

## **AGREEMENT**

This Agreement ("Agreement") is entered into this 28th day of February, 2001 ("Effective Date") by and between the following parties: Bay State Council of the Blind, National Federation of the Blind of Massachusetts, Sight Loss Services, Bob Hachey, Amy E. Hasbrouck, Cynthia Ice, Brian Langlois, Margaret Mason, Rhonda Mencey, Phyllis Mitchell, Guy Zuccarello (hereinafter "the Claimants"), and Fleet National Bank (hereinafter "Fleet") 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. Each of the individual Claimants is an individual who is blind or vision-impaired and who currently has, had, or would like to have one or more bank accounts with Fleet or would like to use Fleet Automated Teller Machines ("ATMs") via a network system. Each of the individual Claimants 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. Each of the organizational Claimants is a not-for-profit membership organization that advocates for and provides services to Persons with Vision Impairments in Massachusetts. Among the members of these organizations and those on whose behalf they advocate and provide services are many Persons with Vision Impairments who hold bank accounts with Fleet or who hold or held bank accounts with other banks and would like to utilize Fleet ATMs to access those accounts.
- C. Fleet has branches and/or ATMs in Massachusetts, Connecticut, Rhode Island, New York, Maine, New Hampshire, New Jersey, Delaware, Florida, Maryland, Pennsylvania, and Virginia. A critical component of Fleet's retail banking business consists of a network of ATMs that provide a variety of banking services. In addition, Fleet provides information and services through its web site and printed material to its customers and potential customers.
- D. A dispute has arisen between Claimants and Fleet concerning whether Fleet provides Claimants and other Persons with Vision Impairments with legally required access to its printed materials, web site, and ATMs ("the Dispute").
- E. 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, Fleet 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 Fleet of any such violation or failure to comply with any applicable law. This Agreement and its terms and provisions shall not be offered or received as evidence for any purpose whatsoever against Fleet 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.**

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 or ATM Location means a street address where one or more Fleet ATMs are located, except as limited by Sections 1.2(a) and 1.2(b) below.

**1.2(a)** If a single street address is a large public facility (such as an airport, stadium, shopping mall, or multistory office building) and has Fleet ATMs in more than one area, each area containing a Fleet ATM constitutes an ATM Location.

**1.2(b)** If a single street address has Fleet ATMs in both indoor and outdoor locations, the indoor and outdoor locations shall each be considered an ATM Location. For purposes of this Section, “indoor” location means a location within a branch or other facility which is accessible only during times that the branch or other facility is open to the public; “outdoor” location means a location which is accessible, with or without bankcards, at any time.

1.3

Fleet Automated Teller Machine or Fleet ATM means, for the purpose of this Agreement, a self-service, card-accessed electronic information processing device that dispenses cash and/or accepts deposits, is owned, leased or operated by Fleet, and is installed in public locations for the primary purpose of conducting certain financial and/or other transactions directly through the device. Excluded from this definition are devices which only accept merchant deposit bags or supply change.

1.4

Fleet Talking ATM means a Fleet 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 Fleet Talking ATM has the following features: (1) provides speech output with volume control (either on the machine or on the listening device), subject to the provisions of Section 3.1.3 of this Agreement; (2) has Tactilely Discernible Controls, as defined in Section 1.9 of this Agreement; (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 (after a user utilizes an “additional time” function); 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.

1.5

Fleet 24-Hour Telephone Customer Service means the toll-free telephone banking customer service that Fleet provides to its consumers 24 hours per day for conducting banking transactions and obtaining information about accounts, products and services from Fleet’s Retail Distribution Group.

1.6

Counsel means The Disability Law Center, Inc., the Law Office of Elaine B. Feingold, and the attorneys respectively practicing law therein.

1.7

Function means a task or transaction that an ATM is capable of performing. Examples of ATM Functions available on Fleet 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.

1.8

Persons with Vision Impairments means persons who have a physical or mental impairment that substantially limits them in the major life activity of seeing within the meaning of the ADA and applicable Massachusetts law.

