

PRELIMINARY AGREEMENT

This Preliminary Agreement ("Agreement") is entered into this 15th day of April, 2001 ("Effective Date"), by and between the following parties: Kelly Pierce and Anna Byrne (hereafter "Claimants") and Bank One, National Association (Columbus), on behalf of itself and its affiliated banks (collectively "Bank One"), for the purposes and on the terms specified herein.

RECITALS

This Agreement is based on the following facts:

- A. Each Claimant is an individual with a vision impairment and who currently has, had, or would like to have one or more bank accounts with Bank One or would like to use Bank One Automated Teller Machines as defined in section 1.2 herein, via a network system. Each Claimant is an individual with a disability within the meaning of section 3(2) of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, 12102(2) ("ADA") and 28 C.F.R. §36.104.
- B. The law firm of Saperstein, Goldstein, Demchak & Baller ("Saperstein") and the attorneys practicing law therein and the Law Office of Elaine B. Feingold ("Feingold") (collectively "Claimants' Counsel") represent the Claimants.
- C. Bank One does business in Illinois, Ohio and in other states across the United States, where Bank One owns, operates or leases Automated Teller Machines ("ATMs").
- D. A dispute has arisen between Claimants on one side and Bank One on the other side, concerning whether Bank One provides Claimants and other vision-impaired persons with legally required access to its ATMs, printed materials, and website ("the Dispute"). The Dispute was brought to the attention of Bank One by written correspondence from Claimants' Counsel sent in June, 1999. Regarding its ATMs, Bank One replied by letter, in July 1999, that it was in compliance with the requirements of the ADA by virtue of, among other things, Braille applications on the ATMs, bank personnel assistance at its staffed locations, and its 24 hour "bank by phone" service. Since that time, the parties and their respective counsel have met and conferred in good faith and have participated in laboratory and field testing of Bank One Talking ATMs, as defined in section 1.3 herein, in efforts to resolve the Dispute.
- E. The parties have determined that full resolution of the Dispute will be aided by execution of this Agreement that addresses primarily the pilot testing of Bank One Talking ATMs, as defined in section 1.3 herein, at a limited number of sites containing Bank One ATMs, as defined in section 1.2 herein.
- F.

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

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

1. Definitions.

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

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

1.3

Bank One Talking ATM means a Bank One ATM installed pursuant to this Agreement which, by means of an audio enhancement, enables Persons with Vision Impairments to independently access functions on the ATM that are available to sighted persons and that are required to be accessible pursuant to the terms of section 3.1 of this Agreement. Bank One Talking ATMs installed pursuant to this Agreement have the following features: (1) speech output; (2) Tactilely Discernible Controls, as defined in section 1.6 herein; (3) ensures the privacy of the audible output of information by delivery through an earphone, whose jack will be placed in an easily locatable position and will be a standard, 3.5 millimeter size; (4) allows the user to correct entries without canceling the entire transaction; (5) provides audible transaction prompts to enable completion

of each function accessible pursuant to this Agreement; (6) provides audible operating instructions and orientation to machine layout; (7) allows the user to interrupt (bypass) audible instructions; (8) repeats audible instructions; and (9) provides audible acknowledgment of all inputs, except that entry of the personal identification number need not be verified audibly with numbers.

1.5

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.

1.6

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

2. Term of Agreement.

The terms of this Agreement shall remain in effect from the Effective Date until completion of the Second Negotiation Period as described in section 4 herein.

3. Talking ATMs.

3.1 Development and Testing of Bank One Talking ATMs.

As of the Effective Date, Bank One, in conjunction with its principal ATM vendor and its third party host processor, has begun and will continue developing and testing, in a controlled laboratory setting, Bank One Talking ATMs. The Bank One Talking ATMs that have been developed and are being pilot tested pursuant to the terms of this Agreement (“Pilot Project”) will provide Persons with Vision Impairments independent access to the following functions, to the extent that such functions are available to sighted persons at the Bank One ATM location where the pilot Bank One Talking ATM is to be installed: (i) balance inquiry; (ii) transfers between a user’s primary accounts; (iii) deposits to a user’s accounts; (iv) cash withdrawals from a user’s accounts; and (v) cash withdrawals from a user’s credit card account when the ATM is accessed through the user’s credit card. The parties recognize that Diebold, Bank One’s ATM vendor, which will participate in the developing and testing pursuant to this section, will not have ready a volume control feature in time to include this feature in the first Bank One Talking ATMs to be installed pursuant to this Agreement. Should Diebold offer a volume control feature prior to the expiration of this Agreement, as provided in section 4.4 herein, Bank One will in good faith consider installation pursuant to the comment and response procedure described in section

3.6 herein. Bank One will inform Claimants of the status of this feature at the meetings required by section 3.6 herein.

