations within this latter category.

1.11

Subsequently Acquired Automated Teller Machine Locations means ATM Locations that are added to the ATM Locator page of UBOC website for the first time after the Effective Date, or, if that page is discontinued, would have been added utilizing the criteria for adding locations as of the Effective Date.

1.12

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 UBOC 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. Additionally, all Tactilely Discernible Controls will otherwise comply with applicable regulations.

1.13

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

1.14

UBOC Talking ATM means a UBOC ATM that enables persons with Vision Impairments to independently access all Functions on the ATM that are available to sighted persons and that are required to be accessible pursuant to the terms of this Agreement. A UBOC Talking ATM has the following features: (1) speech output with volume control subject to the provisions relating to volume control set forth in section 2.1 below ; (2) Tactilely Discernible Controls; (3) ensures the privacy of the audible output of information; (4) provides the same degree of privacy of user input as is provided to sighted users; (5) allows 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; (6) provides audible transaction prompts to enable completion of each Function required to be accessible pursuant to this Agreement; (7) provides audible operating instructions and orientation to machine layout; (8) allows the user to interrupt audible instructions; (9) repeats audible instructions and (10) provides audible verifications for all inputs, except that entry of the personal identification number need not be verified audibly with numbers. When the method for ensuring privacy is an earphone, the earphone jack will be placed in an easily locatable position and will be a standard, 3.5 millimeter size.

## **2. Deployment of UBOC Talking ATMs**

### **2.1 Development and Testing.**

Prior to the Effective Date, UBOC, in conjunction with Diebold Corporation, its principal ATM vendor, has developed and tested, in a controlled laboratory setting, UBOC Talking ATMs. The UBOC Talking ATMs that have been developed and tested pursuant to this section provide Persons with Vision Impairments independent access to the following Functions: (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; and (vi) any other Functions available to sighted persons through UBOC ATMs. The parties recognize that Diebold may not have ready the volume control feature (described in section 1.13 above) for the Talking ATM Development and Testing phase or Pilot Project. UBOC will inform Claimant of the status of this feature at the meetings required by section 2.3 herein and will incorporate this feature into UBOC Talking ATMs promptly after its becoming available from the ATM vendor.

### **2.2 Pilot Project.**

At the conclusion of the Development and Testing phase, in accordance with the following schedule, UBOC has begun a pilot project of UBOC Talking ATMs as described in Section 2.1. For the Pilot Project, UBOC has installed a total of twenty (20) UBOC Talking ATMs for pilot testing. Eighteen machines have been installed in California, one UBOC Talking ATM has been installed in Washington State, and one UBOC Talking ATM has been installed in Oregon. All UBOC Talking ATMs installed as of the Effective Date shall continue to perform as UBOC Talking ATMs.

**2.2(1)** During the Pilot Project, UBOC will solicit input from Persons with Vision Impairments regarding the usability of the Talking ATMs on forms that have been mutually agreed to by the parties, and provide such input to Claimant.

### **2.3**

Meeting with Claimant and Counsel During the Pilot Project, UBOC personnel will meet with Claimant, Counsel, and their consultant at least once every sixty (60) days to demonstrate and report on the progress of these efforts and to elicit input regarding the operation, usability and flow of the Talking ATM. UBOC will consider Claimant's comments pursuant to Section 2.11 below.

### **2.4 Rollout Program.**

At the conclusion of the Pilot Project, but no later than August 1, 2001 UBOC will begin the Rollout Program during which it will install one UBOC Talking ATM as described in Section 2.1 above, at each Rollout Location in the Geographic Area. The Rollout shall be completed no later than July 30, 2002. At least fifty per cent (50%) of all UBOC talking ATMs required to be installed pursuant to this Agreement shall be installed no later than February 28, 2002.

