

## SETTLEMENT AGREEMENT

### **I. INTRODUCTION**

1. In *Juan Figueroa et al. v. Alex M. Azar II*, No. 3:16-cv-30027 (District of Massachusetts) (“the Case”), Juan Figueroa, Derek Manners, Martti Mallinen, and the National Federation of the Blind (collectively “Plaintiffs”) filed a complaint against the Secretary of Health and Human Services in his official capacity (“Defendant”), alleging that Defendant had violated Section 504 by denying blind Medicare beneficiaries meaningful and equally effective access to their Medicare information. Plaintiffs’ complaint also refers to complaints that were filed with the HHS Office for Civil Rights in 2011 and 2012 under Section 504.

2. Defendant denies the allegations of Plaintiffs in the Case, and the issue of liability has not been litigated.

3. Defendant avers that neither the policies nor initiatives Defendant already has undertaken to enhance access for blind Medicare beneficiaries, as set forth in Section I.5, nor the actions Defendant shall take under the terms set forth below in this Settlement Agreement, are required by Section 504.

4. This settlement agreement is the result of two years of collaborative, arm’s length settlement negotiations by Plaintiffs and Defendant (collectively, “the Parties”) and their counsel to resolve the claims in the Case. The Parties, without conceding any infirmity in their claims or defenses, engaged in extensive arm’s length settlement negotiations to implement changes related to the Section 504 violations alleged in the Case. This collaborative attitude has allowed Defendant, through the actions of its Operating Division, the Centers for Medicare & Medicaid Services (“CMS”), to address the concerns raised in association with the claims in this action with practical creativity.

5. Since the initiation of the Case, Defendant's sub-agency CMS commenced significant initiatives to enhance the ability of blind Medicare beneficiaries and members of the public to access information about the Medicare program, and that process has been ongoing throughout the time the Case has been pending. As a result of CMS's voluntary, significant initiatives and the Parties' collaborative work, the following policies and initiatives have been adopted and/or implemented and will continue to be implemented:

- A. The creation of the Customer Accessibility Resource Staff ("CARS") in its Offices of Hearings and Inquiries. CARS serves as a focal point for, and to otherwise support, accessible Medicare communications, and its team has been charged with coordinating Defendant's accessibility efforts relating to external Medicare communications from CMS and providing guidance to CMS's Medicare Health and Drug Plans.
- B. The implementation of a process allowing blind Medicare beneficiaries to request Medicare Summary Notices ("MSNs") in an accessible format. Following an initial request, the requested accessible format shall be the default format for MSNs mailed to the beneficiary. Formats available as of the Effective Date, as defined below, are large print, Braille, audio CD, and data CD. Requests for custom accessible formats for MSNs and other documents are considered on a case-by-case basis.
- C. The placement of a statement on the Medicare.gov and CMS.gov websites, and in numerous documents, informing the public about the availability of auxiliary aids and including language that provides examples of such formats (*e.g.*, large print, Braille, audio and data CDs). The placement of contact information for CARS on

Medicare.gov for concerns about quality and timeliness of accessible formats as well as concerns about previous or pending requests for communications in accessible formats. The Nondiscrimination Notice on CMS's public-facing website, Medicare.gov, includes the right to file a complaint with Defendant's Office for Civil Rights.

- D. The availability of *Medicare & You* via Medicare.gov in e-book format (Mobi and Epub), as a podcast (.mp3 format), and as a PDF.
- E. The addition of a link in the publications section of Medicare.gov that refers users to guidance on how to request Medicare communications, including publications, in accessible formats.
- F. The availability of CMS's most popular publications, as determined by user request volume, in e-book format (Mobi and Epub) on Medicare.gov. As of the Effective Date, 22 publications are available on Medicare.gov in e-book format (Mobi and Epub) and are accessible from the publications link on Medicare.gov.
- G. A process for informing CMS beneficiaries regarding the availability of accessibility aids when they initially enroll or are enrolled in Medicare, and through annual notifications (*e.g., Medicare & You*).
- H. The provision of guidance to CMS employees on making documents compliant with Section 508.
- I. The provision of training to both new and existing CMS employees regarding Section 504 compliance in the context of ensuring the accessibility of CMS's program communications.

- J. Through CMS's National Medicare Training Program, the provision of education and training regarding the availability of accessible Medicare communications to stakeholders who interact with Medicare beneficiaries.
- K. The issuance of guidance on multiple occasions to Medicare Health and Drug Plans, including: one guidance document which noted the requirement that Medicare Health and Drug Plans must establish a process by which an individual can request information in accessible formats and that individuals with disabilities must not have less time to take an action than individuals without disabilities; attendance at several Medicare Health and Drug Plan conferences to make presentations on the topic of Section 504; and the provision of periodic reminders to these organizations about their responsibilities relating to accessibility and Section 504 compliance (*e.g.*, in CMS's annual Plan Readiness Check List, CMS's Annual Notice of Change (ANOC) template, CMS's Evidence of Coverage (EOC) template, Health Plan Management System (HPMS) Memorandums, and conversations with CMS account managers).
- L. Through CMS' Call Center Monitoring Contractor, a process for assessing Medicare Health & Drug Plan Customer Service Representatives' knowledge of the availability of Section 504 compliant materials.
- M. The adoption of a process, including but not limited to automated and user testing, for verifying that information posted on Medicare.gov, including Medicare publications, meets Section 508 Board Standards, as applicable.
- N. The provision of contact information on Medicare.gov for users to report issues accessing the website.

- O. The revision of Defendant's Section 508 Policy Statement, currently located at [https://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/Section508/Section\\_508\\_policies\\_procedures.html](https://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/Section508/Section_508_policies_procedures.html), which will be updated as Defendant's technological capabilities change and/or are updated.

Any updates of the Section 508 Policy Statement will be posted to CMS.gov.