3.2 Pilot Project.

Pursuant to the schedule set forth herein, Bank One will install Bank One Talking ATMs as described in section 3.1 herein at one hundred and thirty (130) locations at which Bank One owns, operates or leases ATMs (hereinafter referred to as "Pilot Locations"). The first thirty (30) Pilot Locations are identified in Exhibit A, which is attached hereto and incorporated herein by reference. Fifteen (15) of these first thirty Pilot Locations are in the State of Ohio and fifteen (15) of the first thirty Pilot Locations are in the State of Illinois. The remaining Bank One Talking ATMs required to be installed pursuant to this Agreement will be placed in at least three additional states in which Bank One owns, operates or leases ATMs, and may include additional Bank One Talking ATMs in Illinois and Ohio. The particular Pilot Locations at which Bank One Talking ATMs will be placed in these additional states will be selected pursuant to the terms of section 3.11 herein.

3.3 Schedule for Installing Bank One Talking ATMs and Duration of Pilot Project.

3.3(a) Installation of Bank One Talking ATMs for the Pilot Project in Ohio and Illinois was completed November 30, 2000.

3.3(b) At least forty-five (45) additional Bank One Talking ATMs will be installed no later than September 1, 2001. The remaining Bank One Talking ATMs required to be installed pursuant to this Agreement will be installed no later than October 30, 2001, subject to section 9.1 herein.

3.3(c) The Pilot Project will continue at least until the end of the Second Negotiation Period set forth in section 4 herein.

3.4 Hours of Operation of Bank One Talking ATMs.

All Bank One Talking ATMs shall have the same hours of operation as the ATM with the longest hours of operation at the Pilot Location.

3.5 Input from Persons with Vision Impairments.

During the Pilot Project, Bank One will solicit input regarding the Bank One Talking ATMs from Persons with Vision Impairments. Methods for providing such input shall include e-mail contact through Bank One's website located at www.bankone.com, branch or other Bank One staff, and Bank One's telephone customer service.

3.6 Meetings with Claimants.

During the development and testing phase and Pilot Project, Bank One personnel will meet in person or confer by telephone with representatives of Claimants at least once every ninety (90) days, or more frequently if necessary, to demonstrate and report on the progress of these efforts and to elicit input regarding the operation, usability and flow of Bank One Talking ATMs. Bank One will in good faith consider all written comments given by Claimants and their representatives pursuant to this section, provided that such comments and suggestions are consistent with this Agreement and the ADA, and provided further that such comments are communicated by Claimants' Counsel in writing on behalf of all parties and representatives within ten (10) business days after the demonstration or meeting or telephonic conference which gives rise to the comments. Within ten

(10) business days after receipt of any such comments, Bank One shall provide Counsel with a specific response in writing regarding Bank One's position on each such comment. This section does not obligate Bank One to implement any such comment or suggestion. All comments and other communications between Claimants and their representatives and Bank One will be subject to the Confidentiality Agreement entered into between the Parties on or about March 14, 2000.

3.7 Visual and Tactile Signage and Labels.

Within sixty (60) days of the Effective Date, each Bank One Talking ATM installed pursuant to this Agreement shall have a sign that identifies the machine as a Bank One Talking ATM. Any text in that sign shall be in large print and Braille. Any non-text symbol on the sign shall be tactile. Additionally, each Bank One ATM (except drive-up ATMs) at a location with a Bank One Talking ATM shall have a sign in large print and Braille stating that there is a Bank One Talking ATM at that location. All Bank One Talking ATMs installed pursuant to this Agreement shall have Braille labels identifying the following components: all numeric keys, deposit slot, card slot, cash dispenser and receipt dispenser.

3.8 Availability of Private Listening Devices.

The private listening devices necessary to utilize any Bank One Talking ATM shall be readily available and provided free of charge to Persons with Vision Impairments. The private listening devices shall be distributed with instructions about how users are to locate the earphone jack and activate the Bank One Talking ATM audio program. Such instructions shall be available in audio and large print within sixty (60) days of the Effective Date of this Agreement.

3.9 Maintenance of Bank One Talking ATMs.

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

3.10 ATMs Purchased During the Term of this Agreement.

If during the term of this Agreement Bank One purchases ATMs, such ATMs will be equipped with the necessary hardware and software to enable the machines to serve as Bank One Talking ATMs.

3.11 Notification of Locations.

Bank One will inform Claimants of the proposed locations where Bank One Talking ATMs will be installed pursuant to section 3.3(c) herein at least thirty (30) days prior to the scheduled installation date. All Claimants' comments and suggestions regarding these locations, and other locations in the states in which the proposed locations are situated, shall be considered in good faith. The parties agree that no more than ten (10) of the Bank One Talking ATMs installed during the Pilot Project will be "drive-up" ATMs. Additionally, no Pilot Project location will have more than one Bank One Talking ATM in place during the Pilot Project.

