

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (hereinafter "Settlement Agreement") and the related document entitled Confidential Addendum to Settlement Agreement (collectively referred to herein as the "Full Agreement") are entered into as of the Effective Date, as defined below in Section 1.4, by and between the following parties: American Council of the Blind ("ACB"), American Foundation for the Blind ("AFB"), and California Council of the Blind ("CCB") (collectively, the "Claimants"), and Target Corporation ("Target"). Claimants and Target are at times referred to collectively herein as the "Parties."

## **RECITALS**

The Full Agreement is based on the following facts:

**A.**

ACB is a non-profit organization that provides advocacy services in the United States on behalf of individuals who are blind or have visual impairments. CCB is ACB's California affiliate serving the needs of blind and visually-impaired persons throughout the State of California. ACB is incorporated in Washington, D.C. and has its place of business in Arlington, Virginia. CCB is incorporated and has its place of business in the State of California.

**B.**

AFB is a national non-profit organization whose mission is to eliminate the inequities faced by the more than ten million blind and visually impaired persons in the United States. AFB's headquarters are in New York, New York, and its Public Policy Center is in Washington, D.C. In negotiations leading to execution of this Settlement Agreement, Claimants have been represented by Linda M. Dardarian of Goldstein, Demchak, Baller, Borgen and Dardarian, and Lainey Feingold of The Law Office of Lainey Feingold.

**C.**

Target operates retail stores in California and other states across the United States. Target's retail stores include general merchandise stores and SuperTarget stores (collectively, "Target Stores"). In negotiations leading to execution of this Agreement, Target has been represented by Robert Naeve of Jones Day.

**D.**

Target currently equips each of the cash registers in its stores with one of three types of POS Devices that are designed to assist customers in making credit and debit card purchases.

**1.** Commencing in March 2002, Target equipped all of its stores with IBM Smart Card Reader POS Devices, which utilize video touchscreens and a stylus pen ("IBM POS Device"). Target equipped each store that uses IBM POS Devices with a number of acrylic raised number overlays (the "IBM Overlays") that could be placed over the video screen to assist visually impaired customers input Personal Identification Numbers ("PINs"). Commencing March 2006, Target has been phasing out all IBM POS Devices so that they will no longer be in use after December 2010.

**2.** Commencing March 2006, Target installed Hypercom L-4100 POS Devices ("L-4100 POS Device") in all of its newly constructed stores. Target equips each store using L-4100 POS Devices with a number of Hypercom ADA Keypad Appliances ("POS Overlay"), that snap onto the Hypercom POS Device to assist visually impaired customers input their PINs.

**3.** Commencing July 2008, Target began installing Hypercom L-4150 POS Devices ("L-4150 POS Device") in all of its newly constructed stores. Target equips each store that uses L-4150 POS Devices with a number of Hypercom P-1310 PIN PADS ("P-1310 PIN PAD"), an auxiliary keypad that can be plugged into the L-4150 POS Device to assist visually impaired customers input their PINs.

**E.**

In a demand letter dated April 15, 2005, Claimants alleged that POS Devices deployed in Target's stores throughout the United States were inaccessible to individuals who are blind or visually impaired in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq., California's Unruh Act, Cal. Civ. Code §§ 51 et seq., and California's Blind and Disabled Persons Act, Cal. Civ. Code § 54 et seq., and other similar federal, state, local, or administrative laws, statutes, rules, or regulations relating to disability access or disability discrimination by a public accommodation or business ("Access Laws"). Target disputes whether any Access Laws apply to its POS Devices. Target denies that it has engaged in any unlawful or wrongful conduct with respect to the alleged inaccessibility of its POS Devices, and further denies that Claimants or any of their members have been injured or have suffered damages in any amount, or at all.