1.9

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 Fleet 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 Fleet's ATMs, web site, and printed materials, all to the extent identified in this Agreement, wherever Fleet does business in the United States or its territories.

### **3. Talking ATMs.**

#### **3.1 Development and Testing of Fleet Talking ATMs.**

**3.1.1** Following the Effective Date, in conjunction with its ATM vendors, Fleet will continue developing and testing Fleet Talking ATMs. The Fleet Talking ATMs that will be developed and tested will provide Persons with Vision Impairments independent access to the following Functions, to the extent that such Functions are available to sighted persons at any Fleet ATM Location: (i) transfers between a user's accounts; (ii) deposits to a user's accounts; (iii) cash withdrawals from a user's accounts; (iv) account balance for a user's accounts; and (v) cash withdrawals from a user's Fleet credit card accounts when the ATM is accessed through the user's credit card. No later than December 31, 2002, the following Functions, to the extent that such functions are available to sighted persons at any Fleet ATM location, will be made available on Fleet Talking ATMs: (a) setting Personal Identification Number (PIN); (b) setting Fleet Cash (pre-determined automatic cash withdrawal amount); and (c) purchasing stamps.

**3.1.2** During the Development and Testing phase, Fleet personnel will be available, on reasonable notice, to meet with representatives of Claimants 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. Fleet shall consider all written comments given by Counsel regarding the demonstration and report, provided that such comments and suggestions are consistent with this Agreement and the ADA, and provided further that such comments are communicated by Counsel in writing on behalf of all parties and representatives within fifteen (15) business days after the demonstration or meeting which gives rise to the comments. Within fifteen (15) business days after receipt of any such comments, Fleet shall provide Counsel with a specific response in writing regarding Fleet's position on each such comment.

**3.1.3** The parties recognize that Fleet's principal ATM vendors do not currently have available for deployment on Fleet Talking ATMs the volume control feature on the machine (described in Section 1.4(1) above) for the Development and Testing phase of the Pilot Project. Fleet will inform Claimants of the status of this feature, upon reasonable request, and will incorporate this feature (or volume control on the listening device) into Talking ATMs promptly after it becomes available from the ATM vendor.

#### **3.2 Pilot Project of Fleet Talking ATMs.**

At the conclusion of the Development and Testing phase, in accordance with the following schedule, Fleet will conduct a Pilot Project of Fleet Talking ATMs. The Pilot Project will consist of the following:

**3.2.1** No later than March 8, 2001, twenty (20) Fleet Talking ATMs will be installed at Fleet ATM Locations in Massachusetts.

**3.2.2** No later than March 29, 2001, fifteen (15) more Fleet Talking ATMs will be installed at Fleet ATM Locations in Massachusetts.

**3.2.3** No later than April 29, 2001, a total of fifteen (15) additional Fleet Talking ATMs will be installed at Fleet ATM Locations in Massachusetts and New Hampshire.

**3.2.4** No later than December 1, 2001, twenty (20) Fleet Talking ATMs will be installed at Fleet ATM Locations in New York, New Jersey, Connecticut, and/or Rhode Island.

**3.2.5** No later than December 31, 2001, twenty (20) Fleet Talking ATMs will be installed at Fleet ATM Locations in New York, New Jersey, Connecticut, and/or Rhode Island.

**3.2.6** Selection of Locations: All Fleet ATM Locations where Fleet Talking ATMs are installed during the Pilot Project will be mutually agreed upon and selected by the parties from a list of locations supplied by Fleet.

**3.2.7** Meeting with Claimants: During the Fleet Talking ATM Pilot Project, Fleet personnel will be available, on reasonable notice, to meet with representatives of Claimants at least once every sixty (60) days to report on the progress of the Pilot Project and to elicit input regarding the operation, usability and flow of the Talking ATM. Fleet shall consider all written comments given by Counsel regarding the subjects discussed at the meeting, provided that such comments and suggestions are consistent with this Agreement and the ADA, and provided further that such comments are communicated by Counsel in writing on behalf of all parties and representatives within fifteen (15) business days after the demonstration or meeting which gives rise to the comments. Within fifteen (15) business days after receipt of any such comments, Fleet shall provide Counsel with a specific response in writing regarding Fleet's position on each such comment.