### **2.5 Unavailability of Parts.**

If at any time during the Development and Testing phase described in Section 2.1, UBOC reasonably believes that there is a Function offered to sighted customers

on UBOC ATMs, other than the Functions set forth in section 2.1(i)-(v), that cannot be made part of the UBOC Talking ATM because the necessary hardware or software components cannot be obtained from one of UBOC's principal vendors or any other United States ATM vendors manufacturing products that are compatible with UBOC ATMs, UBOC will notify Claimant in writing, providing written documentation from all applicable vendors. At Claimant's request, made in writing within ten (10) days after receiving UBOC's written notification, UBOC will use its best efforts to arrange for a meeting to be held with Claimant, UBOC and its applicable ATM vendor regarding any Function that is the subject of the written notice. If the parties cannot agree within ten (10) days of receipt of the notice, or, if a meeting is held, within ten (10) days of the meeting, as to whether the disputed Function should be part of the UBOC Talking ATM, Claimant may submit to binding arbitration, pursuant to Section 8.4 below, the question of whether or not the necessary hardware or software components can be obtained from an applicable vendor that would enable the Function to be included on the UBOC Talking ATM.

2.6

ATM Locations containing only UBOC ATMs manufactured by Fujitsu Corporation: No later than July 31, 2002 UBOC shall install a UBOC talking ATM at each UBOC ATM Location which, at the time of the Effective Date, contained only ATMs manufactured by Fujitsu Corporation. No later than April 30, 2002, UBOC shall inform Claimant as to whether the talking ATMs to be installed pursuant to this Section will be the one developed and tested pursuant to Section 2.1, or whether a different UBOC Talking ATM will be used. If a different UBOC Talking ATM will be used, the parties will meet no later than May 31, 2002 regarding the operation, usability and flow of the Talking ATM.

2.7

New and Previously Excluded Functions on UBOC Talking ATMs. The following provisions apply to (i) a Function that did not exist for sighted persons on any UBOC ATM at the time that the UBOC Talking ATM was developed and tested (hereafter "New Function"), and (ii) any Function on a UBOC ATM that is available to sighted persons and was not included as part of the UBOC Talking ATM developed and tested pursuant to section 1.1 for which the necessary hardware or software components are subsequently obtainable from one of UBOC's principal vendors or any other United States ATM vendors manufacturing products that are compatible with UBOC ATMs (hereinafter "Previously Excluded Function").

**2.7(1)** Subject to section 2.7(b), all New and Previously Excluded Functions will be added to UBOC Talking ATMs as follows:

**2.7(a)(1)** The New or Previously Excluded Function will be included on all UBOC Talking ATMs that have not yet been rolled out, provided that the Function is available to sighted persons at the Rollout Location;

**2.7(a)(2)** The New or Previously Excluded Function will be included on all previously rolled out Talking ATMs, provided that the Function is available to sighted persons at the Rollout Location within (60) days after the Function becomes available to sighted persons at the Rollout Location.

## 2.8 Proviso Regarding New Functions.

If UBOC reasonably believes that a New Function cannot be made part of the UBOC Talking ATM because the necessary hardware or software components cannot be obtained from one of UBOC's principal vendors or any other United States ATM vendors manufacturing products that are compatible with UBOC ATMs, UBOC will notify Claimant in writing, providing written documentation from all applicable vendors. At Claimant request, made in writing within ten (10) days after receiving UBOC's written notification, UBOC will arrange for a meeting to be held with Claimant, UBOC and its applicable vendors regarding any Function that is the subject of the written notice. If the parties cannot agree within ten (10) days of receipt of the notice, or, if a meeting is held, within ten (10) days of the meeting, as to whether the disputed Function should be part of the UBOC Talking ATMs, Claimant may submit to binding arbitration, pursuant to Section 7, below, the question of whether or not the necessary hardware or software components can be obtained from an applicable vendor that would enable the Function to be included on the UBOC Talking ATM.

