

## SETTLEMENT AGREEMENT RE: RITE AID POS DEVICES

This Settlement Agreement re: Rite Aid POS Devices (this “Agreement”) is made as of March 31, 2008 (its “Effective Date”), by and between American Council of the Blind, American Foundation for the Blind, and California Council of the Blind (collectively the “Organizations”) and Rite Aid Corporation (“Rite Aid”). The Organizations and Rite Aid are referred to in this Agreement as the “Parties.” This Agreement operates in conjunction with its Confidential Addendum also executed by the Parties as of the same date.

### Recitals

A. On or about April 15, 2005, the Organizations contacted Rite Aid raising concerns about certain of Rite Aid’s point of sale devices (defined below and referred to in this Agreement as the “POS Devices”) at its stores with respect to usage of those devices by individuals who are blind or visually impaired.

B. On or about May 4, 2005, the Parties entered into a Structured Negotiations Agreement. Thereafter, the Parties have had a series of discussions, meetings, and device testings regarding the concerns raised by the Organizations.

C. As a result of those discussions, the Parties have agreed to enter into this Agreement and its Confidential Addendum.

D. In the negotiation and drafting of this Agreement, the Organizations have been represented by Linda M. Dardarian of Goldstein, Demchak, Baller, Borgen & Dardarian and Lainey Feingold of the Law Office of Lainey Feingold (the “Organizations’ Counsel”); and Rite Aid has been represented by Jeffrey D. Wohl of Paul, Hastings, Janofsky & Walker LLP.

E. By entering into this Agreement, Rite Aid does not make any admission of noncompliance or liability to the Organizations or any other person or entity under any law with respect to its POS Devices. Rite Aid denies that its POS Devices as currently configured are not in compliance with any applicable law.

Based on these recitals, the Parties agree as follows:

### Terms

#### 1. Definitions

a. “Existing Rite Aid Store” means a Rite Aid Store open to the public as of the Effective Date.

b. “New Rite Aid Store” means a Rite Aid Store that is either (i) open to the public for the first time after the Effective Date; or (ii) acquired and operated by Rite Aid after the Effective Date and was not operated as a “Rite Aid”-branded store as of the Effective Date.

c. “Next Generation POS Device” means a POS Device with or without a touch screen that also has the following features: (i) a Raised Character Keypad; (ii) audible feedback on key-press; and (iii) signature block on the bottom of the touch screen with no virtual buttons below. On a Next Generation POS Device, the Raised Character Keypad may be used to perform the following functions to the extent that a touchpad POS Device used at the same Rite Aid Store is programmed for sighted customers to perform such functions: (i) input, correct, cancel and enter (submit) personal identification number (“PIN”), cash-back amounts, and other numeric information; (ii) select card type; and (iii) approve (“OK”) card data, signature and other information. The VeriFone MX850 and the VeriFone MX870 (with an external Raised Character Keypad, such as the New PinPad 1000), or an equivalent POS Device that has a Raised Character Keypad and the other features set forth in this paragraph, and that provides blind and visually-impaired users with the same or greater level of privacy and ability to perform the functions set forth in this Agreement, are Next Generation POS Devices. Photographs of the VeriFone MX850 and the VeriFone MX870 (with the New PinPad 1000) are attached to this Agreement as Exhibit A.

d. “POS Device” means a point of sale device used by a customer at a point of purchase that allows the customer to pay for items with a debit, credit, or other electronic-funds card. “POS Device” does not include self-service kiosks or other equipment that may be used by a customer in conjunction with the POS Device to scan, price, weigh, or obtain other information about products.

e. “Raised Character Keypad” is a Raised Number Keypad that has these additional features: the following function keys have the indicated raised tactile markings: Enter/Accept Key (raised circle), Cancel Key (raised “X”), and Correct Key (raised forward slash or backwards arrow). The VeriFone New PinPad 1000 is a Raised Character Keypad.