### 3.3 Fleet Talking ATM Rollout

**3.3.1** No later than September 30, 2001, Fleet will begin the Fleet Talking ATM Rollout ("Rollout"). During the Rollout, Fleet will install one Fleet Talking ATM at Fleet ATM Locations pursuant to the following schedule:

#### ATM Rollout Dates/Location Schedule

#### **ATM Rollout Dates/Location Schedule**

<b>Date (No Later Than)</b>	<b>Cumulative Number of Fleet ATM Locations with Talking ATMs as of This Date (number includes Locations where Talking ATMs were placed during the Pilot Project)</b>
November 30, 2001	165
March 31, 2002	380
September 30, 2002	720
March 31.	1195

2003

September 30,  
2003 1420 (subject to Section 3.5)

**3.3.2 Selection of Rollout Locations:** All Fleet ATM Locations at which Fleet Talking ATMs will be placed during the first twelve (12) months of the Rollout will be mutually agreed to and selected by the parties from a list of locations provided by Fleet. Location suggestions provided in a timely manner by Claimants after this period will be considered in good faith by Fleet. Talking ATMs will be placed in at least the following states during the first twelve (12) months of the Rollout: Massachusetts, Connecticut, Rhode Island, New York, Maine, New Hampshire and New Jersey.

**3.3.3 Locations with Different Types of Fleet ATMs:** Whenever a Fleet ATM Location has multiple Fleet ATMs, the Fleet Talking ATM at that Location shall have all the Functions available at that Location, except as otherwise provided in Section 3.8. In addition, whenever a Fleet ATM Location has multiple ATMs with varying hours of operation, the Fleet Talking ATM shall have the same hours of operation as the ATM with the longest hours of operation. If the ATM with the longest hours of operation is a drive- up location, Fleet will notify Claimants in writing prior to installing a Talking ATM at that location and the parties will jointly agree as to which ATM should become the Fleet Talking ATM at that ATM location.

#### 3.4 Newly Purchased ATMs:

Following completion of the Pilot Project as applicable in each state, each ATM purchased by Fleet from an ATM manufacturer will be installed in that state as a Fleet Talking ATM unless there is already a Fleet Talking ATM at the location where the newly purchased ATM is to be installed. Fleet will use its best efforts to install newly purchased ATMs at Fleet ATM locations that have not yet been equipped with a Talking ATM pursuant to either the Pilot Program set forth in Section 3.2 or the Rollout set forth in Section 3.3.

#### 3.5 ATMs acquired from other institutions:

This section applies whenever, during the term of this Agreement, Fleet acquires, in one transaction, in excess of ten (10) ATM Locations that contain ATMs that have already been deployed by another financial institution or other ATM provider (hereafter referred to as a Bulk ATM Acquisition). Within sixty (60) days of a Bulk ATM Acquisition, Fleet will notify Claimants in writing, stating the number of ATMs acquired, the manufacturer and model number of each ATM, the address at which the ATM is installed, and the name of the financial institution or other ATM provider from whom the machines were acquired. Within thirty (30) days from receipt of this notice, the parties will meet and confer regarding whether Fleet Talking ATMs will be installed at locations that are included in the Bulk ATM Acquisition and, if so, the schedule for installing Fleet Talking ATMs at the ATM Locations that are included in the Bulk ATM Acquisition. As to the proposed acquisition of Summit Bancorp, which has not been consummated as of the Effective Date, (a) if the Summit acquisition is consummated, the Rollout described in Section 3.3.1 shall end at September 30,

2003 with a total of 1,420 locations; or (b) if the Summit acquisition is not consummated, the Rollout described in Section 3.3.1 shall end at March 31, 2003 with a total of 1,195 locations.