4. Further Agreement to Be Negotiated.

4.1

By no later than April 18, 2001, the parties shall begin negotiations in good faith to enter into a further agreement regarding the issues set forth in section 4.2 herein. Such negotiations shall continue for a period not to exceed ninety (90) days unless the parties mutually agree to extend the period further ("First Negotiation Period").

4.2

During the First Negotiation Period, the parties shall negotiate in good faith regarding the following: (i) schedule and policy and procedure for ensuring effective communication of Bank One printed materials to Persons with Vision Impairments; (ii) schedule and method for ensuring access to Bank One's website and on-line banking services to Persons with Vision Impairments; (iii) implementation of a comprehensive training program for relevant Bank One staff on issues relevant to Persons with Vision Impairments; (iv) resolution of Claimants' damage claims; (v) schedule and methods for audibly providing error messages that are only displayed on receipt; and (vi) any other matter which either party believes is reasonably related to the issues set forth in subparts (i) – (v) herein. The parties expressly recognize that the Claimants are entitled to seek reasonable attorneys' fees, costs and expert expenses for all work performed in connection with the Dispute, even though negotiations regarding such reasonable attorney's fees, costs and expert expenses have not occurred in the negotiations that resulted in this Agreement and will not occur during the First Negotiation Period.

4.3

By no later than September 15, 2001, the parties shall begin negotiations in good faith to enter into a further agreement regarding (a) the schedule and method(s) for providing Persons with Vision Impairments independent access to Bank One ATMs and all ATM functionality at each location where Bank One ATMs are owned, leased or operated, by means of an audio enhancement and (b) resolution of Claimants' claim for reasonable attorney's fees, costs, and expert expenses. Such negotiations shall continue for a period not to exceed sixty (60) days unless the parties mutually agree to extend the period further ("Second Negotiation Period").

4.4

If the parties fail to reach a definitive agreement by the expiration of the Second Negotiation Period, or if the parties have not agreed to an extension of the Second Negotiation Period, the term of this Agreement shall expire.

5. Training of Bank One Personnel.

5.1 Training.

Bank One will train relevant employees regarding the location, use and operation of Bank One Talking ATMs and will instruct such employees in appropriate methods of instructing Persons with Vision Impairments how to use Bank One ATMs generally and the Bank One Talking ATMs in particular, as further set forth in section 5.2 herein. At a minimum, employees to be trained pursuant to

this section shall include employees at all bank branches where the Bank One Talking ATMs are located and Bank One shall send communications to its telephone customer service representatives regarding the Bank One Talking ATMs. Bank One shall also provide a toll free customer service line that is designed to provide relevant information about Bank One Talking ATMs through a voice response unit. Such employees will be trained in a timely manner to ensure effective implementation of the provisions of this Agreement.

5.2 Information and Services to Persons with Vision Impairments.

Bank One will train the banking center employees specified in section 5.1 in how to demonstrate Bank One Talking ATMs to Persons with Vision Impairments, and such demonstration shall be provided to Persons with Vision Impairments upon reasonable request therefore. All requests made to branch staff at Bank One Talking ATM locations for assistance in using Bank One ATMs generally and in using the Bank One Talking ATMs will be handled by branch staff. By no later than the Effective Date, Bank One will provide Claimants' Counsel with training materials designed to comply with this section. Claimants shall provide Bank One with comments thereon within ten (10) business days of receipt. Bank One 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 with the ADA and this Agreement.

6. Right to Seek Modification Under Certain Limited Circumstances.

6.1 Pursuant to the terms of section 8, herein, Bank One may seek modification of section 3 herein:

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

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

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

6.2 Suspension of Performance Under Certain Limited Circumstances Following Notice of Modification Pursuant to Section 8.1(a) and 8.1(b).

Delivery by Bank One to Claimants of Notice of Proposed Modification pursuant to section 8.1(a), based upon the conditions stated in sections 6.1(a) or 6.1(b), shall suspend for forty-five (45) days Bank One's performance of its executory obligations under the portion of section 3 herein that Bank One seeks to modify. Any such suspension shall not constitute a breach of section 3 herein and shall not

excuse Bank One's performance during the suspension period of all other portions of this Agreement not affected by the suspension.

7. Publicity Regarding Bank One Talking ATMs.

7.1

Within forty-five (45) days of the Effective Date, Bank One will provide information about the location of the Talking ATMs via the "Locate Us" link on the homepage of Bank One's website and through Bank One's telephone customer service.