**F.**

The Parties subsequently entered into structured negotiations to resolve their disputes regarding Claimants' claim that Target's POS Devices are inaccessible in violation of the Access Laws. In addition to negotiating the terms and conditions of this Agreement, Target and Claimants participated in testing of the L-4100 POS Device and its POS Overlay, as well as L-4150 POS Device with the P-1310 PIN PAD by individuals with visual impairments who were members of one or more of the Claimants' organizations. The Parties jointly concluded that both of these devices were accessible to and usable by individuals with visual disabilities.

**G**

The Parties enter into the Full Agreement in order to resolve the Claims and to avoid the burden, expense, and risk of potential litigation. Neither the Full 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 Target of any violation or failure to comply with any

applicable law. Neither the Full Agreement nor any of its terms and provisions shall be offered or received as evidence for any purpose whatsoever against Target in any action or proceeding, other than a proceeding to enforce the terms of the Full Agreement.

## **A G R E E M E N T**

NOW, THEREFORE, in consideration of the recitals outlined above, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **1. Definitions.**

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

#### **1.1**

Americans with Disabilities Act or ADA means Title III of 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.

#### **1.2**

Claims means the contention by Claimants and their respective boards, staff, members and clients, and other blind and visually-impaired persons, that Claimants are being, have been and continue to be discriminated against due to alleged inaccessibility of certain POS Devices in Target Stores pursuant to applicable Access Laws.

#### **1.3**

Counsel means Goldstein, Demchak, Baller, Borgen and Dardarian, The Law Office of Lainey Feingold, and the attorneys practicing law therein.

#### **1.4**

Effective Date means March 31, 2009.

#### **1.5**

Existing Target Store means a Target Store that is open to the public as a Target Store on March 31, 2009.

**1.6**

New Target Store means a Target Store that is first opened to the public after March 31, 2009.

**1.7**

Next Generation POS Device means a POS Device, other than the L-4100 POS Device, the L-4150 POS Device or IBM POS Device. Any such device will include an integrated or permanently attached raised button keypad, have raised tactile markings on the Function keys, as follows: Enter/ Accept (green key with a raised circle); (ii) Cancel (red key with a raised X); and (iii) Correct / Clear (yellow key with a raised backward arrow, vertical line, or forward or backward slash), and provide at least the same level of functionality for customers with visual impairments as provided by the P-1310 PIN Pad.

**1.8**

POS Overlay means the raised button keypad that is designed to be placed on the screen of, and work in conjunction with, the L-4100 POS Device. The L-4100 POS Device shall be programmed so that customers may input, clear, cancel and enter PINs using the POS Overlay.

**1.9**

Personal Identification Number or PIN means a unique numerical code used by individual customers that must be entered into a POS Device before conducting certain transactions on the POS Device.

**1.10**

P-1310 PIN PAD means the raised button keypad that plugs into, and works in conjunction with, the L-4150 POS Device. The L-4150 POS Device shall be programmed so that customers may input, clear, cancel and enter PINs using the P-1310 PIN PAD.

**1.11**

Point of Sale Device or POS Device means a device that is staffed by a Target employee and used by a customer at a point of purchase to pay for items with a debit, credit or other electronic funds card. POS Device does not include equipment that may be used by a customer in Target

Stores to scan, price, or weigh products, or payment devices at non-staffed locations. The IBM POS Device, L-4100 POS Device and L-4150 POS Device are POS Devices within the meaning of this Agreement.

#### **1.12**

Staffed Guest Services Counter means the Guest Services Counter typically located at the front of a Target Store, where at least one POS Device is placed to assist customers in making returns and/or paying for products or services. The term Staffed Guest Services Counter does not include Staffed Front End Checkstands.

#### **1.13**

Staffed Front End Checkstand means any checkstand at the front of a Target Store where a POS Device is placed and which is staffed by a Target employee to assist customers in paying for products or services. The term Staffed Front End Checkstand does not include Staffed Specialty Counters or Staffed Guest Services Counters.

#### **1.14**

Staffed Specialty Counter means the staffed counters equipped with cash registers, for the jewelry, pharmacy, electronics and Food Avenue departments within a Target Store.