## 2.9 Locations with Different Types of UBOC ATMs.

(i) Whenever a UBOC Rollout Location has multiple UBOC ATMs, the UBOC Talking ATM at that Location shall have all the Functions that are offered to sighted users at that location. (ii) In addition, whenever a UBOC Rollout Location has multiple ATMs with varying hours of operation, the UBOC Talking ATM shall have the same hours of operation as the ATM with the longest hours of operation at the location except as provided in section 2.10.(a)

**2.9(1)** Because of Legitimate Safety Requirements, the Talking ATM that will be installed at 1666 Euclid Avenue, San Diego, will be the walk-up location, rather than the location with the longest hours of operation. If UBOC believes that compliance with Section 2.9 (ii) would interfere with Legitimate Safety Requirements at any other Rollout Location, it will notify Claimant of this fact within thirty (30) days of making the determination and such notification will include a description of the Legitimate Safety Requirements. In such circumstances, compliance with Section 2.9 (ii) will be excused unless Claimant objects to the Notice within ten days after receipt thereof. Failure to agree on whether compliance with section 2.9 (ii) is required shall be considered a dispute pursuant to Section 8. The fact that the ATM with the longest hours of operation is located outside a branch that also contains interior ATMs is alone an insufficient basis on which to excuse compliance with Section 2.9 (ii)

## 2.10 Subsequently Relinquished ATM Locations.

If UBOC 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 UBOC ceases to own, operate or lease the ATM Location, and such Subsequently Relinquished ATM Locations shall no longer be considered in calculating UBOC's rollout schedules unless the ATM Location is relinquished to a parent, successor or assign of UBOC, in which case the ATM Location remains subject to this Agreement.

## 2.11 Comments.

UBOC shall consider all written comments given by Claimant pursuant to Section 2.3 above, provided that such comments and suggestions are consistent with this Agreement and the ADA, and provided further that such comments are communicated to UBOC within ten (10) calendar days after the demonstration or meeting which gives rise to the comments. Within thirty (30) calendar days after receipt of any such comments, UBOC shall provide Counsel with a specific response in writing regarding UBOC's position on each such comment.

**2.12 Locating and Identifying UBOC Talking ATMs.**

Each UBOC Talking ATM installed pursuant to this Agreement shall have a sign that identifies the machine as a Talking ATM. Any text in that sign shall be in print no smaller than sixteen (16) point and Braille. Any symbol on the sign shall be tactual.

**2.13 Availability of Private Listening Devices.**

Any private listening devices necessary to utilize any UBOC Talking ATM shall be readily available and provided free of charge to Persons with Vision Impairments.

**2.14 Maintenance of Talking ATMs.**

UBOC will maintain its Talking ATMs, including the auditory functionality of these ATMs, in operable working condition at all times except for isolated or temporary interruptions in service due to maintenance or repairs. Should a Talking ATM malfunction, UBOC will use best efforts to correct the problem within 24 hours of receiving notice of the malfunction.

### **3. Auxiliary Aids and Services for Printed Material.**

**3.1 Provision of Auxiliary Aids and Services for Printed Material.**

Within one hundred and eighty (180) days of the Effective Date, UBOC shall implement an Auxiliary Aids and Services Policy and Procedure, pursuant to the terms of this section, to ensure that UBOC's printed materials, as described in Section 4.3(c), are communicated effectively to Persons with Vision Impairments, to the extent required by the ADA. The time periods in this section 3 shall be extended for no more than sixty (60) days if there is unexpected delay in UBOC entering into a contract with an auxiliary aids and services vendor. In such circumstances UBOC will notify Claimant in writing.

**3.2 Development of Auxiliary Aids and Services Policy and Procedure.**

**3.2(1)** Within ninety (90) days of the Effective Date, UBOC will provide Claimant with a copy of a draft Auxiliary Aids and Services Policy and Procedure. Within fifteen (15) business days after receiving the Auxiliary Aids and Services Policy and Procedure, Claimant shall provide written comments and suggestions about the Policy and Procedure to UBOC. UBOC shall consider and use best efforts to incorporate the substance of all such written comments and suggestions that Claimant gives pursuant to this section that are consistent with the ADA and this Agreement.