**3.6 Subsequently Relinquished ATM Locations.**

If Fleet 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 Fleet ceases to own, operate or lease the ATM Location, unless the ATM Location is relinquished to a parent or successor of Fleet itself, in which case the ATM Location remains subject to this Agreement.

**3.7 Subsequent Negotiations Regarding Further Deployment of Fleet Talking ATMs**

**3.7.1** No later than November 1, 2002, on a date to be agreed upon by the parties, the parties shall begin negotiating in good faith regarding the schedule for installing Fleet Talking ATMs at remaining Fleet ATM Locations existing as of the time of the negotiations (including Bulk ATM Acquisitions) at which Talking ATMS have not been, or are not scheduled to be, installed pursuant to Sections 3.2 (Pilot Program); 3.3 (Rollout Program); 3.4 (Newly purchased machines); and 3.5 (ATMs acquired from other institutions). Such negotiations shall continue for a period not to exceed sixty (60) days ("Negotiation Period"), unless the parties mutually agree to an extension of the Negotiation Period.

**3.7.2** If the parties reach agreement during the negotiations described in Section 3.7.1 of this Agreement, that agreement will be memorialized in writing as an Addendum to this Agreement.

**3.7.3** If the parties have not reached agreement during the negotiations described in Section 3.7.1 of this Agreement, and if the parties have not agreed to an extension of the Negotiation Period, the issue of an appropriate schedule for installing Fleet Talking ATMs at any remaining Fleet ATM Locations existing as of the time of the negotiations (including Bulk ATM Acquisitions) where Talking ATMS have not been, or are not scheduled to be, installed pursuant to Sections 3.2 (Pilot Program), 3.3 (Rollout Program), and 3.4 (Newly purchased machines) will be submitted, at either party's request, to non-binding mediation before a mediator or mediators agreed to by the parties.

**3.8 Provisions Regarding Particular Functions on Talking ATMs:**

If at any time during the term of this Agreement, Fleet reasonably concludes that there is a Function that will be offered to sighted customers on Fleet ATMs, other than the Functions set forth in Section 3.1.1, that cannot be made part of the Fleet Talking ATM, Fleet will notify Claimants in writing, providing written documentation from all applicable vendors or other explanatory material supporting its conclusions. At Claimants' request, made in writing within fifteen (15) days after receiving Fleet's written notification, Fleet will use its best efforts to arrange for a meeting to be held with Claimants, Fleet and, if applicable, the appropriate ATM vendors regarding any Function that is the subject of the written notice.

**3.9 Public Comments Regarding Fleet Talking ATMs:**

During the Pilot Project and Rollout, Fleet will accept input from Persons with Vision Impairments regarding the use and operation of the Fleet Talking ATMs. To the extent such input is received by means of (i) electronic communications

from Persons with Vision Impairments through Fleet's web site, (ii) in person communication at a Fleet branch, or (iii) telephone communications from Persons with Vision Impairments through the Fleet 24-Hour Telephone Customer Service, Fleet will record such input on standard forms created by Fleet. Such relevant information shall be provided to Claimants, subject to the condition that Fleet will not provide information subject to any restrictions relating to rights of privacy or confidentiality. In the event Claimants seek information that Fleet contends is subject to restrictions relating to rights of privacy or confidentiality, Claimants may invoke the procedures of Section 7.4 of this Agreement.

### 3.10 Provision of Information to Claimants.

**3.10.1** During the Fleet Talking ATM Pilot and Rollout, Fleet will notify Claimants' Counsel in writing or electronically of the address of each Fleet Talking ATM. Such notification will occur within one week of the date on which the Fleet Talking ATM is installed.