6. Defendant maintains its right to amend the policies and initiatives referenced in Section I.5 without approval from Plaintiffs. However, during the Compliance Period (as defined in Section II below), Defendant agrees that any modifications to these policies and initiatives shall not result in blind Medicare beneficiaries or members of the public having less effective access to information about the Medicare program than sighted individuals. Defendant further agrees to inform Plaintiffs' counsel in writing: (1) to the best of its ability at least 14 days in advance of any changes to the policies and initiatives during the Compliance Period; or (2) within 30 days of the change in the event that, despite its best efforts, Defendant is unable to provide advance notice. Compliance with any revised policy or procedure that is consistent with the preceding sentences in Section I.5 shall not be deemed a breach of this settlement agreement. Any dispute regarding whether access to information about the Medicare program has become less effective for blind individuals shall be resolved pursuant to Section IX.

7. The Parties believe this settlement agreement is fair, reasonable, and adequate to protect the interests of all parties.

## **II. DEFINITIONS AND RULES OF CONSTRUCTION**

**"Plaintiffs"** are Juan Figueroa, Derek Manners, Martti Mallinen, and the National Federation of the Blind (NFB).

**“Defendant”** is the United States Department of Health & Human Services, acting through its Operating Division, the Centers for Medicare & Medicaid Services.

**“The Parties”** are Plaintiffs and Defendant.

**“Blind”** is used in its broadest sense to include all persons who have a vision-related disability that requires the use of alternative techniques or assistive technology to access visual information.

The **“Effective Date”** of the Settlement Agreement is the last day on which the Parties, through their Counsel, sign this Settlement Agreement.

The **“Compliance Term”** of this Agreement is 2.5 years from the Effective Date. If, at the end of the 2.5-year period, the Parties agree that if provisions of this agreement remain unfulfilled, then the Compliance Term shall be extended for one additional 12-month term.

**“Section 504”** refers to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and any regulations enacted thereunder.

**“Section 508”** refers to Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. § 794d, and any regulations enacted thereunder.

**“Section 508 Board Standards”** means the United States Access Board’s most recent Section 508 standards.

**“CMS”** is the Centers for Medicare & Medicaid Services.

**“Medicare Health and Drug Plans”** or **“Plans”** means Medicare Advantage Organizations, Medicare Prescription Drug Plans, Programs of All-inclusive Care for the Elderly (“PACE”) Organizations, Medicare-Medicaid Plans, and Section 1876 Cost Plans.

“**Accessible format**” includes, but is not limited to, large print, Braille, audio, or digital navigable formats supported by computers or digital talking-book players transmitted through CD, flash drive, or other requested media.

“**Environmental Scan**” means a study that systematically scans industry practices and interprets relevant data and characteristics to identify opportunities and risks and/or the extent of an identified potential problem.

“**Explore**” means the examination of whether a stated initiative or process is feasible, immediately or over time, in light of factors including but not limited to agency resources, goals, and technical constraints.

“**Major Medicare Communications Channels**” means the medium or mechanism by which information shall be shared or relayed most commonly and in the greatest numbers to the beneficiaries or public.

“**Most Requested Publications**” means publications frequently asked for and/or utilized by beneficiaries or the public, based on information available such as the number of requests made to the call center or the number of times information is utilized on the website.

“**Medicare & You**” means Defendant’s *Medicare & You* handbook.

“**MSN**” means Medicare Summary Notice.

“**Routine Medicare Communications**” shall mean MSNs, Medicare Fee-for-Service Redetermination and Reconsideration Notices (Appeals Levels 1 and 2, respectively), Medicare Part D Low Income Subsidy Notices, and the Medicare General Enrollment Package.

**Time Periods** in this Agreement shall be construed as ending on the last date of the identified month. For example, if a deadline is six months from the Effective Date, and if the Effective Date were to be January 23, 2018, then the deadline would be July 31, 2018.

“**Within**” a specified time period shall be construed as a specified time period after the Effective Date. For example, “within 12 months” means “within 12 months after the Effective Date.”

### **III. GENERAL PROVISIONS**

#### **A. Policy Statement**

1. Within 12 months, Defendant shall maintain existing or, if needed, develop policy guidance for its operations clarifying that if the document for which an accessible format is requested requires a response within a specified time period, such period shall be extended by at least the number of days it took Defendant to process the accessible format request. Defendant shall provide counsel for Plaintiffs with a copy of the proposed policy guidance, omitting any confidential information, no later than 14 days before it is to be published or otherwise distributed. Counsel for Plaintiffs shall provide any feedback within 7 days of receiving the draft statement from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs’ feedback.

2. Within 24 months, Defendant shall provide Plaintiffs with a list of manuals, publications, and websites in which the policy guidance referenced in III.A.1 has been included or promoted.

#### **B. Print Materials**

1. Within the time frames noted below, Defendant shall implement a process to provide Routine Medicare Communications that are generated by automated means in the accessible format(s) requested by a Medicare beneficiary. By the



end of the appropriate time frame, an individual's request for an accessible format for one of the Routine Medicare Communications shall automatically generate a request for a different Routine Medicare Communication to be provided in the same accessible format. The following time frames shall apply:

- a. Medicare Fee-for-Service Redetermination (level 1) Notices: 12 months
  - b. Medicare Fee-for-Service Reconsideration (level 2) Notices: 18 months
  - c. Medicare Part D Low Income Subsidy Notices: 12 months
  - d. Medicare General Enrollment Package: 24 months
  - e. Medicare Premium Bills: 18 months
2. Within 12 months, Defendant shall develop a process to ensure that when CMS mails communications other than Routine Medicare Communications, such communications will be mailed to Medicare beneficiaries in the same accessible format(s) the beneficiaries requested for their Routine Medicare Communications. Additionally, Defendant shall ensure that Routine Medicare Communications CMS sends contain language informing beneficiaries how to receive their Medicare communications in an accessible format. Defendant shall implement this process within 18 months of the Effective Date of the Agreement.
3. Within the time frames noted below, Defendant shall implement a process to provide standard-print communications in the same envelopes as their accessible format counterparts for all communications with respect to

which blind Medicare beneficiaries may need to take some further action related to Medicare (*i.e.*, file an appeal or submit an application).

