

## **SETTLEMENT AGREEMENT**

This Settlement Agreement and Release (“Agreement”) is entered into by and between Serena Olsen, Darian Smith, Michael Godino, and the American Council of the Blind (“Claimants”), and Keenwawa, Inc. (“eatsa” or “Respondent”). Individually, the foregoing are referred to as “Party” and collectively referred to as the “Parties.”

### **SECTION 1 – BACKGROUND**

1. On November 3, 2016, Claimants Olsen and Smith transmitted a letter to Respondent expressing concerns that eatsa’s self-service food selection, ordering, payment, and food pick-up services at its restaurants—operated via a mobile application, self-service kiosks, and self-service food pick-up cubbies—are inaccessible to blind customers. On March 23, 2017, Claimants Godino and the American Council of the Blind filed a lawsuit in the United States District Court, Southern District of New York, alleging similar concerns regarding the inaccessibility of eatsa’s services for blind customers.
2. Respondent denies Claimants’ allegations, intends to assert various defenses to Claimants’ claims, and states that it has a process for providing in-store customer assistance to blind individuals to ensure they have full and equal access to eatsa’s goods and services.
3. However, to avoid uncertainty and the costs of potential litigation, the Parties entered into a Structured Negotiations Agreement and have worked collaboratively to address Claimants’ concerns.
4. By entering into this Agreement, the Parties intend to settle any disputes regarding the accessibility of the services Respondent provides at eatsa restaurants and via its mobile application with respect to blind customers.
5. The Parties agree that it is in their best interests and in the public interest to voluntarily enter into this Agreement. The Parties have therefore agreed as follows:

### **SECTION 2 – DEFINITIONS**

6. “Accessible” (or “Accessibility” or “Access”) means that blind customers have independent access to the same information and substantially equivalent ease of use of the features/commands available to sighted customers via the self-service technology available at eatsa restaurants and via eatsa’s mobile application, to the extent this is technically feasible.
7. “Accessible Kiosk” means an eatsa kiosk that is Accessible for blind customers, including hardware and software features; on which blind customers can activate the VoiceOver functionality through independent means (whether through the home button or other independent means); and which has a braille label indicating how to activate VoiceOver functionality.

8. “Blind” means all persons who have a vision-related disability that requires assistive technology to access visual information.
9. “Effective Date” means the date of the last signature on the Agreement.

### **SECTION 3 – ACCESSIBILITY IMPROVEMENTS**

10. Mobile Apps.
  - a. Within nine (9) months of the Effective Date, eatsa will make the functions and information available on the eatsa iPhone mobile app Accessible through VoiceOver. Claimants will have the opportunity to review and provide feedback on the Accessibility of the app at this time. Claimants will provide their feedback within 30 days of their review. Respondent will consider Claimants’ feedback in good faith and make best efforts to incorporate Claimants’ suggestions into the Accessibility of the app to the extent feasible and required to provide Access to Blind customers within 60 days thereafter.
  - b. Within eighteen (18) months of the Effective Date, eatsa will make the functions and information available on the eatsa Android mobile app Accessible through TalkBack. Claimants will have the opportunity to review and provide feedback on the Accessibility of the app at this time. Claimants will provide their feedback within 30 days of their review. Respondent will consider Claimants’ feedback in good faith and make best efforts to incorporate Claimants’ suggestions into the Accessibility of the app to the extent feasible and required to provide Access to Blind customers within 60 days thereafter.
11. In-Store Experience. (The remedies in this section will be carried out within two (2) years of the Effective Date, unless indicated otherwise)
  - a. *Order placement via touchscreen, iPad-based kiosks.* Respondent will provide at least one Accessible Kiosk at every eatsa restaurant where kiosks exist, and for those restaurants that have more than ten (10) kiosks, at least two Accessible Kiosks.
  - b. In addition to the minimum number of accessible kiosks set in paragraph 11(a) above, eatsa will also make best efforts to enable VoiceOver to be activated and used on all newly designed kiosks if all of the following conditions are met: (i) eatsa decides to redesign its kiosk hardware so that the home button and headphone jack are available to customers standard across all kiosks; (ii) Apple develops a feature enhancement in iOS that enables developers to programmatically turn off VoiceOver in single-app mode after a transaction has been completed; (iii) Claimants give notice to eatsa of this enhancement with nine (9) months to implement the change into the software of the kiosks; (iv) eatsa is otherwise using a version of iOS that supports the single-app mode feature enhancement from Apple; and (v) Claimants’ recommendations about wayfinding instructions to get from the kiosk to the cubby do not depend on the specific position of each individual kiosk. Claimants agree that any kiosks provided under