**3.10.2** Twice annually during the pendency of this Agreement, beginning six months after the commencement of the Pilot Project, Fleet will provide to Counsel in writing or electronically the following information (if applicable during the reporting period) about the Pilot and Fleet Talking ATM Rollout Programs:

**3.10.2(a)** the number and street address of any Fleet ATM Locations that were not Fleet ATM Locations as of the Effective Date,

**3.10.2(b)** the number and street address of any Subsequently Relinquished Fleet ATM Locations,

**3.10.2(c)** the number of ATMs purchased from an ATM vendor during the reporting period and the street address of the Fleet ATM Location where such machines were installed,

**3.10.2(d)** a list of any New Functions on Fleet ATMs that were not on Fleet ATMs as of the Effective Date,

**3.10.2(e)** a copy of all Talking ATM Installation Checklists, as described in Section 6.2.4, for every Fleet ATM Location at which a Fleet Talking ATM was installed during the reporting period, and

**3.10.2(f)** comments received from the public pursuant to Section 3.9.

**3.10.3** Within fifteen (15) days of receiving the information required pursuant to Section 3.10.2 above, Claimants may request additional information reasonably related to implementation of this Agreement. Within thirty (30) days of Claimants' request, Fleet shall provide such information to Claimants or state objections to same in writing.

### 3.11 Visual and Tactile Signage and Braille Labeling

**3.11.1** Each Fleet Talking ATM installed pursuant to this Agreement shall have a sign that identifies the machine as a Talking ATM. Any text in that identifying portion of the sign shall be in large print and Braille. Any non-text symbol on the sign shall be tactile. To the extent there is sufficient space on the face of the machine without altering existing layout or signage, each Non-Talking ATM at Talking ATM locations shall have a sign in Braille and large print stating that there is a Talking ATM at that location.

**3.11.2** All Fleet Talking ATMs installed pursuant to this Agreement shall have Braille labels identifying the following components: all keys, the earphone jack, deposit slot, card slot, cash dispenser and receipt dispenser.

**3.12 Availability of Private Listening Devices.**

Fleet will use best efforts to have any private listening devices necessary to utilize any Fleet Talking ATM readily available at branches with Talking ATMs during normal business hours, and such devices shall be provided free of charge to Persons with Vision Impairments.

**3.13 Maintenance of Talking ATMs.**

Fleet will use reasonable efforts to maintain its Talking ATMs in operable working condition, consistent with its prevailing service standards for ATMs generally at locations containing a single ATM.

## **4. Web Accessibility.**

**4.1**

Fleet will use its best efforts to design and generate each page of its website (www.fleet.com) so that it substantially complies with Priority 1 of the Web Content Accessibility Guidelines found at (hereinafter Guidelines) by June 1, 2001. In addition, Fleet will use its best efforts to design and generate each page of its website so that each page substantially complies with Priority 2 of the Guidelines by December 31, 2001.

**4.2**

Semi-annually during the term of this Agreement, beginning June 1, 2001, Fleet will report to Claimants regarding progress made toward compliance with Section 4.1. All questions regarding such report that are provided by Claimants in writing within fifteen (15) business days of receipt of the report shall be answered by Fleet in writing fifteen (15) business days thereafter.

**4.3**

For purposes of this section, adherence to the terms and understandings contained in the Memorandum appended hereto as Exhibit "A" shall constitute substantial compliance as to issues addressed therein.

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

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

**5.1.1** No later than thirty (30) days from the Effective Date, Fleet will develop and provide to Counsel a draft of an effective policy for providing auxiliary aids and services to Persons with Vision Impairments. Counsel shall provide Fleet with comments thereon within fifteen (15) days of receipt. Fleet shall consider and use best efforts to incorporate the substance of all such written comments and suggestions that Counsel give pursuant to this section that are consistent with the ADA and this Agreement. No later than sixty (60) days from the Effective Date, Fleet will finalize its policy for providing auxiliary aids and services. No later than ninety (90) days from the Effective Date, Fleet will implement the policy. That policy will include, at a minimum, the following components:

**5.1.1(a)** Production of the following frequently used documents in alternative formats: personal deposit account agreements, personal deposit account fee schedules, banking brochures, and new account opening materials, which will be generally available to Persons with Visual Impairments at all Fleet branch offices. Alternative formats will include Braille, audiocassette, diskette or other electronic format, and large print, as appropriate. In addition, Fleet will make these documents accessible through its web site within ninety (90) days from the Effective Date. Fleet will provide at each of its branch offices sample statements in Braille, audiocassette, diskette or other electronic format, and large print formats.