Defendant will provide only the requested accessible format, without providing a standard print version of the same communication, for (1) communications that are solely for the purpose of providing information to Medicare beneficiaries and that would not need to be submitted for a further action related to Medicare or (2) for large print formats, as Medicare beneficiaries would have the ability to perform a required additional action based on the information they received in large print format. As this option becomes available, Defendant shall update its Call Center scripts, or other appropriate communication tools, to explain when both communications can be provided in the same notice. Defendant shall provide counsel for Plaintiffs with a copy of the proposed revisions to its Call Center scripts and other appropriate communication tools, omitting any confidential information, no later than 14 days before such revisions are to be implemented. Counsel for Plaintiffs shall provide any feedback within 7 days of receiving the proposed revisions from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback.

- a. MSNs: 6 months
- b. Medicare Part D Low Income Subsidy Notices, Medicare Fee-for-Service Redetermination (level 1) and Reconsideration (level 2) notices: 18 months

- c. Medicare Premium Bills: 24 Months
- 4. When sending Medicare beneficiaries documents in accessible formats, Defendant shall send the accessible format through a delivery method that is no slower than the delivery method used to send standard print documents to Medicare beneficiaries.
- 5. *Medicare Cards.*
  - a. Beginning in spring 2018, Defendant shall send a tactile element sticker with the issuance of the replacement Medicare Cards to every currently-enrolled Medicare beneficiary who has requested delivery of MSNs in Braille.
  - b. Upon completion of the Medicare Card replacement initiative, Defendant shall send tactile element stickers to beneficiaries who have requested delivery of an MSN in an Accessible Format other than Braille. The letter accompanying the tactile element sticker shall be in the beneficiary's requested accessible format, and may be combined with the letter described in item IV(E).

**C. Beneficiary Outreach and Education**

- 1. Within 18 months, Defendant shall develop a written plan to promote to Medicare beneficiaries the availability of accessible formats (including examples of such formats) across Major Medicare Communications Channels. In developing the written plan, Defendant shall explore a variety of options, including, but not limited to, using appropriate static call center messaging, posting Medicare publications on public

accessibility resources, and outreach opportunities such as giving presentations and distributing outreach materials for dissemination with appropriate groups that represent the blind (*e.g.*, the National Federation of the Blind) and serve the blind (*e.g.*, libraries for the blind, ophthalmologists).

2. Defendant shall provide counsel for Plaintiffs with a copy of the draft written plan no later than 28 days before it is to be finalized, published, distributed, or otherwise implemented. Counsel for Plaintiffs shall provide any feedback within 14 days of receiving the draft plan from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback.

**D. Medicare.gov and Medicare Publications**

1. Defendant shall provide Most Requested Publications in e-book format on Medicare.gov. As of the Effective Date, e-book formats consist of Mobi and Epub formats.
2. Within 6 months, Defendant shall update the statement on the Medicare.gov and CMS.gov websites, and in numerous documents, providing clarifying language of where beneficiaries can submit concerns and inquiries regarding accessible communications and requests, including to CARS.
3. Within 3 months, Defendant shall create an inventory of publications available on Medicare.gov that include content presented in tables. Within 12 months thereafter, Defendant shall ensure that content presented in

those tables is available in an accessible format, by: (a) providing the entire publication in e-book format; (b) providing a link within the publication to that content on the Medicare.gov website; or (c) revising the publication to eliminate the table.

4. Within 6 months, and at least once every 3 months thereafter for the Term of this Settlement Agreement, Defendant shall deploy automated testing tools on Medicare.gov that integrate the new Section 508 Board Standards as defined by the United States Access Board.
5. Within 12 months, Defendant shall explore options for increased user testing of the Medicare.gov website, as well as code-inspection based accessibility testing approaches through mechanisms such as the Trusted Tester program developed by the United States Department of Homeland Security, to include testing of web content for compliance with the new Section 508 Board Standards as defined by the United States Access Board and for usability.
6. Within 12 months, Defendant shall ensure that all beneficiary-oriented Portable Document Format (PDF) forms on Medicare.gov are fillable and compliant with new Section 508 Board Standards as defined by the United States Access Board.
7. Within 24 months, Defendant shall develop and make available on Medicare.gov non-PDF, accessible versions of the forms referenced in item III.D.6 that will be fillable and printable.

8. Within 12 months, Defendant shall provide a link on each of the accessibility pages of Medicare.gov and CMS.gov to an email address through which users can provide feedback regarding the accessibility of Medicare.gov.
9. Within 6 months, Defendant shall provide Universal Serial Bus (USB) flash drives to Medicare beneficiaries who request data or audio formats on a USB device, instead of a Compact Disc (CD) format.
10. If, during the term of this Settlement Agreement, Defendant launches a Medicare mobile application, the application shall be compliant with Section 508.
11. Within 18 months, Defendant shall explore updating MyMedicare.gov to allow Medicare beneficiaries to change their default media preference to an accessible format (e.g., large print, Braille, audio CD, data CD).
12. Within 9 months, Defendant shall review and, if necessary, revise its Medicare Call Center scripts and Call Center processes to ensure that users who experience problems accessing information on Medicare.gov with screen reader technologies are accurately directed and receive support from appropriate sources. Defendant shall provide counsel for Plaintiffs with a copy of these proposed revisions, omitting any confidential information, no later than 14 days before they are to be finalized, published, distributed, or implemented. Counsel for Plaintiffs shall provide any feedback within 7 days of receiving the proposed

revisions from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback.