**3.2(2)** Within one hundred and twenty (120) days of the Effective Date, UBOC shall finalize the Auxiliary Aids and Services Policy and Procedure, and shall

commence initial training of its employees who serve the public regarding implementation of the Auxiliary Aids and Services Policy and Procedure.

**3.2(3)** Within one hundred and eighty (180) days of the Effective Date, Bank shall commence providing Auxiliary Aids and Services to Persons with Vision Impairments.

### 3.3 Elements of the Auxiliary Aids and Services Policy and Procedure.

UBOC's Auxiliary Aids and Services Policy and Procedure (hereafter "Policy and Procedure") shall be consistent with the ADA and shall include, at a minimum, the following elements:

**3.3(1)** A Statement of UBOC's Obligation to Provide Effective Auxiliary Aids and Services of Its Choice. The Policy and Procedure shall state that UBOC will provide effective Auxiliary Aids and Services for print materials subject to the policy to Persons with Vision Impairments who request Auxiliary Aids and Services in a manner consistent with the policy. The Policy and Procedure shall further provide that if more than one Auxiliary Aid or Service is effective to communicate a particular printed material to a Person with Vision Impairment, UBOC may select the effective method of its choice.

**3.3(2)** A Statement of Persons Entitled to Auxiliary Aids and Services. The Policy and Procedure shall state that Auxiliary Aids and Services are available to Persons with Vision Impairments.

**3.3(3)** A Statement of Printed Materials Covered by the Policy and Procedure. The Policy and Procedure shall state that it applies to all printed materials published by UBOC and its subsidiaries, concerning ATM services, consumer deposit accounts and or consumer lending and shall list specific examples of materials for which the Bank will provide Auxiliary Aids and Services, including but not limited to monthly bank account statements, informational materials such as product and service brochures, legal disclosure booklets, loan and account applications, special notices of account activity, notices of changes in account terms or conditions, and ATM Guides. For the purposes of this agreement, these materials do not include print materials related to investment services or UBOC-branded credit cards.

**3.3(4)** A Statement of the Types of Auxiliary Aids and Services Offered. The Policy and Procedure shall list available Auxiliary Aids and Services, including Braille, large print, electronic format, audio tape cassette, agent or operator assisted and self-service telephone service, and branch staff assistance. As provided in section 4.3(a), the policy may state that not every format is necessarily available for every document provided that a different format provides effective communication of the particular printed materials. UBOC's web site may serve as an Auxiliary Aid and Service at such time as the UBOC web site complies with Priorities One and Two of the Web Accessibility Guidelines found at <http://www.w4.org/TR/WCAG10/>.

**3.3(5)** A Reasonable Method or Methods for Persons with Vision Impairments to Request Auxiliary Aids and Services. The Policy and Procedure shall contain a reasonable method or methods by which a Person with Vision Impairments may request Auxiliary Aids and Services. At a minimum, the Policy and Procedure shall allow Persons with Vision Impairments to request Auxiliary Aids and

Services over the telephone and electronically through a method available on the UBOC website. The Policy and Procedure shall ensure that Persons with Vision Impairments (1) do not have to identify themselves more than once as Persons with Vision Impairments entitled to receive monthly statements in an alternative format; (2) do not have to specify more than once the requested Auxiliary Aids and Service that is effective for them for monthly statements; and (3) do not have to request more than once that a particular type of document (e.g., account statement) be provided by means of an Auxiliary Aid or Service. Nothing in this section shall preclude UBOC from utilizing its standard security measures and procedures.

**3.3(6) Time Frame Within which UBOC Must Provide Auxiliary Aids and Services After Receipt of a Request.** The Policy and Procedure shall contain reasonable time frames for UBOC to provide Auxiliary Aids and Services after receiving requests therefor.