f. “Raised Number Keypad” means a number keypad on which each key or button is tactually discernable from surrounding surfaces and adjacent keys; numeric keys are arranged in a 12-key ascending telephone keypad layout; the number-five key is tactually distinct from the other keys by means of a raised dot; numerals on the number keys are large and in a color that contrasts with the key background; no other information is on the number keys; and the following function keys have the following colors: Enter/Accept Key (green), Cancel Key (red), and Correct Key (yellow).

g. “Rite Aid Store” means a retail store operated by Rite Aid in the United States during the Term of this Agreement, including “Rite Aid” branded stores and Brooks and Eckerd drugstore stores acquired by Rite Aid on June 4, 2007. As of the Effective Date there are approximately 5,100 Rite Aid Stores. All obligations imposed upon Rite Aid under this Agreement apply only to stores that are Rite Aid Stores at the time the obligation is effective.

h. “Staffed, Non-Pharmacy Checkout Counter” means any checkout counter (including a customer service desk and any counter or aisle, other than a Staffed Pharmacy Counter) in a Rite Aid Store where a POS Device is placed and which is

staffed by a Rite Aid employee to assist customers in paying for products or services. As of the Effective Date, with the exception of approximately 190 Customer World stores (“Customer World Stores”) and not more than two POS Devices with additional managerial functionality at Staffed Non-Pharmacy Checkout Counters in approximately 1,000 Rite Aid Stores, all POS Devices at Staffed, Non-Pharmacy Checkout Counters in Rite Aid Stores are either Tactile POS Devices or Next Generation POS Devices.

i. “Staffed Pharmacy Counter” means the counter in a Rite Aid Store where customers can pick up and pay for prescriptions, where one or more POS Devices are placed, and which is staffed by one or more Rite Aid employees, at least one of whom is available at all times to assist customers in paying for products or services.

j. “Tactile POS Device” means a POS Device with each key (button) tactually discernable from surrounding surfaces and adjacent keys, numeric keys arranged in a 12-key ascending telephone keypad layout, and the number five key tactually distinct from the other keys by means of a raised dot.

k. “Term of this Agreement” means the period commencing on the Effective Date of this Agreement and ending on June 30, 2010.

**2. Installation of Next Generation POS Devices at Staffed Pharmacy Counters.**

a. By not later than December 31, 2009, on the timetable set forth below unless modified pursuant to this Agreement, Rite Aid will install at least one Next Generation POS Device in those Staffed Pharmacy Counters (including those at Customer World Stores) that as of the Effective Date do not have a Tactile POS Device.

- (1) Rite Aid has installed or will install at least one Next Generation POS Device in Staffed Pharmacy Counters in Existing Rite Aid Stores as follows: one quarter by the end of June 2008; one quarter by the end of December 2008; one quarter by June 2009; and one quarter by the end of December 2009.
- (2) Next Generation POS Devices will be installed at Staffed Pharmacy Counters in every New Rite Aid Store by not later than the date the store is opened to the public; provided that for Staffed Pharmacy Counters in a Rite Aid Store that is a New Rite Aid Store because it is acquired, the Next Generation POS Devices will be installed at the time that the store’s systems are converted to Rite Aid’s systems.

b. If, during the term of this Agreement, Rite Aid replaces or eliminates any Tactile POS Device installed at a Staffed Pharmacy Counter, Rite Aid will ensure that at least one Tactile POS Device or Next Generation POS Device is installed at that counter.

3. **Installation of Tactile POS Devices or Next Generation POS Devices at Customer World Stores.** Rite Aid has installed or will install Tactile POS Devices or Next Generation POS Devices at all Staffed Non-Pharmacy Checkout Counters in one half of its Customer World Stores by the end of 2008 and in the other half by the end of 2009.