**E. Employee Training**

1. Within 9 months, Defendant shall share with Plaintiffs training materials and resources offered on Web accessibility that are provided to CMS employees. Additionally, within 9 months, Defendant shall also seek input from Plaintiffs into future training, job aids, and other pertinent training and guidance documents. Defendant retains discretion on all final decision responsibilities regarding these products.
2. Within 12 months, Defendant shall develop or update, as necessary, job aids explaining common actions that make documents accessible, *e.g.*, how to add comment, tagging, etc., for CMS employees who create content for Medicare.gov.
3. Within 18 months, Defendant shall provide existing or updated accessibility training to CMS staff who develop content for Medicare.gov, including training to convert documents to accessible PDF or other formats. Training will include an evaluation form for trainees to provide feedback regarding training content and effectiveness.

**IV. MEDICARE HEALTH AND DRUG PLANS**

- A. Within 12 months, and annually thereafter, Defendant shall reinforce, by the methods such as those noted in paragraph I.5.K, its expectation that Medicare

Health and Drug Plans monitor website compliance with Section 508 standards and have mechanisms to remediate any identified accessibility issues.

B. *Best Practices.*

1. Within 12 months, Defendant shall issue a set of accessibility best practices, providing due consideration to input from Plaintiffs as well as other applicable sources, to Medicare Health and Drug Plans. Defendant shall encourage Medicare Health and Drug Plans to follow these best practices when developing policies, procedures, and training on website accessibility, including end user testing using multiple types of screen readers.
2. Defendant shall encourage Medicare Health and Drug Plans to post the best practices they adopt on their website or via another forum within 18 months.

C. *Environmental Scan.*

1. Within 6 months, Defendant shall initiate a study to include an Environmental Scan of Medicare Health and Drug Plan Accessibility programs and analysis of plan performance and compliance. Defendant shall provide counsel for Plaintiffs with a summary of the planned study no later than 28 days before it is to be initiated. Counsel for Plaintiffs shall provide any feedback within 14 days of receiving the proposed study from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback. Defendant shall provide Plaintiffs with the results of this study.
2. Within 24 months, Defendant shall utilize the Environmental Scan to (a) explore ways to recognize Medicare Health and Drug Plans that excel in



accessibility and (b) update the accessibility best practices to Medicare Health and Drug Plans.

D. Within 18 months, Defendant shall recommend that Medicare Health and Drug Plans provide information in their Plan materials (*e.g.*, Evidence of Coverage (EOC), Annual Notice of Change (ANOC)) and on their websites about accessible formats (*e.g.*, large print, Braille, audio/data CD), including how to request accessible formats with a single request rather than multiple requests for different communications.

E. Within 12 months, Defendant shall send a letter in the requested accessible format to Medicare beneficiaries who have indicated they want their MSNs in an accessible format to explain that other materials also are available in accessible formats. The letter shall advise that Medicare beneficiaries can contact their Medicare Health and Drug Plans, if any, to request that relevant communications from that entity be provided in an accessible format.

F. Within 6 months, Defendant shall update 1-800-MEDICARE Call Center scripts to inform Medicare beneficiaries that they can contact their Medicare Health and/or Drug plan to request all print materials in accessible format.

G. Within 12 months, Defendant shall add language to *Medicare & You* and to Medicare.gov indicating that blind beneficiaries can obtain accessible formats “from your Plan.”

## **V. DEFENDANT’S PAYMENT OF FEES AND COSTS**

A. Following Plaintiffs’ filing of a stipulation of dismissal pursuant to Section VI.C, Defendant shall pay attorney’s fees and costs to Plaintiffs in the amount of [REDACTED]. Defendant shall submit the necessary paperwork to process the [REDACTED] payment within twenty-one (21) days of Plaintiffs having provided to Defendant the necessary information to

process the payment to be made pursuant to this Agreement, and Defendant shall also make good-faith efforts to provide for payment to be made within ninety (90) days from when Defendant submits the necessary paperwork.

B. Upon receipt of payment for attorney's fees and costs, Plaintiffs shall release and forever discharge all claims against Defendant for attorney's fees and costs accrued through the date on which Plaintiffs file the Rule 41(a)(1)(A)(ii) stipulation pursuant to Section VI.C.

C. Compliance with all applicable Federal, State, and local tax requirements shall be the sole responsibility of Plaintiffs and their counsel. Nothing in this Settlement Agreement waives or modifies Federal, State, or local law pertaining to taxes, offsets, levies, and liens that may apply to money paid under this Agreement, and Plaintiffs are executing this Agreement without reliance on any representation by Defendants as to the application of any such law.

## **VI. RELEASE OF CLAIMS AND DISMISSAL**

A. Plaintiffs and their heirs, administrators, successors, or assigns (collectively, "Releasers"), hereby release, waive, acquit, and forever discharge Defendant, along with Defendant's administrators, successors, officers, employees, and agents (together, the "Releasees") from, and are forever barred and precluded from prosecuting, any and all claims, causes of action, or requests for any monetary or injunctive relief (whether in administrative or in judicial proceedings), whether presently known or unknown, that have been or could have been asserted in the Case by reason of, with respect to, in connection with, or which arise out of, any matters alleged in the case that the Releasers, or any of them, have against the Releasees, or any of them. This subsection shall not be interpreted to in any way limit the ability of Plaintiffs, either collectively or individually, to prosecute any and all claims, causes of action, or requests

for any monetary or injunctive relief (whether in administrative or in judicial proceedings) that may arise following Plaintiffs' filing of the Rule 41(a)(1)(A)(ii) stipulation pursuant to Section VII.C, even if such future claims, causes of action, or requests which arise after the filing of the stipulation might raise claims of non-compliance with Section 504. This subsection does not release any claims Plaintiffs may have related to Defendant's Office of Medicare Hearings and Appeals.