**3.3(7) A Method for a Person with Vision Impairments to Seek, and for UBOC to Provide, an Auxiliary Aid or Service Other than that Initially Offered by UBOC.** The Policy and Procedure shall provide a method by which Persons with Vision Impairments can seek a particular Auxiliary Aid or Service other than that offered by UBOC for a particular type of printed material. The Policy and Procedure shall establish a procedure for the Bank to accept or reject such requests within a reasonable time frame. The Policy and Procedure shall not require UBOC to grant any such request if the Auxiliary Aid and Service initially offered by the Bank is effective to communicate to the Person with Vision Impairment the information provided on the particular document requested.

**3.3(8) No Charge for Auxiliary Aids and Services.** The Auxiliary Aids and Services Policy and Procedure shall state that UBOC will not impose any fees or charges on Person with Vision Impairments for providing any Auxiliary Aids or Services pursuant to this Agreement.

#### 3.4 Telephone Banking, On-line Banking, and Live Teller Fee Waivers.

Commencing on the Effective Date, UBOC will begin waiving any fees associated with access to its customer service telephone, On-line banking and live teller assistance for Persons with Vision Impairments. Nothing in this section precludes UBOC from charging Persons with Vision Impairments for particular products and services for which sighted customers are charged (e.g. the cost of checks) other than access to the services listed above.

#### 3.5 Raised Line Checks.

UBOC will offer 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.

#### 3.6 Record-Keeping and Reporting.

To the extent such requests, complaints or compliments are received through UBOC's website or telephone customer service line, UBOC will record requests for Auxiliary Aids and Services, the Bank's response to each such request, and complaints and compliments about UBOC's provision of Auxiliary Aids and Services on a form designed for this purpose. Beginning nine (9) months from the Effective Date, UBOC will provide Claimant's Counsel with semi-annual reports

describing and quantifying requests for Auxiliary Aids and Services, listed by banking material and type of Auxiliary Aid or Service requested, and the type of Auxiliary Aid or Service provided in response to each request; and summarizing complaints and compliments received by UBOC concerning its provision of Auxiliary Aids and Services pursuant to this Agreement.

### 3.7 Limitation on Remedies.

A breach of section 3 of this Agreement shall occur only where Claimant can establish that UBOC 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 is dissatisfied with a particular Auxiliary Aid or Service offered by UBOC shall not in itself constitute a breach of this Agreement. No breach of contract claims related to UBOC's provision of Auxiliary Aids and Services under this Agreement may be maintained by persons who are not parties to this Agreement.

## **4. Training of UBOC Personnel.**

### 4.1

UBOC shall develop training materials and train its employees who serve the public at branch locations, staffed off-premises locations, and on the customer service telephone regarding implementation of the Auxiliary Aids and Services Policy and Procedure and use, operation and locations of the UBOC Talking ATMs. Persons will be trained in a timely manner to ensure effective implementation of the provisions of this Agreement, and new employee training and refresher training will include training on these issues throughout the term of the Agreement. UBOC shall include annually an article or reminder notice about the Auxiliary Aids and Services Policy and Procedure in a publication circulated to its employees.

### 4.2 Training consultant:

Within thirty (30) days of the Effective Date, UBOC shall hire a mutually-agreed upon consultant to assist UBOC in carrying out its obligations pursuant to section 5.1. UBOC may require such consultant to sign a consulting agreement and/or a confidentiality agreement to be prepared by UBOC. The consulting agreement may be for a specified duration sufficient to ensure compliance with this section. The consultant will be a Person with Vision Impairments.

### 4.3 Training Materials and Program.

UBOC will provide Claimant with copies of training materials, and the principal components of its training plan, thirty days prior to the start of all training being conducted pursuant to this agreement. All comments of Claimant provided to UBOC within ten (10) business days will be considered in good faith and UBOC shall use best efforts to incorporate the substance of all such written comments and suggestions that Claimant gives pursuant to this section that are consistent with the ADA and this Agreement.

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

### 5.1 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 UBOC'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, UBOC's compliance with the new law or regulation will constitute compliance with this Agreement, provided that UBOC follows the procedures set forth in section 6.2, below. Where the law imposes a more stringent obligation than provided in this Agreement, the parties agree that: (1) the new obligation shall be incorporated as a term of this Agreement as soon as reasonably feasible after the new obligation becomes effective; and (2) no action by UBOC, which is permitted or required by such laws or regulations, shall constitute a breach of this Agreement.