4. **Continued Use of Tactile POS Devices or Next Generation POS Devices at Staffed, Non-Pharmacy Checkout Counters.** With the exception of approximately 190 Rite Aid Customer World stores (“Customer World Stores”) and not more than two POS Devices with additional managerial functionality at Staffed Non-Pharmacy Checkout Counters in approximately 1,000 Rite Aid Stores, as of the Effective of this Agreement, all POS Devices at Staffed, Non-Pharmacy Checkout Counters in Rite Aid Stores are either Tactile POS Devices or Next Generation POS Devices. During the Term of this Agreement, Rite Aid will continue to use the Tactile POS Devices or Next Generation POS Devices installed as of the Effective Date of this Agreement at Staffed, Non-Pharmacy Checkout Counters or, if a Tactile POS Device, Next Generation POS Device, or POS Device with additional managerial functionality is replaced, it will be replaced with a Tactile POS Device or Next Generation POS Device.

5. **Placement of Next Generation POS Devices in Rite Aid Stores in California.**

a. Notwithstanding any other provision in this Agreement, all POS Devices newly installed in Rite Aid Stores in California since January 1, 2006 (with the exception of Customer World Stores and not more than two POS Devices with additional managerial functionality at Staffed Non-Pharmacy Checkout Counters in approximately 250 Rite Aid Stores in California), have been Tactile POS Devices or Next Generation POS Devices.

b. Notwithstanding any other provision in this Agreement, by not later than January 1, 2010, all POS Devices at all Staffed Pharmacy Counters and Staffed Non-Pharmacy Counters in Rite Aid Stores in California will be Tactile POS Devices or Next Generation POS Devices.

6. **Opportunity to Test and Provide Feedback about a Next Generation POS Device.** Prior to installing a model of a Next Generation POS Device in a Rite Aid Store, Rite Aid will give representatives of the Organizations the opportunity to test the device and provide Rite Aid with feedback about its operation. The Organizations acknowledge that they have already reviewed, tested, and approved as Next Generation POS Devices the VeriFone MX850 and the VeriFone MX870 (with the New PinPad 1000).

7. **Continuing Use of Raised Number Keypads in Lieu of Raised Character Keypads.** Prior to the Effective Date, Rite Aid obtained from VeriFone Corporation (“VeriFone”) more than 3,000 PP1000SE units that are Raised Number Keypads (but not Raised Character Keypads) to use with the VeriFone MX870. Notwithstanding any other provision of this Agreement, during the term of this

Agreement, Rite Aid may use these PP1000SE units in Rite Aid Stores with its Next Generation POS Devices in lieu of Raised Character Keypads, and use of these units will satisfy Rite Aid's obligations under this Agreement with respect to the installation and use of Next Generation POS Devices; however, Rite Aid will not purchase any additional non-Raised Character Keypad PP1000SE. Instead, during the term of this Agreement, to the extent that Rite Aid must obtain additional external keypads to make additional VeriFone MX870 units or any other POS Device it acquires a New Generation POS Device, Rite Aid will obtain Raised Character Keypads such as the VeriFone New PinPad 1000.

## **8. Training.**

a. At all Rite Aid Stores where the Next Generation POS Device has been or will be installed, Rite Aid will train all staff who have contact with customers regarding (i) the existence and placement of Next Generation POS Devices in Rite Aid Stores; (ii) how the devices operate; (iii) why blind and visually-impaired customers need the devices; and (iv) how to instruct blind or visually impaired customers about how to use the devices.

b. In Rite Aid Stores where the Next Generation POS Device has not yet been installed at the Staffed Pharmacy Counters, Rite Aid will train all staff who have contact with customers about (i) how to instruct blind and visually-impaired customers to find or be escorted to a Tactile POS Device or a Next Generation POS Device at a Staffed, Non-Pharmacy Checkout Counter, and (ii) the related Rite Aid policy addressing this issue.

c. Training pursuant to this section 8 will occur in a timely manner to ensure that the provisions of this Agreement are implemented effectively. Prior to the commencement of training, Rite Aid will give representatives of the Organizations the opportunity to review the training materials and provide feedback about the materials to Rite Aid. Rite Aid will give good-faith consideration to the comments and suggestions offered by the Organizations.