B. Plaintiffs and their counsel release and forever discharge all claims against Defendant for monetary relief they have asserted or could have asserted in this Case for attorney's fees, costs, and expenses incurred to date and through the date on which Plaintiffs file the Rule 41(a)(1)(A)(ii) stipulation pursuant to Section VII.C, including but not limited to fees or expenses associated with this Settlement Agreement.

C. Within 7 days of the Effective Date, Plaintiffs shall file a joint stipulation of dismissal of this case with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

## **VII. REPORTING**

A. With respect to each item in this Agreement to be performed within a specified time period, Defendant shall report to Plaintiffs as to whether the item has been performed at the close of the specified time period.

B. Within 6 months, and every 6 months thereafter, Defendant shall report to Plaintiffs any relevant policy changes and any relevant status updates affecting Defendant's ability to perform the items contained in Sections III and IV, as well as the following information for the preceding 6-month period:

1. Broken down by accessible format type (Braille, large print, etc.), the number of requests received by CMS for accessible formats, including custom formats, the number of requests granted, descriptions (without personal identifying details) of all complaints received related to accessible formats, how such complaints were resolved if applicable, and the time it took to resolve such complaints.
  2. Summaries of email feedback received by CMS related to accessibility of the Medicare.gov and CMS.gov websites and how such complaints were resolved if applicable.
  3. Summaries of complaints received in the CMS Complaint Tracking Module (CTM) regarding accessibility of materials from Medicare Health and Drug Plans, including the number of complaints resolved, if applicable, and the time taken to resolve such complaints.
  4. A description of how the written outreach plan required under Section III.C.1 has been implemented.
  5. Summary results of all automated and user testing performed on the Medicare.gov website, as required under Section III.D.
  6. Summary results of trainee evaluation of the effectiveness of Defendant's website accessibility training programs, as required under Section III.E.
- C. For each item in this Agreement that Defendant commits to explore (Sections III (C)(1); III (D)(5); III (D)(11); IV (C)(2)), within 30 days of concluding each required exploration, Defendant shall provide to Plaintiffs the result of the exploration and Defendant's reasoning for reaching such result.

D. If Defendant determines during the process of exploring or implementing an item that a deadline will not be met, Defendant shall report to Plaintiffs during the reporting cycle in Section VIII(B) why the deadline could not be met, and when Defendant expects to meet the deadline.

## **VIII. MODIFICATION**

A. Defendant may seek to modify an item in this Agreement, but only if Defendant determines that one or more of the following conditions applies:

1. The item would violate any applicable Federal or State statute, regulation, or ordinance, or any applicable court order.

2. Congress has materially amended, repealed, or allowed to expire without reenactment a statute that empowers Defendant to raise revenue.

3. Defendant has determined that it will no longer be practicable to achieve an item in the specified time frame in light of factors unforeseen at the Effective Date.

4. Defendant has determined that an alternative business practice, procedure, or method would enable it to achieve the goal(s) embodied in an item.

B. If Defendant modifies or removes an item pursuant to Section VIII(A), Defendant must notify Plaintiffs in writing of the nature, scope, and reasons for the modification(s) or removal(s). Within seven (7) calendar days of Defendant's notification, Plaintiffs may request in writing from Defendant additional information about the proposed modification or removal. If Plaintiffs object to the modification or removal of an item, they may invoke the dispute resolution process provided for in Section IX within twenty-one (21) calendar days of receiving notice of such modification or removal. If Plaintiff does not invoke the dispute resolution

process within twenty-one (21) calendar days of receiving such notice, then any objections to such modifications or removals are deemed waived.

C. If either party determines that technological changes create opportunities for meeting the needs of blind individuals more efficiently or effectively than is provided for under this Settlement Agreement, the proposing party shall present written notice to the other party. The receiving party shall consider such proposed changes and will advise the proposing party as to whether it agrees to modify this Settlement Agreement.

## **IX. DISPUTE RESOLUTION PROCESS**

- A. Notice of Non-Compliance. If a Party to this Settlement Agreement believes that any other Party has not complied with Sections III, IV, or VII of this Agreement, or believes that there is a dispute under Section I.6, that Party shall provide the other Party with a written Notice of Non-Compliance containing the following information: (i) the alleged act of non-compliance; (ii) a reference to the specific provision(s) of this Agreement that is or are not being complied with; (iii) a statement of the remedial action sought by the initiating Party; and (iv) a brief statement of the specific facts, circumstances, and legal argument supporting the position of the initiating Party.
- B. Response. Within 30 days of receipt of a Notice of Non-Compliance, the non-initiating Party shall respond to the initiating party in writing.
- C. Meet and Confer. Within 14 days after the response described above, representatives of the Parties shall informally meet, either in person or via teleconference, and confer and attempt to resolve the issues raised in the Notice of Non-Compliance.