#### 5.2 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, 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 7 of this Agreement.

### **6. Right to Seek Modification Under Certain Limited Circumstances.**

#### 6.1

Pursuant to the terms of section 7, below, UBOC may seek modification of section 3 of this Agreement if:

**6.1(1)** The development, testing, implementation and rollout of the UBOC Talking ATMs has a substantial adverse effect on the individual performance of a substantial number of such ATMs or on the overall performance or security of UBOC's ATM operations; or

**6.1(2)** The available technology does not permit UBOC to develop and install UBOC Talking ATMs that will operate effectively to enable Persons with Vision Impairments to independently use the machines for the Functions provided; or

**6.1(3)** There is a method other than UBOC Talking ATMs for providing Persons with Vision Impairments independent access to banking services at UBOC ATMs to the same extent that such access is provided by UBOC Talking ATMs and that such method can be implemented pursuant to the schedules contained in section 3 of this Agreement or any subsequently negotiated Addendum.

#### 6.2

Suspension of Performance Under Certain Limited Circumstances Following Notice of Modification Pursuant to Section 7.1(a) and 7.1(b). Delivery by UBOC to Claimant of Notice of Proposed Modification pursuant to section 8.1(a), based upon the conditions stated in sections 7.1(a) or 7.1(b) shall suspend for forty-five (45) days UBOC's performance of its executory obligations under the portion of section 3 of the Agreement that UBOC seeks to modify. Any such suspension shall not constitute a breach of section 3 of this Agreement and shall not excuse UBOC's performance during the suspension period of all other portions of the Agreement not affected by the suspension.

## **7. Procedures in the Event of Disputes or Requests for Modification.**

### 7.1 Notice.

**7.1(1) Notice of Proposed Modification.** If UBOC 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 sections 7.1(a), 7.1(b) or 7.1(c), it shall provide Claimant with a written Notice of Proposed Modification containing the following information:

**7.1(a)(1)** Which conditions set forth in section 7.1(a) or 7.1(b) have occurred or, in the event of a modification pursuant to section 7.1(c), what alternative technology it proposes;

**7.1(a)(2)** The factual basis for UBOC's initial conclusion that the conditions in sections 7.1(a), or 7.1(b) have occurred, or, in the event of a modification pursuant to section 7.1(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.

**7.1(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:

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

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

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

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

### 7.2 Meet and Confer.

Within thirty (30) days of receipt of a Notice provided pursuant to sections 8.1(a) or 8.1(b), Claimant and UBOC shall informally meet and confer and attempt to resolve the issues raised in the Notice, except that where performance has been suspended pursuant to section 7.2, such meet and confer will be held within ten (10) days.

### 7.3 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 given pursuant to section 8.1(a)

or 8.1(b). 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.

#### 7.4 Submission to Binding Arbitration.

**7.4(a)** If the matters raised in a Notice provided pursuant to section 8.1(a) or (b) herein are not resolved within thirty (30) days of the initial meet and confer required by section 8.2, either party may submit the unresolved matters to binding arbitration as set forth herein.

**7.4(b)** Arbitration shall be held before the Honorable Eugene Lynch of JAMS provided that he is available to schedule a hearing on the matter within thirty (30) days of the submission to binding arbitration and to render a written decision on the matter within sixty (60) days of the first hearing date. If Judge Lynch is unavailable, the arbitration shall be held before Judge Daniel Weinstein of JAMS provided he can meet this time schedule. If neither Judge Lynch nor Judge Weinstein are available within the time frame set forth herein, the JAMS arbitration selection procedure shall be utilized.

**7.4(c)** Any performance that has been suspended pursuant to section 8.2 herein and is the subject of a matter submitted to binding arbitration pursuant to this section shall continue to be suspended through the date of the arbitrator's written decision.