this Section 11(b) will not be required to have any braille instructions, raised lettering, or any other cues indicating that it has VoiceOver capability.

- c. *Order Notification.* At the conclusion of the ordering process, Accessible Kiosks and the mobile app will aurally notify Blind customers that they will be informed when their order is ready (e.g. “Your order has been submitted. Please wait and we will let you know when it is ready.”). When the order is ready, eatsa will ensure that Accessible Kiosks and the mobile app inform Blind customers aurally within the application that their order is ready and provide wayfinding instructions on the location of the cubby that contains the order (e.g. “Your order is in cubby 1 located on the wall opposite the entrance, farthest to the right. Cubby 1 is in the column farthest to the right, approximately 3’ above the floor. The cubby is marked with braille and raised lettering and can be opened by double tapping the top right hand corner of the cubby door.”).
  - d. *Food pickup.* Within nine (9) months of the Effective Date, at eatsa restaurants where more than one (1) cubby exists, two (2) cubbies will be designated as “Accessible Cubbies” and all orders placed by customers who have self-identified as having a sight disability will be delivered there. The “numbers” assigned to these cubbies will be in braille and raised numbers. Orders placed by customers (with or without disabilities) that cannot be delivered via cubby will continue to be delivered via host.
  - e. *Wayfinding Consultant.* In order to best implement the solutions above, eatsa will work with an agreed upon wayfinding consultant in preparing the wayfinding instructions and will provide Claimants with the opportunity to review and provide feedback on the instructions.
  - f. *Change in Kiosk Software Platform.* Nothing in this Agreement restricts or prohibits eatsa from utilizing an alternative to iOS technology for its kiosks provided that the Blind user experience is substantially equivalent to that described in this Section 11.
12. Testing of the In-Store Experiences. Within eighteen (18) months of the Effective Date, eatsa will implement the Accessibility improvements to the In-Store Experience described in paragraph 11 (a)-(d) at one (1) eatsa restaurant in the Bay Area (“Prototype In-Store Experience”). Respondent will provide Claimants the opportunity to test the Prototype In-Store Experience at said eatsa restaurant in the Bay Area. Claimants will provide feedback to eatsa regarding the Prototype In-Store Experience within thirty (30) days of testing. Within five (5) months of the receipt of Claimants’ feedback, Respondent will (i) make best efforts to incorporate Claimants’ feedback on the Accessibility of the Prototype In-Store Experience to the extent feasible and required to provide Access to Blind customers, and (ii) implement the agreed-upon Accessible In-Store Experience at every eatsa restaurant in the United States. However, if Respondent determines that Claimants’ feedback requires extensive changes to the Prototype In-Store Experience, the Parties will discuss the outstanding issues and develop an amended

timeline for the incorporation of Claimants' feedback and the roll-out of the Accessible In-Store Experience at all eatsa restaurants in the United States.