## **9. Semi-Annual Reports to the Organizations; Annual Meetings Regarding Technology Issues.**

a. On a semi-annual basis commencing in July 2008, Rite Aid will provide reports to a designated representative of the Organizations listing the Rite Aid Stores where the Next Generation POS Devices have been installed during the previous six-month period.

b. On an annual basis commencing on June 1, 2008, and continuing until June 1, 2010, representatives of the Parties will confer by telephone or in person about any issue regarding technology used by Rite Aid customers and the effect of that technology on customers who are blind or visually impaired.

## **10. Maintenance of Tactile POS Devices and Next Generation POS Devices.** Rite Aid will make its best efforts to maintain in good working order all Tactile

POS Devices and the Next Generation POS Devices that are installed in Rite Aid Stores. Isolated or temporary periods in which a device is inoperable due to regular maintenance, the occurrence of a malfunction, or the repair of a malfunction will not constitute a breach by Rite Aid of any obligation under this Agreement.

11. **Availability of Tactile POS Device or Next Generation POS Device.** If fewer than all POS Devices at a Staffed Pharmacy Counter are Tactile POS Devices or Next Generation POS Devices, at least one Tactile POS Device or Next Generation POS Device will be operable at the Staffed Pharmacy Counter during all hours of the counter's operations. Other than at Customer World Stores for the period when they do not have any Tactile POS Devices or Next Generation POS Devices, if fewer than all POS Devices at a Staffed Non-Pharmacy Checkout Counter are Tactile POS Devices or Next Generation POS Devices, at least one Tactile POS Device or Next Generation POS Device will be operable at the Staffed Non-Pharmacy Checkout Counter during all hours of the counter's operations.

12. **Press Release.** On a mutually agreed-upon date, the Organizations and Rite Aid will jointly issue a press release announcing the installation of Next Generation POS Devices pursuant to this Agreement. The press release may also reference the Parties' agreement to institute changes to [riteaid.com](http://riteaid.com) pursuant to the Parties' Settlement Agreement re: [riteaid.com](http://riteaid.com). If the Parties cannot agree on the terms of the joint press release or the date of its issuance, the Organizations or Rite Aid may issue separate releases provided that any release will be consistent with the terms of this Agreement, and a copy will be provided to all parties at least three business days prior to issuance.

13. **Right to Seek Modification.**

a. Pursuant to section 14 below, Rite Aid may seek to modify the schedule for installing Next Generation POS Devices, as set forth in sections 2 and 3 above, if Rite Aid reasonably believes that complying with that schedule 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. Notwithstanding the foregoing, during each year of the Agreement, Rite Aid may defer installation of Next Generation POS Devices in up to one hundred Rite Aid Stores for up to six months upon written notification to the Organizations' Counsel.

b. 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.

c. Rite Aid's delivery to the Organizations of a Notice of Proposed Modification pursuant to section 14 below, based upon the claim of undue burden, will suspend for six months Rite Aid's performance of its obligations under sections 2 and 3 above with respect to the subject matter of the Proposed Modification. Any such

suspension will not constitute a breach of such section; provided, however, that such suspension will not excuse the Rite Aid's performance during the suspension period of all other portions of the Agreement not affected by the suspension.

**14. Dispute Resolution.**

a. In the event of (i) a claim by one or more of the Parties that one or more of the other Parties are in breach of this Agreement; (ii) a Notice of Proposed Modification by Rite Aid not agreed to by the Organizations; or (iii) any other dispute between the Parties over the construction, application, or modification of this Agreement, the Party or Parties alleging breach, or Rite Aid in seeking the modification, or any Party engaged in the dispute, will provide written notice of its position to the other Party or Parties. Such Notice will include the following information: (i) in the event of a claimed breach, the section or term of the Agreement claimed to be breached; (ii) in the event of a proposed modification, the section or term of the Agreement proposed to be modified; and (iii) the grounds for claiming a breach or proposing a modification, including a brief statement of the specific facts, circumstances, and legal arguments supporting the Parties' position.