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

The Full Agreement shall apply to Target Stores in every state in the United States in which Target operates Target Stores. The terms of the Full Agreement shall remain in effect from the Effective Date until June 30, 2011.

## **3. Provisions Regarding POS Devices.**

### **3.1 Target Stores in California.**

On or before December 31, 2009, Target shall equip all POS Devices in all Target Stores located in the State of California with either a POS Overlay (for stores using L-4100 POS Devices) or a P-1310 PIN PAD (for stores using L-4150 POS Devices). All POS Overlays and P-1310 PIN PADs required by this section 3.1 will be attached to the POS Devices.

### 3.2 Target Stores Outside of California.

**3.2.1** On or before December 31, 2010, Target shall remove IBM POS Devices from all Target Stores outside the state of California, and shall replace the IBM POS Devices with the L-4150 POS Devices.

**3.2.2** Concurrently with removal of IBM POS Devices and installation of L-4150 POS Devices as required by paragraph 3.2.1 above, Target shall equip each Target Store outside the State of California with P-1310 PIN PADs as follows:

(i) Staffed Guest Services Counter: Target shall attach one P-1310 PIN PAD to one POS Device at the Guest Services Counter of each Target Store.

(ii) Staffed Front End Checkstands: Target shall attach P-1310 PIN PADs to Staffed Front End POS Devices in conformance with the following schedule:

Staffed Front End Checkstands	
Staffed Front End Checkstands	
Total Number of Staffed Front End Checkstands	Minimum Number of P-1310 PIN PADs
1-4	1
5-8	2
9-15	3
Over 15	3, plus 20% of additional aisles

(iii) Staffed Specialty Counters: Target shall attach one P-1310 PIN PAD to one POS Device located at the electronics, Food Avenue, jewelry, and pharmacy counters.

**3.2.3** On or before December 31, 2010, Target shall equip all Target Stores outside the state of California using L-4100 POS Devices with POS Overlays as follows:

(i) Staffed Guest Services Counter: Target shall attach one POS Overlay to the stand of one POS Device at the Guest Services Counter of each Target Store.

(ii) Staffed Front End Checkstands: Target shall attach POS Overlays to the stands of Staffed Front End POS Devices in conformance with the following schedule:

Staffed Front End Checkstands	
Staffed Front End Checkstands	
Total Number of Staffed Front End Checkstands	Minimum Number of POS Overlays
1-4	1
5-8	2
9-15	3
Over 15	3, plus 20% of additional aisles

(iii) Staffed Specialty Counters: Target shall attach one POS Overlay to the stand of one POS Device located at the electronics, Food Avenue, jewelry, and pharmacy counters.

### **3.3 Maintenance.**

Target will use its best efforts to maintain all POS Devices, POS Overlays, P-1310 PIN PADs and Next Generation POS Devices in operable, working condition except for isolated or temporary interruptions in service due to maintenance or repairs.

### **3.4**

To the extent possible, Target will make good faith efforts to ensure that POS Overlays and PIN PADs installed pursuant to Sections 3.2.2(ii) and 3.2.3(ii) will be placed at the Staffed Checkstands closest to the stores' front entrances, and Target will make good faith efforts to ensure that those Checkstands will be open during all hours of store operation.

### **3.5 Rollout Information to Claimants.**

On a semi-annual basis, beginning one month after execution of this Settlement Agreement by all parties and continuing through the Term of this Settlement Agreement, Target shall provide to Claimants a written list of the stores at which L-4150 POS Devices equipped with P-1310 PIN PADs, as well as L-4100 POS Devices equipped with POS Overlays, have been installed pursuant to the terms of this Agreement.

### **3.6 Testing of Next Generation POS Device.**

In the event Target chooses to install a Next Generation POS Device instead of either the L-4100 POS Device or L-4150 POS Device, Target shall meet and confer with Claimants so that Claimants may test and provide feedback on any Next Generation Device to be installed in Target Stores prior to Target making a final purchasing decision about the Next Generation Device. Claimants shall provide any feedback within fourteen days of their testing and such feedback will be considered in good faith by Target. Target will retain the right to decide the brand and model of the Next Generation POS Device.