13. Employee Training.

- a. *Interim Training.* Employees working on the restaurant floor will receive training on how to provide assistance to individuals who are Blind or have other disabilities; this training shall encompass best practices when interacting with people with disabilities and specific instruction on providing ordering assistance pending implementation of the Accessibility solutions required by this Agreement. Within four (4) months of the Effective Date, Respondent will provide the interim training materials to Claimants for review. Claimants will provide feedback regarding such training materials within fourteen (14) days of receiving the materials. Respondent will consider Claimants' feedback regarding the training materials in good faith and incorporate the feedback to the extent it is consistent with eatsa's operational needs and necessary to accomplish the training objectives described in this paragraph. Respondent will implement the interim training at all eatsa restaurants within sixty (60) days of receiving Claimants' feedback. Such training will also be provided to new store employees upon hire.
- b. *Training on Accessibility Solutions.* Employees working on the restaurant floor will receive specific training on providing assistance to customers with disabilities in conjunction with each of the Accessibility solutions required by this Agreement. Such training will be provided prior to the implementation of each solution required by this Agreement and to new store employees upon hire. Respondent will provide the Accessibility solutions training materials to Claimants for review at least forty-five (45) days prior to the implementation of the training. Claimants will provide feedback regarding such training materials within fourteen (14) days of receiving the materials. Respondent will consider Claimants' feedback regarding the training materials in good faith and incorporate the feedback to the extent it is consistent with eatsa's operational needs and necessary to accomplish the training objectives described in this paragraph.

**SECTION 4 – OTHER SETTLEMENT TERMS**

14. Term. The Agreement shall have effect from the Effective Date and shall continue in force for the longer of a period of thirty (30) months or until Respondent completes all obligations required by this Agreement.
15. Maintenance of Accessible Features. Respondent will ensure that the Accessibility improvements described herein are maintained throughout the term of the Agreement.
16. Monitoring of Compliance.
  - a. *Teleconferences.* Starting six (6) months after the Effective Date and continuing through the term of the Agreement, the Parties will meet bi-annually (every six (6) months) by teleconference for updates regarding progress on the Accessibility solutions required by this Agreement. In addition, any Party may request a

teleconference regarding implementation of the Agreement, at which point the Parties will promptly schedule such teleconference to occur within fourteen (14) days of the request. The Parties will timely respond in good faith to reasonable concerns and questions addressed in such teleconferences.

- b. *Reports.* Starting one (1) year after the Effective Date and continuing through the term of the Agreement, eatsa will provide Claimants with annual reports (plus one final report, for a total of three (3)) generally describing (i) the Accessibility improvements made under this Agreement during the prior year, (ii) any complaints or concerns regarding the Accessibility of its mobile application or the In-Store Experience as described above, and (iii) any planned Accessibility improvements for the next year. Claimants will also report any feedback or concerns regarding the Accessibility of the mobile application to eatsa as such concerns arise.
17. Dispute Resolution. Any disputes under this Agreement shall be resolved according to the following procedure:
- a. *Notification in Writing.* Counsel for a Party shall notify counsel for the other Parties in writing of any perceived non-compliance with the terms of this Agreement, or any other perceived disputed related to the terms, processes, or obligations set forth in this Agreement.
  - b. *Meet and Confer.* Unless otherwise agreed to by the Parties, with respect to any particular dispute, the Parties agree to meet and confer in good faith within fifteen (15) business days after receipt of a written notification of a dispute pursuant to the previous paragraph.
  - c. *Application for Further Relief.* If the meet-and-confer does not lead to a resolution of the dispute, then, no sooner than fifteen (15) business days after providing the other parties with written notice of an intent to terminate the meet and confer process, any party may file a claim in court in New York or California to enforce the terms of the Agreement.
  - d. *Fees and Costs for Dispute Resolution.* Fees and costs for dispute resolution shall be awarded in accordance with applicable law.
  - e. *Public Comments.* The Parties and their counsel agree that they will not discuss publicly, either orally or in writing, any disputes or disagreements arising under this Agreement before the dispute resolution process set forth above is exhausted and an enforcement action is filed.
18. Publicity. The Parties agree to exchange any press statements relating to the Agreement no later than twenty-four (24) hours prior to their release. The Party making the press statement will consider the other Parties' comments and suggestions in good faith.
19. Severability. In the event that any portion of the Agreement is determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall remain

in full force and effect, and that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts or provisions of this Agreement.

