

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between the Boston Center for Independent Living (“BCIL”), the Bay State Council of the Blind (“BSCB”), Barbara Rivero, Cheryl Cumings, Daniela Depina, Rhonda Mencey, and James Wice (collectively, “Claimants”) and Chair of the Boston Elections Commission Eneida D. Tavares and the City of Boston (the “City”). Claimants and the City are sometimes collectively referred to as the “Parties,” or individually as a “Party.”

### RECITALS

WHEREAS, Claimants notified Boston of their intention to pursue claims alleging violations of Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504”) based on an alleged failure to provide equal and effective access to the Absentee Voting and Vote by Mail Programs to voters with print disabilities due to the Programs’ exclusive use of paper ballots.

WHEREAS, the City does not admit, and specifically denies, that it has violated or failed to comply with the ADA and Section 504. This Agreement and its terms or provisions shall not be offered or received as evidence for any purpose whatsoever against the City in any action or proceeding, other than a proceeding to enforce the Agreement’s terms.

WHEREAS, the Parties have engaged in good faith negotiations and determined that it is in their mutual best interest, and the best interests of City of Boston voters, to enter into this Agreement, which resolves all potential claims and disputes between them relating to the availability of an accessible electronic remote voting program for voters with print disabilities.

WHEREAS, the Parties entered into an Agreement in Principle on August 31, 2021, the terms of which are incorporated herein by reference and expanded upon as contemplated by said Agreement in Principle.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the Parties covenant and agree as follows:

**1. Definitions.** The terms below shall have the following meanings with respect to this Agreement. All other terms shall be interpreted according to their plain and ordinary meaning:

**1.1.** “WCAG 2.1” means the World Wide Web Consortium’s Web Content Accessibility Guidelines version 2.1, Level AA criteria that affect users with vision disabilities, available at [www.w3.org/TR/WCAG/](http://www.w3.org/TR/WCAG/). Unless otherwise provided in this Agreement, technical terms used in this Agreement have the same meaning as provided in WCAG 2.1.

**1.2.** “Print disabilities” are disabilities that make it difficult or impossible for an individual to effectively access standard print materials. Such disabilities include blindness, low

vision, mobility/dexterity disabilities, or other disabilities that prevent or substantially limit access to standard printed text because the individual with the disability cannot read, write, hold, physically manipulate, or otherwise use standard print materials.

**1.3.** “Accessible Forms” are forms, applications, ballots, or transactions that are electronically fillable and submissible, produce a savable confirmation of submission for users, and are compliant with WCAG 2.1 AA.

**1.4.** “Accessible Ballots” are electronically fillable and submissible and are compliant with WCAG 2.1 AA. Accessible Ballots are received, marked, cast and submitted electronically, and ensure privacy and independence in voting for individuals with print disabilities who use common assistive technology, such as standard screen reader software (e.g., Job Access With Speech (“JAWS”), NonVisual Desktop Access (“NVDA”), VoiceOver, or Narrator), sip and puff devices (e.g., Sip/Puff Breeze, Jouse2), magnification, or speech to text software independently.

**1.5.** “Remote Voting Programs” are voting programs available to Massachusetts voters, such as the Absentee Voting Program and the Vote by Mail Program currently in effect until December 15, 2021, that permit a voter to privately and independently cast a ballot from a location other than an official polling site by mail, email, fax, and a web-based or other electronic system.

**1.6.** “Absentee Voting Program” is a voting program available in all Massachusetts elections for voters deemed to qualify to receive an absentee ballot. Registered Massachusetts voters are eligible to request and utilize an absentee ballot if they: (1) are going to be absent from the city or town where they are registered to vote during polling hours on election day; (2) have a disability that keeps them from voting at their polling site on election day; or (3) are unable to cast their vote in person on election day due to their religious beliefs. Massachusetts citizens who are not registered voters are eligible to vote absentee if they are: (1) a military voter on active duty or a dependent family member of active-duty personnel protected by the Uniformed and Overseas Citizens Absentee Voting Act; (2) a Massachusetts citizen residing outside of the United States protected by the Uniformed and Overseas Citizen Absentee Voting Act; (3) a voter who has been admitted to a hospital within one week of the election; or (4) a voter who is incarcerated.

**1.7.** “Vote by Mail Program” is a voting program currently available in all Massachusetts elections to all voters without any need to provide a reason or otherwise meet special criteria to participate.

**1.8.** “Accessible Electronic Remote Voting System” means a system by which the City of Boston will provide voters with print disabilities private and independent access to available remote voting programs, as described in Paragraph 2 of this Agreement.

**1.9.** “Effective Date” is the date of the last signature on this Agreement.

**2. Accessible Remote Voting for Voters with Print Disabilities.** The City and its departments shall, for the 2021 Boston preliminary and regular municipal elections and for every election through December 31, 2025, provide an Accessible Electronic Remote Voting System for use by individuals with print disabilities participating in the Absentee Voting Program or, while it exists, the Vote by Mail Program to allow them to privately and independently cast a ballot electronically.