## **4. Training of Target Personnel.**

### **4.1**

Target will update its online training program and materials to ensure that such materials cover, inter alia, (i) the installation of the POS Overlays, P-1310 PIN PADs and (if applicable) Next Generation POS Devices; (ii) the reason visually impaired Target customers need the Devices; (iii) the manner in which visually impaired Target customers use the Devices; (iv) locations of the POS Overlays and/or P-1310 PIN PADs in Target Stores; and (v) guidelines for appropriate interactions with visually impaired customers using the L-4100 POS Device, the L-4150 POS Device or Next Generation POS Devices.

### **4.2**

Target will provide Claimants with a copy of the updated training materials prior to their finalization. Review and distribution of the proprietary training material is to be limited to Claimants and their

attorneys only for purposes of this dispute. All training material shall be returned to Target or confidentially destroyed. Target will consider the feedback provided by Claimants and use good faith efforts to incorporate applicable feedback provided that such feedback is submitted in a timely manner and is consistent with this Agreement. The details of the training program will be in the sole discretion of Target.

## **5. Joint Press Release.**

The Claimants and Target may jointly issue a press release announcing the terms of this Agreement. If the Parties cannot agree on the language of a joint press release, or the timing of its issuance, either party may issue its own release provided that it is shared with the other Parties at least three business days prior to issuance, is consistent with the terms of this Agreement, and reflects the collaborative method in which the Parties resolved the Dispute.

## **6. Right to Seek Modification.**

### **6.1**

Target may seek to modify the schedules set forth in Section 3 above, if Target reasonably believes that compliance with the schedules will result in an “undue burden” within the meaning of 42 U.S.C. section 12182(iii) and 28 C.F.R. sections 36.104 and 36.303. Additionally, as set forth in Section 14, Target may also seek to modify these schedules as a result of Force Majeure.

**6.1.1** As used in this Agreement, the term “undue burden” means significant difficulty or expense. In determining whether an action would result in an Undue Burden, factors to be considered include those set forth in 28 C.F.R. section 36.104, part III-4.3600 of the Technical Assistance Manual, and any other regulations/interpretive guidance issued by or on behalf of the United States Department of Justice.

## **6.2**

Target may also seek to modify or suspend compliance with the schedules set forth in Section 3 above if Target reasonably concludes in good faith either that:

**6.2.1** Unforeseen circumstances render compliance with Section 3 impossible or impracticable; or

**6.2.2** Installation or continued use of a POS Device, POS Overlay or P-1310 PIN PAD required by this Agreement is prohibited, restricted or made impracticable by federal, state or local law or regulation, or by any modification of or changes to the Payment Card Industry's PED Security Standards, or other similar standards.

## **6.3**

If Target seeks to modify the schedules as provided in Section 3, above, it will send Claimants a Notice of Proposed Modification, describing the factual basis of the reason for the modification or suspension, and proposing a modified schedule. If within sixty (60) days after their receipt of Target's Notice of Proposed Modification the Parties have not reached agreement regarding the Notice, the matter will be resolved pursuant to Section 7.4, below.

## **6.4**

Target shall not be in breach of any term of this Agreement if it fails to comply with the schedules set forth in Section 3 after providing to Claimants a Notice of Modification pursuant to Section 6 above.

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

### **7.1 Notice of Non-Compliance.**

If a party believes that the other party has not complied with any provision of the Full Agreement, that party shall provide the other party with Notice of Non-Compliance containing the following information:

**7.1.1** the alleged act of non-compliance;

**7.1.2** a reference to the specific provision(s) of the Settlement Agreement or Confidential Addendum that are involved;

**7.1.3** a statement of the remedial action sought by the initiating party;

**7.1.4** a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

**7.2 Response.**

Within forty-five (45) days of receipt of a Notice provided pursuant to Section 7.1, the non-initiating party shall respond to the initiating party in writing.