**5.1.1(b)** An effective procedure whereby Persons with Vision Impairments may request and Fleet will provide bank statements in alternative formats, including Braille, audio cassette, diskette or other electronic format, and large print.

**5.1.1(c)** An effective procedure whereby Persons with Vision Impairments can request, and Fleet will provide, in alternative format (Braille, audio cassette, diskette or other electronic format, and large print) or some other effective form of communication, other documents that Fleet provides to its sighted customers. Fleet will use reasonable efforts to comply with requests for documents in an alternative format within fifteen (15) business days of the date of the request.

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

The Auxiliary Aids and Services Policy shall state that Fleet will not impose any fees or charges on Persons with Vision Impairments for providing any Auxiliary Aids or Services pursuant to this Agreement.

#### 5.3 Fee Waivers.

Commencing on the Effective Date, Fleet will waive fees associated with the use of its 24-Hour Customer Service Telephone (already available to customers who provide notice of disability), live teller assistance and On-Line Banking for Persons with Vision Impairments.

#### 5.4 Raised Line Checks.

Fleet will continue to provide raised line checks for demand deposit and negotiable order of withdrawal accounts to Persons with Vision Impairments who so request, at a cost not to exceed the cost of the most comparable basic checks.

#### 5.5 Record-Keeping and Reporting.

To the extent requests, complaints or compliments are received through Fleet's website or 24-Hour Telephone Customer Service, Fleet will have in place procedures designed to record requests for Auxiliary Aids and Services, the Bank's response to each such request, and complaints and compliments about Fleet's provision of Auxiliary Aids and Services on a form designed for this purpose. Beginning six (6) months from the Effective Date, Fleet will provide Claimants' Counsel with semi-annual reports describing and quantifying requests for Auxiliary Aids and Services recorded by such procedures, listed by banking material and type of Auxiliary Aid or Service requested, the timing and substance of Fleet's response to each request; and summarizing complaints and compliments received by Fleet concerning its provision of Auxiliary Aids and Services pursuant to this Agreement. If these reports indicate that there have been many requests for a particular document or documents in an alternative format, Fleet

will give good faith consideration to having copies of that document or documents in alternative formats at a central location or locations available for prompt delivery to a branch office.

#### 5.6 Agreement Policies.

Policies created pursuant to this Agreement, including the Grievance Procedure created pursuant to Section 7.5, shall be available to the public in alternative formats.

## **6. Training of Fleet Personnel.**

### 6.1 Training Program and Materials.

Fleet will develop a training program and train its Retail Distribution Group employees who serve the public regarding the use and operation of Talking ATMs and the Auxiliary Aids and Services Policy. Such employees will be trained in a timely manner to ensure effective implementation of the provisions of this Agreement. Fleet will provide Counsel with copies of training materials, and the principal components of its training plan, thirty (30) days prior to commencing the training required by this Agreement. Counsel shall provide Fleet with comments thereon within fifteen (15) days of receipt. Fleet shall consider and use best efforts to incorporate the substance of all such written comments and suggestions that Claimants give pursuant to this section that are consistent, in Fleet's reasonable judgment, with the ADA and this Agreement.

### 6.2 Training Schedule.

**6.2.1** Within sixty (60) days of the Effective Date, Fleet shall finalize the training program, and shall commence initial training of its Retail Distribution Group employees who serve the public regarding implementation of the Auxiliary Aids and Services Policy. This training will cover Fleet policies and practices relating to Persons with Vision Impairments, including implementation of the fee waiver described in Section 5.3.