- D. Submission to Mediation. If the matters raised in the Notice of Non-Compliance are not resolved within 45 days of the initial meet and confer, either Party may submit the unresolved matters to nonbinding mediation before a mediator provided by the Federal Mediation and Conciliation Service. Each Party shall cover 50% of the total cost of the fees paid to the mediator, and shall bear their own costs.
- E. Court Enforcement. If the Parties are unable to reach a mutually acceptable resolution through mediation, any Party may seek court enforcement of compliance with this Agreement. The Parties agree to engage in the above dispute resolution procedures to resolve any dispute relating to the interpretation or implementation of this Settlement Agreement before bringing the matter to the court's attention. In the event that any Party institutes any legal action against any other Party to enforce the provisions of this Agreement, or to declare rights and/or obligations under this Agreement, that Party shall file a motion pursuant to Fed. R. Civ. P. 60(b)(6) seeking relief from the entry of judgment dismissing the Case. The Parties agree not to dispute that the filing of such a motion constitutes an appropriate mechanism to enforce the provisions of this Agreement, or to declare rights and/or obligations under this Agreement. However, this agreement shall not be deemed to waive any available defenses to the substance of such motion, and any right or authority to contend that no breach of this Settlement Agreement has occurred. If the Rule 60(b)(6) motion is granted, the court shall have full authority to grant any available remedy, including an order of specific performance, upon finding that this Agreement has been breached.
- F. The Parties understand and acknowledge that during the Compliance Period, changes in circumstances may affect compliance with this Agreement, such as, developments in

technology to assist or improve communications with blind individuals. The intent of this Agreement is to ensure equal access to Medicare information for the blind, and the words of this Agreement shall be construed to fulfill that intent.

## **X. ADDITIONAL PROVISIONS**

A. *Authority.* Each Party represents to all other Parties that it has full power and authority to enter into this Settlement Agreement, that the execution of this Agreement will not violate any other agreement binding the Party, and that this Agreement is a valid and binding obligation on the Party, enforceable in accordance with its terms. The signatories to this Agreement expressly warrant that they have been authorized to execute this Agreement and to bind their respective Parties to its terms and provisions.

B. *Knowing Agreement.* Each Party acknowledges that they are represented by counsel and that they have reviewed, and had the benefit of legal counsel's advice concerning, all of the terms and conditions of this Settlement Agreement.

C. *No Admission of Liability.* This Settlement Agreement shall not be construed as an admission by Defendant of the truth of any of the allegation or the validity of any claim asserted in the Case, or of the liability of Defendant, nor as a concession or an admission of any fault or omission of any act or failure to act, or of any statement, written document, or report heretofore issued, filed, or made by Defendant, nor shall the Settlement Agreement nor any confidential papers related hereto and created for settlement purposes only, nor any of the terms of either, be offered or received as evidence of discrimination in any civil, criminal, or administrative action or proceeding, nor shall they be the subject of any discovery or construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the



part of Defendant, nor as an admission by any Party to this Settlement Agreement that the consideration to be given hereunder represents the relief which could have been recovered after trial.

1. Defendant denies liability and the appropriateness of monetary or injunctive relief as to each of the claims that were or could have been raised in the Case, and this Settlement Agreement does not constitute, and may not be construed as, a determination or an admission of a violation of any law, rule, regulation, policy, or contract by Defendant, the truth of any allegation made in the Case, or the validity of any claim asserted in the Case. This Agreement does not constitute, and may not be construed as, a determination or an admission that Defendant is liable in this matter, that Plaintiffs are a prevailing party, that Plaintiffs were substantially justified in any claim or position, or that any claim, defense, or position of Defendant was substantially unjustified.
2. Nothing herein shall be construed to preclude the use of this Settlement Agreement to enforce the terms thereof.

D. *Integration.* This Settlement Agreement and its attachments and addenda constitute the entire agreement of the Parties, and no prior statement representation, agreement, or understanding, oral or written, that is not contained herein, shall have any force or effect.

E. *Duties Consistent with Federal Law.* Nothing contained in this Settlement Agreement shall impose on Defendant any duty, obligation, or requirement, the performance of which would be inconsistent with federal statutes or federal regulations in effect at the time of such performance.

F. *Headings.* The headings in this Settlement Agreement are for the convenience of the Parties only and shall not limit, expand, modify, or aid in the interpretation or construction of this Settlement Agreement.

G. *Severability.* Should any non-material provision of this Settlement Agreement be found by a court to be invalid or unenforceable, then (A) the validity of other provisions of this Settlement Agreement shall not be affected or impaired; and (B) such provisions shall be enforced to the maximum extent possible.

H. *Jointly Drafted Agreement.* This Settlement Agreement shall be considered a jointly drafted agreement and shall not be construed against any party as the drafter.

## **XI. COUNTERPARTS**

This Settlement Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

## **XII. EFFECTIVE DATE AND COMPLIANCE TIME**

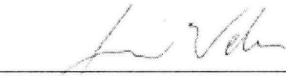
A. This Settlement Agreement shall take effect upon being signed by counsel for both Parties.

B. The Compliance Term of this Settlement Agreement is 2.5 years from the Effective Date. The Compliance Term may be extended for an additional 12-month term in the event that any obligations of Defendant under the Agreement remain unsatisfied following the expiration of 2.5 years.

### XIII. SIGNATURES

By their signatures below, the Parties, by and through counsel, indicate their consent to the terms and conditions set forth above.

Dated: April 20, 2018

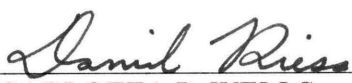
  
\_\_\_\_\_  
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Dated: April 20, 2018

  
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**Addendum 1: Items to Be Completed Within Specified Time Periods After the Effective Date**

**Addendum 2: Reporting**

## ADDENDUM 1

### **Items to Be Completed Within Specified Time Periods After the Effective Date<sup>1</sup>**

#### **I. Within 3 Months**

- Create an inventory of publications available on Medicare.gov that include content presented in tables. (III.D.3)