**2.1.** The Accessible Electronic Remote Voting System shall comply with WCAG 2.1 and the requirements of Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12131 *et seq.*, and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794 *et seq.*

**2.2.** The Accessible Electronic Remote Voting System, unless ordered otherwise by either the Secretary of the Commonwealth of Massachusetts or a court of competent jurisdiction, shall include, at a minimum, the following accommodations for voters with print disabilities:

**2.2.1.** Accessible Forms to allow voters with print disabilities to apply to participate in Remote Voting Programs that permit use of a typed name or other proof of identity as a substitute for a hand-drawn signature, provided that this accommodation shall apply to the 2021 regular municipal election and thereafter. This accommodation shall be available as soon as is practicable;

**2.2.2.** Accessible Forms or other accessible web-based or electronic means compliant with WCAG 2.1 by which a voter with print disabilities can privately and independently request to participate in the Accessible Electronic Remote Voting System and self-certify that they are voters with disabilities that prevent or substantially limit them from being able to privately and independently complete a paper ballot to participate in a Remote Voting Program;

**2.2.3.** An Accessible Ballot;

**2.2.4.** An accessible means of ballot certification that is electronically fillable and submissible and compliant with WCAG 2.1 that permits use of a typed name or other proof of identify or credentials as a substitute for a hand-drawn signature; and

**2.2.5.** A web-based platform or other accessible mechanism that complies with WCAG 2.1 through which approved voters with print disabilities can electronically submit their Accessible Ballot and ballot certification in order to officially cast their vote as part of a Remote Voting Program.

**2.3.** The City shall make the Accessible Electronic Remote Voting System available to voters with print disabilities participating in the Absentee Voting and Vote by Mail programs for the 2021 Boston elections beginning on September 8, 2021.

**2.4.** This Agreement is not intended to, and shall not be interpreted to, require the

City to continue to use any particular Accessible Electronic Remote Voting System or technology during the term of this Agreement. The City may change its system or technologies during the term of this Agreement, as long as the systems provide the accommodations described above at 2.2.1 through 2.2.5 and an equal opportunity for voters with print disabilities to vote privately and independently through Remote Voting Programs. The City will notify Disability Law Center (“DLC”), as Claimant’s counsel, at least 30 days prior to implementing a new system or technology and will provide details sufficient to allow DLC to determine whether such system or technology meet the requirements of paragraphs 2.2.1 through 2.2.5 above.

**3. Public Notice of the Accessible Electronic Remote Voting System.**

**3.1.** No later than September 9, 2021, the City will provide notice in the “2021 Election Information” content on the Boston Elections Commission webpage, and webpages concerning the Absentee Voting Program and the Vote by Mail Program, of the existence and availability of the Accessible Electronic Remote Voting System for the 2021 Boston elections.

**3.2.** Throughout the term of the Agreement, the City shall prominently display on its website information concerning the Accessible Electronic Remote Voting System and the procedures for voters who wish to apply for and receive accommodations for their print disabilities to enable them to vote privately and independently through all available Remote Voting Programs. The City’s website pages on which such information is posted shall include the webpages for the Boston Elections Commission and the Boston Disabilities Commission. The content referencing or otherwise relating to the Accessible Electronic Remote Voting System and related procedures on the City’s website shall be compliant with WCAG 2.1.

**4. Policies.** As soon as possible, but not later than six (6) months from the Effective Date, the City shall adopt or revise policies regarding its procedure for providing prompt and timely equal access to Remote Voting Programs for people with print disabilities as necessary to effectuate the terms of this Agreement.

**4.1.** The policy will make clear that the Accessible Voting Coordinator will receive and resolve questions and complaints about the accessibility of the voting process for people with disabilities. The Accessible Voting Coordinator’s contact information, including an email address, mailing address, and telephone number, shall be included in the policy and easily identifiable on the City’s website.

**4.2.** The policy will establish and process the manner through which the City will accept and address complaints and feedback from the public regarding its provision of the Accessible Electronic Remote Voting System.

**4.3.** The policy will be posted prominently on the City’s website, including on the webpages for the Boston Elections Commission and the Boston Disabilities Commission.

**5. Training.** The City will provide training and support, as necessary, to ensure that personnel in the Boston Elections Department and the Boston Disabilities Commission are

adequately informed of the availability of the Accessible Electronic Remote Voting System for Boston voters with print disabilities who wish to participate in Absentee Voting or Vote by Mail, while it exists, and are prepared to assist voters in requesting access to that System.

6. **Reporting.** For each election that occurs from the Effective Date through December 31, 2025, upon request, the City will promptly provide Disability Law Center a report containing the following information for the preceding election:

6.1. The number of individuals who requested access to the Accessible Electronic Remote Voting System as an accommodation;

6.2. The number of individuals who were granted access to the Accessible Electronic Remote Voting System as an accommodation;

6.3. The number of individual who submitted a ballot using the Accessible Electronic Remote Voting System; and

6.4. A description of any complaints or feedback received by the City from voters with disabilities regarding attempts to use or use of the Accessible Electronic Remote Voting System.