b. Within two weeks of the date of the Notice provided for in section 14.a. above, the Parties will engage in a meet-and-confer process to resolve the matter.

c. If the matter remains unresolved after a reasonable meet-and-confer period, the Parties will resort to mediation before a mutually agreed-upon mediator to resolve the matter.

d. If mediation fails to resolve the matter, the Parties then will settle the matter finally by means of arbitration conducted by Judicial Arbitration & Mediation Services ("JAMS") pursuant to its Streamlined Arbitration Rules and Procedures. The Arbitration will take place in San Francisco, California. The arbitrator may award the prevailing party its reasonable attorneys' fees, expenses, expert witness fees, and other costs pursuant to applicable law. The award of the arbitrator will be enforceable in a court of competent jurisdiction.

**15. Force Majeure.** Rite Aid will not be liable for any failure to perform its obligations under this Agreement if that failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond Rite Aid's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by Rite Aid's financial condition or negligence).

**16. No Use of Agreement as Admission.** This Agreement will not be used by the Organizations to establish any claim of legal noncompliance or liability against Rite Aid.

**17. Term of Agreement.** Rite Aid's contractual obligations under this Agreement will expire on June 30, 2010, the end of the Term of this Agreement. Nothing in this section will be construed to mean that the Organizations are waiving the right to

challenge under applicable law any act or omission with respect to the subject matter of this Agreement that occurs after June 30, 2010.

18. **Notice or Communication to Parties.** Any notice or communication required or permitted to be given to the Parties will be given in writing by e-mail and United States mail, addressed as follows:

To the Organizations:

Linda M. Dardarian  
Goldstein, Demchak, Baller, Borgen  
& Dardarian  
300 Lakeside Drive, Suite 1000  
Oakland, California 94612  
e-mail: [ldardarian@gdblegal.com](mailto:ldardarian@gdblegal.com)

Lainey Feingold  
Law Office of Lainey Feingold  
1524 Scenic Avenue  
Berkeley, California 94708  
e-mail: [lf@llegal.com](mailto:lf@llegal.com)

To Rite Aid:

Jeffrey D. Wohl  
Paul, Hastings, Janofsky & Walker LLP  
55 Second Street, 24th Floor  
San Francisco, California 94105  
e-mail: [jeffwohl@paulhastings.com](mailto:jeffwohl@paulhastings.com)

19. **Miscellaneous.** This Agreement (with its Confidential Addendum) sets forth the Parties' entire agreement regarding its subject matter and supersedes all prior and contemporaneous agreements, understandings, and representations. This Agreement may not be modified except by a writing signed by all Parties affected by the modification. This Agreement will be governed by the law of the State of California. This Agreement may be signed in counterpart with each counterpart forming an original.

### **Execution**

The Parties hereby execute this Agreement as of its Effective Date to signify their acceptance of it.

AMERICAN COUNCIL OF THE BLIND

By: \_\_\_\_\_

AMERICAN FOUNDATION FOR THE BLIND

By: \_\_\_\_\_

CALIFORNIA COUNCIL OF THE BLIND

By: \_\_\_\_\_

RITE AID CORPORATION

By: \_\_\_\_\_

**Approval as to Form by Counsel**

LINDA M. DARDARIAN  
GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN

By: \_\_\_\_\_

LAINY FEINGOLD  
LAW OFFICE OF LAINY FEINGOLD

\_\_\_\_\_  
Attorneys for American Council of the Blind,  
American Foundation for the Blind, and  
California Council of the Blind

JEFFREY D. WOHL  
PAUL, HASTINGS, JANOFKY & WALKER LLP

By: \_\_\_\_\_

Attorneys for Rite Aid Corporation

**EXHIBIT A**

[PHOTOGRAPHS OF VERIFONE MX850, VERIFONE MX870, AND  
VERIFONE NEW PINPAD 1000]