#### **II. Within 6 Months**

- Implement a process to provide standard-print MSNs in the same envelopes as their accessible format counterparts for all MSNs with respect to which blind Medicare beneficiaries may need to take some further action related to Medicare (i.e., file an appeal or submit an application). Defendant will provide only the requested accessible format, without providing a standard print version of the same communication, for (1) communications that are solely for the purpose of providing information to Medicare beneficiaries and that would not need to be submitted for a further action related to Medicare or (2) for large print formats, as Medicare beneficiaries would have the ability to perform a required additional action based on the information they received in large print format. As this option becomes available, Defendant shall update its Call Center scripts, or other appropriate communication tools, to explain when both communications can be provided in the same notice. Defendant shall provide counsel for Plaintiffs with a copy of the proposed revisions to its Call Center scripts and other appropriate communication tools, omitting any confidential information, no later than 14 days before such revisions are to be implemented. Counsel for Plaintiffs shall provide any feedback within 7 days of receiving the proposed revisions from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback. (III.B.3.a)
- Update the statement on the Medicare.gov and CMS.gov websites, and in numerous documents, providing clarifying language of where beneficiaries can submit concerns and inquiries regarding accessible communications and requests (III.D.2)
- (And at least once every 3 months thereafter) Deploy automated testing tools on Medicare.gov that integrate the new Section 508 Board Standards as defined by the United States Access Board. (III.D.4)

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<sup>1</sup> This addendum will not be construed as modifying, changing, supplementing, or diminishing the obligations in the Agreement, but only as a summary thereof.

- Provide Universal Serial Bus (USB) flash drives to Medicare beneficiaries who request data or audio formats on a USB format instead of a Compact Disc (CD) format. (III.D.9)
- Initiate a study, to include an Environmental Scan of Medicare Health and Drug Plan Accessibility programs and analysis of plan performance and compliance. (Counsel for Plaintiffs to be provided with a summary of the planned study no later than 28 days before it is to be initiated; counsel for Plaintiffs shall provide any feedback within 14 days of receiving the proposed study; due consideration to be provided to incorporating Plaintiffs' feedback; counsel for Plaintiffs to be provided with the results of this study) (IV.C.1)
- Update 1-800-MEDICARE Call Center scripts to inform Medicare beneficiaries that they can contact their Medicare Health and/or Drug plan to request materials in accessible format. (IV.F)
- (And every 6 months thereafter) Report any changes to the initiatives in Section I, any relevant status updates, and any relevant policy changes affecting Defendant's ability to perform the items contained in Sections III and IV. (VII.B)
- (And every 6 months thereafter) Report the following information for the preceding 6-month period:
  - Broken down by accessible format type (Braille, large print, etc.), the number of requests received by CMS for accessible formats, including custom formats, the number of requests granted, descriptions (without personal identifying details) of all complaints received related to accessible formats, how such complaints were resolved if applicable, and the time it took to resolve such complaints.
  - Summaries of email feedback received by CMS related to accessibility of the Medicare.gov and CMS.gov websites and how such complaints were resolved if applicable.
  - Summaries of complaints received in the CMS Complaint Tracking Module (CTM) regarding accessibility of materials from Medicare Health and Drug Plans, including the number of complaints resolved, if applicable, and the time taken to resolve such complaints.
  - A description of how the written outreach plan required under Section III.C.1 has been implemented.
  - Summary results of all automated and user testing performed on the Medicare.gov website, as required under Section III.D.
  - Summary results of trainee evaluation of the effectiveness of Defendant's website accessibility training programs, as required under Section III.E.

### **III. Within 9 Months**

- Review and, if necessary, revise Medicare Call Center scripts and Call Center escalation processes to ensure that users who experience problems accessing information on Medicare.gov with screen reader technologies are accurately directed, and receive timely support from appropriate sources. (Counsel for Plaintiffs to be provided with a copy of these proposed revisions, omitting any confidential information, no later than 14 days before they are to be finalized, published, distributed, or implemented; counsel for Plaintiffs shall provide any feedback within 7 days of receiving the proposed revisions; due consideration to be provided to incorporating Plaintiffs' feedback) (III.D.12)
- Share training materials and resources offered on Web accessibility that are provided to CMS employees. Seek input into future training, job aids, and other pertinent training and guidance documents. (III.E.1)

### **IV. Within 12 Months**

- Maintain existing, or develop, if needed, policy guidance for Defendant's operations, clarifying that if the document for which an accessible format is requested requires a response within a specified time period, such period shall be extended by at least the number of days it took Defendant to process the accessible format request. (Counsel for Plaintiffs to be provided with a copy of the proposed policy guidance, omitting any confidential information, no later than 14 days before it is to be published or otherwise distributed; counsel for Plaintiffs shall provide any feedback within 7 days of receiving the draft statement; due consideration to be provided to incorporating Plaintiffs' feedback). (III.A.1)
- Ensure that once a blind Medicare beneficiary requests one of the Routine Medicare Communications in an accessible format, future Medicare Fee-for-Service Redetermination (level 1) Notices will be produced automatically in the requested accessible format. (III.B.1.a)
- Ensure that once a blind Medicare beneficiary requests one of the Routine Medicare Communications in an accessible format, future Medicare Part D Low Income Subsidy Notices will be produced automatically in the requested accessible format. (III.B.1.b)
- Develop a process to ensure that when CMS mails communications other than Routine Medicare Communications, such communications will be mailed to Medicare beneficiaries in the same accessible format(s) the beneficiaries requested for their Routine Medicare Communications. (III.B.2)