7. **Dispute Resolution.** The Parties agree that they will work cooperatively to resolve any issues, concerns, or disputes regarding the Parties' respective obligations under this Agreement or compliance therewith.

7.1. The Parties agree that any such issues, concerns, or disputes shall be put in writing and responded to in writing by the other Party within thirty (30) days of receipt. The Parties will meet and confer in a good faith effort to resolve any dispute for a period of at least sixty (60) days from the initial date of written notice before the commencement of any enforcement action.

7.2. Claimant's counsel reserves the right to seek recovery of attorney's fees, costs, and expenses incurred as a result of enforcing the Agreement in the event that cooperative efforts to resolve disputes concerning the City's compliance with the Agreement are not successful.

8. **No Admission; Liability Expressly Denied.** It is understood and agreed by the Parties that this Agreement is a settlement and compromise of disputed claims, that the City expressly denies any liability to Claimants and that nothing in this Agreement shall be construed as an admission of liability.

9. **General Release.** In consideration of the promises, commitments, and undertakings made by the City, as set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Claimants, being of lawful age, and fully competent, hereby for themselves, their heirs, executors, administrators, attorneys, successors, and assigns IRREVOCABLY AND UNCONDITIONALLY, RELEASE, ACQUIT, AND FOREVER

DISCHARGE the City and their respective successors and assigns, from any and all claims, losses, damages, and expense, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, liquidated or unliquidated, which they have, or have ever had at any point prior to and up to and including the Effective Date of this Agreement and arising out of or connected with any acts or failure to act occurring at any time whatsoever with respect to the provision of accessible voting through Remote Voting Programs, including, without limitation, all claims arising under the ADA, Section 504, or any other State or Federal or Local law.

**9.1.** Notwithstanding the foregoing, this Agreement shall not release or otherwise affect or limit (i) the rights and obligations of the Parties arising out of this Agreement; (ii) the right of the Parties to enforce this Agreement; (iii) any claims which by law cannot be released; (iv) any claims arising after the Effective Date of this Agreement; or (v) any claims not arising out of or connected with any acts or failure to act occurring at any time whatsoever with respect to the provision of accessible voting for individuals participating in the Absentee Voting Program and Vote by Mail Program.

**10. Severability.** If any provision or term of this Agreement is held to be illegal, invalid, or unenforceable, such provision or term shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision or term there shall be added automatically as a part of this Agreement another provision or term as similar to the illegal, invalid, or unenforceable provision as may be possible and that is legal, valid, and enforceable.

**11. Drafting of this Agreement.** The Parties acknowledge and agree that this Agreement shall for all purposes be deemed jointly drafted and fully negotiated, and as a result, shall not in any manner be interpreted in favor of, or against, any particular Party by reason of being the drafting Party. Any rule of law that would require interpretation of any ambiguities or uncertainties in this Agreement against one of the Parties, shall have no application and is hereby expressly waived.

**12. Voluntary Agreement.** Each of the Parties represents, warrants, and agrees that they have read this Agreement carefully and know and understand its contents, that this Agreement has been voluntarily entered into, that they have received independent legal advice from their attorneys with respect to the advisability of executing this Agreement, and that any and all investigation and analysis of the facts deemed necessary or desirable have been conducted prior to the execution of this Agreement.

**13. Binding Effect.** All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, their heirs, successors, and assigns.

**14. Authority.** Each of the Parties represents, warrants, and agrees that they have the full right and authority to enter into this Agreement, and that the person executing this Agreement has the full right and authority to commit and bind such Party.

**15. Term of Agreement.** This Settlement Agreement shall commence on the Effective Date and continue in force until December 31, 2025, provided, that any provision that is expressly stated to survive expiration of this Agreement shall continue in force beyond the Term unless and until the Parties otherwise agree pursuant to a separate writing.

**16. Notices.**

For Claimants:

Tatum A. Pritchard  
Disability Law Center  
11 Beacon Street, Suite 925  
Boston, MA 02108  
617-723-8455

For the Chair of the Boston Elections Commission Eneida D. Tavares and the City of Boston:

Adam Cederbaum  
City of Boston Law Department  
City Hall Room 615  
Boston, MA 02201  
617-635-4030

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement on the dates set forth opposite their respective signatures.

EXECUTED by the Parties as follows:

ENEIDA D. TAVARES and THE CITY OF BOSTON:



Date: September 08, 2021

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BARBARA RIVERO, CHERYL CUMINGS, DANIELA  
DEPINA, RHONDA MENCEY, JAMES WICE, BOSTON  
CENTER FOR INDEPENDENT LIVING, and BAY  
STATE COUNCIL OF THE BLIND:

Date: September 8, 2021



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Attorneys for Claimants  
DISABILITY LAW CENTER, INC.  
Tatum A. Pritchard  
Thomas P. Murphy