**6.2.2** Within ninety (90) days of the Effective Date, Fleet shall complete initial training of employees described above regarding implementation of the Auxiliary Aids and Services Policy.

**6.2.3** New Retail Distribution Group employees hired after the Effective Date and after the date specified in Section 6.4(b) who serve the public shall receive training regarding implementation of the Auxiliary Aids and Services Policy. Fleet shall include annually an article or reminder notice about the Auxiliary Aids and Services Policy in a publication circulated to its employees.

**6.2.4** The training described in this Section 6.2 shall include training regarding use, operation and location of Talking ATMs consistent with the schedule and locations for installation of such Talking ATMs. The training shall include a requirement that a Talking ATM Installation Checklist be completed at each staffed Fleet ATM location at which a Talking ATM is installed at least twenty-four (24) hours before the Talking ATM is made available to the public. Within thirty (30) days of execution of this Agreement, Fleet will provide Counsel with a draft Talking ATM Installation Checklist. The Checklist shall, at a minimum, have a place for every employee of the location at which the Talking ATM is

installed to indicate that they (1) have used the machine with an earphone; (2) know where the earphones and instructions are available at the location (subject to Section 3.12); (3) know how to report malfunctions with the Talking ATM; and (4) have received the training provided regarding the use, operation and location of the Talking ATMs at the location. Fleet will consider in good faith all Counsel's comments regarding the draft Checklist that are consistent with this Agreement and are provided in writing within fifteen (15) days of receipt of the draft Checklist. A final Checklist will be provided to Counsel within sixty (60) days of execution of this Agreement.

## **7. Procedures in the Event of Disputes.**

### **7.1 Notice.**

**7.1.1** 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:

**7.1.1(a)** the alleged act of non-compliance;

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

**7.1.1(c)** a statement of the remedial action sought by the initiating party; and

**7.1.1(d)** 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 Section 7.1, Claimants and Fleet shall informally meet and confer and attempt to resolve the issues raised in the Notice.

### **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 7.1. Such informal discovery may include, but is not limited to, interviewing witnesses and experts and exchanging 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.**

**7.4.1** If the matters raised in a Notice provided pursuant to Section 7.1(a) or (b) herein are not resolved within thirty (30) days of the initial meet and confer required by Section 7.2, either party may submit the unresolved matters to binding arbitration as set forth herein.

**7.4.2** Arbitration shall be held before an arbitrator or arbitrators agreed to by the parties, provided that the arbitrator/s are 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 the Parties are unable to agree on an arbitrator or arbitrators, then the matter shall be submitted to tripartite arbitration. In this event, each party shall

select a partisan arbitrator, and the two partisan arbitrators shall jointly select a neutral umpire. Failure of the partisan arbitrators to reach agreement on a neutral arbitrator shall result in a referral of the selection dispute to the American Arbitration Association.

**7.4.3 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 Commonwealth of Massachusetts. The parties acknowledge that at the time they conduct further negotiations regarding further deployment of Fleet Talking ATMs, pursuant to Section 3.7, the law and standards for access to ATM services may have changed from the time when this Agreement was executed. The Parties agree that those subsequent negotiations will be based upon the law existing at the time of the negotiations. The Parties further acknowledge that after the Effective Date, standards for access to banking services via the Internet, or the standards for the provision of Auxiliary Aids and Services, for Persons with Vision Impairments, which are different from Fleet'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, Fleet's compliance with the new law or regulation will constitute compliance with this Agreement, provided that Fleet follows the procedures set forth in section 7.4.4, below. Where the law or regulation 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 Fleet which is permitted or required by such laws or regulations shall constitute a breach of this Agreement.

**7.4.4 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 7.4.3, 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.

#### 7.5 Grievance Procedure:

Within thirty (30) days from the Effective Date, Fleet shall establish a written grievance procedure whereby Persons with Vision Impairments can complain to Fleet about any matter covered by this Agreement, including Fleet Talking ATMs, Auxiliary Aids and Services, and web accessibility.