20. Construction. This Agreement shall be deemed to have been drafted by all of the Parties, and the principle of constructing a document against the party that drafted it shall have no application to this Agreement.
21. Non-waiver. The delay or failure to enforce or seek enforcement of any right under this Agreement shall not constitute or be construed as (a) a waiver of such rights or any other rights; (b) a waiver of any remedy to enforce such rights or any other rights; or (c) acquiescence in any default.
22. Counterparts/Execution of Agreement. This Agreement may be executed in counterparts, and together they shall be valid to prove the Agreement. Facsimile and electronic .pdf file signatures shall be deemed as originals.
23. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all prior agreements and understandings between the Parties, and may not be modified except in writing signed by both Parties.
24. Notices. All notices required under this Agreement shall be served on the Parties via certified First Class U.S. Mail return receipt requested or a recognized overnight courier service as follows:

NOTICES TO EATSA:

Tim Young  
Chief Technology Officer  
Keenwawa, Inc.  
200 Kansas Street  
San Francisco, CA 94103

with a copy to:

Minh N. Vu, Esq.  
SEYFARTH SHAW LLP  
975 F Street, N.W.  
Washington D.C. 20004

NOTICES TO MICHAEL GODINO AND AMERICAN COUNCIL OF THE BLIND:

Michelle Caiola, Esq.  
DISABILITY RIGHTS ADVOCATES  
675 Third Avenue, Suite 2216  
New York, NY 10017

NOTICES TO SERENA OLSEN AND DARIAN SMITH

Timothy Elder, Esq.  
TRE LEGAL PRACTICE  
4226 Castanos Street  
Fremont, CA 94536

- 25. Governing Law. This Agreement shall be governed, in all respects, by the laws of the State of California irrespective of its choice of law rules.
- 26. Confidential Riders. The Parties hereby incorporate into this Agreement the agreements made in the Confidential Rider Pertaining to Claimants ACB and Michael Godino and the Confidential Rider Pertaining to Claimants Serena Olsen and Darian Smith.

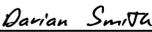
Dated: 9/12/2017

SERENA OLSEN

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Dated: 9/12/2017

DARIAN SMITH

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Dated: \_\_\_\_\_

MICHAEL GODINO

\_\_\_\_\_

Dated: \_\_\_\_\_

AMERICAN COUNCIL OF THE BLIND

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

KEENWAWA, INC.

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

Its: \_\_\_\_\_

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Dated: \_\_\_\_\_

SERENA OLSEN

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Dated: \_\_\_\_\_

DARIAN SMITH

\_\_\_\_\_

Dated: 2/7/17

MICHAEL GODINO

  
\_\_\_\_\_

Dated: \_\_\_\_\_

AMERICAN COUNCIL OF THE BLIND

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

KEENWAWA, INC.

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

Its: \_\_\_\_\_

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SERENA OLSEN

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Dated: \_\_\_\_\_

DARIAN SMITH

\_\_\_\_\_

Dated: \_\_\_\_\_

MICHAEL GODINO

\_\_\_\_\_

Dated: Sept. 8, 2017

AMERICAN COUNCIL OF THE BLIND

By: Darin Robson

Its: President

Dated: \_\_\_\_\_

KEENWAWA, INC.

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

Its: \_\_\_\_\_

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Dated: \_\_\_\_\_ SERENA OLSEN

\_\_\_\_\_

Dated: \_\_\_\_\_ DARIAN SMITH

\_\_\_\_\_

Dated: \_\_\_\_\_ MICHAEL GODINO

\_\_\_\_\_

Dated: \_\_\_\_\_ AMERICAN COUNCIL OF THE BLIND

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

Its: \_\_\_\_\_

Dated: 9/6/17

KEENWAWA, INC.

By: [Signature]

Its: President