7.2

By no later than April 30, 2001, the parties will issue a joint press release announcing the Pilot Project.

7.3

Within sixty days thereafter, Bank One will distribute public service announcements to media and organizations serving Persons with Vision Impairments as suggested by Claimants and approved by Bank One, with names and addresses of such media and organizations to be provided by Claimants. The list shall not include media organizations that charge a fee for making public service announcements.

7.4

Both the public service announcement in section 7.2 and the press release in section 7.3 must be mutually agreed upon by the parties before either the public service announcement or the press release can issue.

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

8.1 Notice.

8.1(a) Notice of Proposed Modification. If Bank One initially concludes, based upon the exercise of reasonable business judgment and discretion, that the conditions exist under which modification of this Agreement is allowed, as set forth in section 6.1(a) or 6.1(b), or 6.1(c) herein, it shall provide Claimants with a written Notice of Proposed Modification containing the following information:

8.1(a)(1) Which conditions set forth in section 6.1(a) or 6.1(b) have occurred; or, in the event of a modification pursuant to section 6.1(c), what alternative technology it proposes;

8.1(a)(2) The factual basis for Bank One's initial conclusion that the conditions in section 6.1(a) or 6.1(b) have occurred; or, in the event of a modification pursuant to section 6.1(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.

8.1(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:

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

- 8.1(b)(2)** a reference to the specific provision(s) of this Agreement that are involved;
- 8.1(b)(3)** a statement of the remedial action sought by the initiating party;
- 8.1(b)(4)** a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

8.2 Meet and Confer.

Within ten (10) days of receipt of a Notice provided pursuant to section 8.1 herein, Claimants and Bank One shall informally meet and confer and attempt to resolve the issues raised in the Notice.

8.3 Informal Discovery.

As part of the meet and confer process, the parties shall exchange relevant documents and/or other information and engage in informal discovery in an attempt to resolve the issues raised in the Notice provided pursuant to section 8.1 herein. Such informal discovery may include, but is not limited to, interviewing witnesses and experts and exchange of additional information or supporting documentation. Any disagreement about information to be provided shall be handled pursuant to the provisions of this section.

8.4 Submission to Binding Arbitration.

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

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

8.4(c) Attorney's fees, expenses, costs, filing fees, and expert witness fees incurred in resolving any disputes arising out of or relating to this Agreement shall be awarded to Claimants if they are the prevailing parties and to Bank One if Claimants' pursuit of their claim through the arbitration is found by the arbitrator(s) to be frivolous, unreasonable or without foundation.

8.4(d) The terms of this Agreement, and the provisions thereof, shall be interpreted and applied pursuant to the laws of the State of Illinois.

9. Miscellaneous Provisions.

9.1 Attorneys Fees.

The parties recognize that execution of the Agreement is in lieu of Claimants commencing an action or administrative proceeding. Bank One agrees that Claimants shall not be precluded from seeking to recover attorney's fees, including litigation expenses and costs, to the extent permitted by Section 505 of the Americans with Disabilities Act, 42 U.S.C. § 12205, because they used alternative means of dispute resolution, including but not limited to settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, rather than instituting a civil action as permitted by Section 308 of the Americans with Disabilities Act, 42 U.S.C. § 12188(a).

9.2 Force Majeure.

The performance of Bank One under this Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God, strikes or lockouts, or unavailability of parts, equipment or materials through normal supply sources. If Bank One seeks to invoke this section, it shall notify Counsel in writing as soon as reasonably possible, specifying the particular action that could not be performed and the specific reason for the non-performance. Counsel and Bank One will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this section, or any future action to be taken, that remains after the meet and confer session will be handled as a dispute pursuant to section 8 herein.

9.3 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.

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

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

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

9.5 Integrated Agreement.

This Agreement constitutes the entire Agreement relating to the subject matters addressed therein.

9.6 Rules of Construction.

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

9.7 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 certified U.S. mail, return receipt requested, addressed as follows:

To Claimants:

Linda M. Dardarian
c/o Saperstein, Goldstein, Demchak & Baller

300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Fax No.: (510) 835-1417
[email address omitted]

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

To Bank One:

Lynn A. Goldstein
Bank One Corporation
1 Bank One Plaza
Mail Code IL1-0286
Chicago, IL 50570-0286
Fax No.: (312) 732-3596
[email address omitted]

National ATM Manager
Bank One Corporation
111 Monument Circle
Mail Code IN1-0189
Indianapolis, IN 46204

9.8 Triplicate Originals/Execution in Counterparts.

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

PARTIES:

- **BANK ONE, NATIONAL ASSOCIATION**
By: Scott M. McBair
Title: Senior Vice President
- **KELLY PIERCE**
- **ANNA BYRNE**