**7.5.1** That procedure shall include at a minimum:

**7.5.1(a)** an effective method of publicizing the grievance procedure in accessible formats;

**7.5.1(b)** designation of an official responsible for handling grievances;

**7.5.1(c)** a timeline for responding to grievances. All responses will be in writing and in an accessible format.

**7.5.2** Beginning six months from the Effective Date, Fleet will provide Claimants' Counsel with semi-annual reports listing the number of grievances received, the substance of each grievance, and the resolution of each grievance.

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 e-mail and United States mail, addressed as follows:

**To Claimants:**

Stanley J. Eichner

Jane K. Alper

Disability Law Center, Inc.

11 Beacon Street, Suite 925

Boston, MA 02108

Fax No. 617.723.9125

[email omitted]

Elaine B. Feingold

Law Office of Elaine B. Feingold

1524 Scenic Avenue

Berkeley, CA 94708

Fax No. 510.548.5508

[email omitted]

**To Fleet:**

Robert L. Klivans

Deputy General Counsel

FleetBoston Financial Corp.

100 Federal Street

Mail Stop MA DE 10019C

Boston, MA 02110

Fax No. 617.434.2073

[email omitted]

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

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

**9.1.1** On or prior to installation of the first pilot Fleet Talking ATM, Fleet will provide information about the location of Fleet Talking ATMs on the “ATM Locator” page of Fleet’s website and through the Fleet 24-Hour Telephone Customer Service. On or prior to implementation of the Auxiliary Aids and Services Policy, the website and Fleet 24-Hour Telephone Customer Service shall also include information regarding the existence of the Policy and the method(s) by which Persons with Vision Impairments can request Auxiliary Aids and Services. To facilitate communication regarding services provided under this Agreement, Fleet will establish a dedicated option on its main menu of the Fleet 24-Hour Telephone Customer Service.

**9.1.2** Fleet shall provide Persons with Vision Impairments its Auxiliary Aids and Services Policy upon request made to branch staff or 24-Hour Telephone Customer Service agents or operators. The Auxiliary Aids and Services Policy 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 two years following the Effective Date, Fleet will distribute public service announcements to media and organizations serving Persons with Vision Impairments, in order to publicize the existence of Fleet Talking ATMs and the Auxiliary Aids and Services Policy. Within sixty (60) days of the Effective Date, Claimants shall provide Fleet with a list of media and organizations to which the announcement should be distributed. The content of the public service announcement shall be consistent with this Agreement and subject to Claimants’ prior review.

### **9.3 Joint Press Release to Announce Execution of this Agreement.**

The parties will negotiate a joint press release to be issued as soon as practicable upon execution of the Agreement. If the parties cannot agree on a joint press release, either party may issue its or their own press release, provided that (i) the content is consistent with this Agreement; and (ii) a copy of the release is

provided to all parties and their counsel at least twenty-four (24) hours before it is sent to the press.

#### **9.4 Joint Press Release and Press Conference to Announce Installation of First Pilot Machine(s).**

The parties will negotiate a joint press release, and will schedule a joint press conference to be issued and held as soon as practicable after the first pilot Talking ATMs are installed. If the parties cannot agree on the content of the joint press release, either party may issue its or their own press release, and schedule its or 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 the 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.**

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

### **12. Force Majeure.**

The performance of Fleet 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. If Fleet 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 Fleet 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.

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#### **15. 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.

- **FLEET NATIONAL BANK**
- **BAY STATE COUNCIL OF THE BLIND**
- **NATIONAL FEDERATION OF THE BLIND OF MASSACHUSETTS**
- **SIGHT LOSS SERVICES**
- **BOB HACHEY**
- **MARGARET MASON**
- **AMY E. HASBROUCK**
- **RHONDA MENCEY**
- **CYNTHIA ICE**
- **PHYLLIS MITCHELL**
- **BRIAN LANGLOIS**
- **GUY ZACARELLO**