**7.4(d)** Law Governing Interpretation and Application of Agreement. The terms of this Agreement, and the provisions thereof, shall be interpreted and applied pursuant to the ADA, or where the ADA does not provide guidance, pursuant to the laws of the State of California.

## **8. 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 or email and United States mail, addressed as follows:

### **To Claimant:**

Elaine B. Feingold  
Law Office of Elaine B. Feingold  
1524 Scenic Avenue  
Berkeley, CA 94708  
Fax No.: (510) 548-5508  
[email omitted]

### **To UBOC:**

Gino A. Chilleri  
Union Bank of California, N.A.  
Legal Division

445 South Figueroa Street, 12th Floor  
Los Angeles, CA 90071  
Fax No.: 213.236.7579

## **9. Publicity Regarding This Agreement and Its Components.**

### **9.1 Information to Bank Customers Regarding Talking ATMs and the Auxiliary Aids and Services Policy.**

**9.1(a)** Within thirty (30) days of the Effective Date UBOC will provide information about the location of the UBOC Talking ATMs on the UBOC website and through the UBOC telephone customer service. Beginning ten (10) days prior to implementation of the Auxiliary Aids and Services Policy and Procedure, the website and UBOC telephone customer service shall also include information regarding the existence of the Policy and Procedure, and the method(s) by which Person with Vision Impairments can request Auxiliary Aids and Services.

**9.1(b)** UBOC shall provide Persons with Vision Impairments with a description of the Auxiliary Aids and Services Policy and Procedure upon request made to branch staff or telephone customer service agents or operators. The Auxiliary Aids and Services Policy and Procedure shall be available in formats that provide effective communication to Persons with Vision Impairments.

### **9.2 Information to Persons with Vision Impairments Regarding Talking ATMs and the Auxiliary Aids and Services Policy.**

Twice annually for the first two years of this Agreement, UBOC will distribute public service announcements to media and organizations serving Persons with Vision Impairments, in order to publicize the existence of UBOC Talking ATMs and the Auxiliary Aids and Services Policy and Procedure. Within sixty (60) days of the Effective Date, Claimant shall provide UBOC with a list of media and organizations to whom the announcement should be distributed. The list shall not include media or organizations that charge a fee for making public service announcements. The content of the public service announcement shall be consistent with this Agreement and subject to Claimant's prior review and approval.

### **9.3 Joint Press Release to Announce Installation of First Pilot Machine(s) in California and in Oregon and Washington.**

The parties will negotiate joint press releases to be issued as soon as practicable after the Effective Date. If the parties cannot agree on the content of the joint press releases, either party may send their own press release, and schedule their own press conference, provided that (i) the content of the press release is consistent with this Agreement; and (ii) a copy of the release, and the time and location of any press conference, is communicated to all parties and their counsel at least forty-eight (48) hours before notification to the press.

## **10. 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.

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

### **11.1 Assigns and Successors.**

This Agreement shall bind any assigns and successors of UBOC. Claimant's Counsel shall be notified in writing within thirty (30) days of the existence, name, address and telephone number of any assigns or successors of UBOC.

### **11.2 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 herefrom, or enforce against either party any provision hereof. The parties specifically intend that there be no third party beneficiaries to this Agreement.

## **12. Force Majeure.**

The performance of UBOC 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. If UBOC seeks to invoke this Section, it shall notify Claimant's 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 UBOC 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 7 of this Agreement.

## **13. Integrated Agreement.**

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

## **14. 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.

## **15. Term of the Agreement.**

The terms of this Agreement shall remain in effect from the Effective Date to twelve (12) months after the completion of the Rollout Program described in section 2.4.

## **16. 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.

- **For UBOC**  
Richard C. Hartnack, Vice Chairman
- **For Claimant**  
Alice Marjorie Donovan

### **APPROVED AS TO FORM:**

- Gino A. Chilleri, Counsel for UBOC
- Elaine B. Feingold, Counsel for Claimant