**7.3 Meet and Confer.**

Within two weeks after the response described above, the Parties shall informally meet and confer and attempt to resolve the issues raised in the Notice.

**7.4 Submission to Mediation/Binding Arbitration.**

**7.4.1** If the matters raised in a Notice provided pursuant to Section 7.1 are not resolved within forty-five (45) days of the initial meet and confer required by Section 7.3, either party may submit the unresolved matters to nonbinding mediation before a mediator affiliated with JAMS, or such other mediator as the Parties may jointly designate.

**7.4.2** If the dispute is not settled in mediation, it shall be submitted to binding arbitration before an arbitrator affiliated with JAMS. The arbitration hearing shall be conducted in accordance with the JAMS Streamlined Arbitration Rules & Procedures. However, those Rules will be modified as necessary to ensure that the hearing is held as soon as practicable after the submission to arbitration, and that a written decision on the matter is rendered within sixty (60) days of the last hearing date.

**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 Claimants:**

Linda M. Dardarian  
c/o Goldstein, Demchak,

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

Lainey Feingold  
Law Office of Lainey Feingold  
1524 Scenic Avenue  
Berkeley, CA 94708  
[email address omitted]

**To Target:**

Jason K. Walbourn, Esq.  
Senior Corporate Counsel  
Target Corporation  
1000 Nicollet Mall  
TPS-3155  
Minneapolis, MN 55403 Robert A. Naeve  
Jones Day  
3 Park Plaza  
Suite 1100  
Irvine, CA 92614  
[email address omitted]

**9. Modification in Writing.**

No modification of the Full Agreement shall be effective unless in writing and signed by authorized representatives of all Parties.

**10. No Other Representations.**

Each party to the Full Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other

party, other than the warranties and representations expressly made in the Full Agreement.

### **11. Full Agreement Has Been Read.**

The Full Agreement has been carefully read by each of the Parties, or their responsible officers, and its contents are known and understood by each of the Parties. The Full Agreement is signed freely by each party executing it.

### **12. No Assignment.**

No party to the Full Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by the Full Agreement.

### **13. Agreement Binding on Assigns and Successors.**

The Full Agreement shall bind any assigns and successors of the Parties.

### **14. Force Majeure.**

The performance of Target under this Settlement 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 operable equipment, materials or software through normal supply sources. If Target 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 Target 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 7.4 of this Settlement Agreement.

## **15. No Admission of Liability.**

In entering into the Full Agreement, Target does not admit, and specifically denies, that it has violated or failed to comply with any Access Laws.

## **16. Authority.**

The persons executing the Full Agreement each represent and warrant that he or she has the authority to enter into the Full Agreement, and to resolve the matters set forth in the Full Agreement, on behalf of the Party for whom he or she is executing the Full Agreement, and that no further approval is necessary in order for the Full Agreement to be binding on the Party for whom he or she is executing.

## **17. Integrated Agreement.**

The Full Agreement constitutes the entire agreement relating to the subject matters addressed therein.

## **18. Rules of Construction.**

Each party and its legal counsel have reviewed and participated in the drafting of the Full 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 the Full Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Full Agreement. The Recitals are integral to the construction and interpretation of the Full Agreement and are therefore incorporated into the Full Agreement in their entirety.

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

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

- **TARGET CORPORATION**  
By: Target Corporation
- **AMERICAN COUNCIL OF THE BLIND**  
By: Melanie Brunson, Executive Director
- **AMERICAN FOUNDATION FOR THE BLIND**  
By: Paul Shroeder, Vice President, Programs & Policy Group
- **CALIFORNIA COUNCIL OF THE BLIND**  
By: Jeff Thom, President

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

- **JONES DAY**  
By: Robert Naeve, Esq., Attorneys for Target Corporation
- **GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN**  
By: Linda M. Dardarian, Attorneys for Claimants
- **LAW OFFICE OF LAINEY FEINGOLD**  
By: Lainey Feingold, Attorneys for Claimants