- Ensure that Routine Medicare Communications CMS sends contain language informing beneficiaries how to receive their Medicare communications in an accessible format. (III.B.2)
- Explore increased user testing of the Medicare.gov website, as well as code-inspection based accessibility testing approaches through mechanisms such as the Trusted Tester program developed by the United States Department of Homeland Security, to include testing of web content for compliance with the new Section 508 Board Standards as defined by the United States Access Board and for usability. (III.D.5)
- Ensure that all beneficiary-oriented Portable Document Format (PDF) forms on Medicare.gov are fillable and compliant with new Section 508 Board Standards as defined by the United States Access Board. (III.D.6)
- Provide a link on each of the accessibility pages of Medicare.gov and CMS.gov to an email address through which users can provide feedback regarding the accessibility of Medicare.gov. (III.D.8)
- Develop or update, as necessary, job aids explaining common actions that make documents accessible, *e.g.*, how to add comment, tagging, etc., for CMS employees who create content for Medicare.gov. (III.E.2)
- (And annually thereafter) Reinforce expectation that Medicare Health and Drug Plans monitor website compliance with Section 508 standards and have mechanisms to remediate any identified issues. (IV.A)
- Issue a set of accessibility best practices, providing due consideration to input from Plaintiffs as well as other applicable sources, to Medicare Health and Drug Plans. Encourage Medicare Health and Drug Plans to follow these best practices when developing policies, procedures, and training on website accessibility, including end user testing using multiple types of screen readers. (IV.B.1)
- Send a letter in the requested accessible format to Medicare beneficiaries who have indicated they want their MSNs in an accessible format to explain that other materials are also available in accessible formats. The letter shall advise that Medicare beneficiaries can contact their Medicare Health and Drug Plans, if any, to request that information from that entity also be provided in an accessible format. (IV.E)
- Add language to *Medicare & You* and to Medicare.gov indicating that blind beneficiaries can obtain accessible formats “from your Plan.” (IV.G)



**V. Within 15 Months**

- Ensure that the content presented in the publications available on Medicare.gov that include content present in tables is available in an accessible format, by: (a) providing the entire publication in e-book format; (b) providing a link within the publication to that content on the Medicare.gov website; or (c) revising the publication to eliminate the table. (III.D.3)

**VI. Within 18 Months**

- Ensure that once a blind Medicare beneficiary requests one of the Routine Medicare Communications in an accessible format, future Medicare Fee-for-Service Reconsideration (level 2) Notices will be produced automatically in the requested accessible format. (III.B.1.b)
- Ensure that once a blind Medicare beneficiary requests one of the Routine Medicare Communications in an accessible format, future Medicare Premium Bills will be produced automatically in the requested accessible format. (III.B.1.e)
- Implement a process to ensure that when CMS mails communications other than Routine Medicare Communications, such communications will be mailed to Medicare beneficiaries in the same accessible format(s) the beneficiaries requested for their Routine Medicare Communications. (III.B.2)
- Implement a process to provide standard-print Medicare Part D Low Income Subsidy Notices, Medicare Fee-for-Service Redetermination (level 1) and Reconsideration (level 2) notices in the same envelopes as their accessible format counterparts for all such communications with respect to which blind Medicare beneficiaries may need to take some further action related to Medicare (i.e., file an appeal or submit an application). Defendant will provide only the requested accessible format, without providing a standard print version of the same communication, for (1) communications that are solely for the purpose of providing information to Medicare beneficiaries and that would not need to be submitted for a further action related to Medicare or (2) for large print formats, as Medicare beneficiaries would have the ability to perform a required additional action based on the information they received in large print format. As this option becomes available, Defendant shall update its Call Center scripts, or other appropriate communication tools, to explain when both communications can be provided in the same notice. Defendant shall provide counsel for Plaintiffs with a copy of the proposed revisions to its Call Center scripts and other appropriate communication tools, omitting any confidential information, no later than 14 days before such revisions are to be implemented. Counsel for Plaintiffs shall provide any feedback within 7 days of receiving the proposed revisions from

Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback. (III.B.3.b)

- Develop a written plan to promote to Medicare beneficiaries the availability of accessible aids (including examples of such aids) across Major Medicare Communications Channels, including, but not limited to exploring appropriate use of static call center messaging, posting Medicare publications on public accessibility resources, and outreach opportunities such as giving presentations and distributing outreach materials for dissemination with appropriate groups that represent the blind (e.g., the National Federation of the Blind) and serve the blind (e.g., libraries for the blind, ophthalmologists (III.C.1)
- Provide Plaintiffs with a copy of the draft written plan no later than 28 days before it is to be finalized, published, distributed, or otherwise implemented. Counsel for Plaintiffs shall provide any feedback within 14 days of receiving the draft plan from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback. (III.C.2)
- Explore updating MyMedicare.gov to allow Medicare beneficiaries to change their default media preference to an accessible format (e.g., large print, Braille, audio CD, data CD). (III.D.11)
- Provide existing or updated accessibility training to CMS staff who develop content for Medicare.gov, including training to convert documents to accessible PDF or other formats. (III.E.3).
- Encourage Medicare Health and Drug Plans to post the best practices they adopt on their website or via another forum. (IV.B.2)
- Recommend that Medicare Health and Drug Plans provide information in their Plan materials (e.g., Evidence of Coverage (EOC), Annual Notice of Change (ANOC)) and on their websites about accessible formats (e.g., large print, Braille, audio/data CD), including how to request accessible formats with a single request rather than multiple requests for different communications. (IV.D)

## **VII. Within 24 Months**

- Provide Plaintiffs with a list of manuals, publications, and websites in which the policy guidance referenced in III.A.1 has been included or promoted (III.A.2)
- Ensure that once a blind Medicare beneficiary requests one of the Routine Medicare Communications in an accessible format, future Medicare General Enrollment

Packages will be produced automatically in the requested accessible format.  
(III.B.1.d)

- Implement a process to provide standard-print Medicare Premium Bills in the same envelopes as their accessible format counterparts for all such communications with respect to which blind Medicare beneficiaries may need to take some further action related to Medicare (i.e., file an appeal or submit an application). Defendant will provide only the requested accessible format, without providing a standard print version of the same communication, for (1) communications that are solely for the purpose of providing information to Medicare beneficiaries and that would not need to be submitted for a further action related to Medicare or (2) for large print formats, as Medicare beneficiaries would have the ability to perform a required additional action based on the information they received in large print format. As this option becomes available, Defendant shall update its Call Center scripts, or other appropriate communication tools, to explain when both communications can be provided in the same notice. Defendant shall provide counsel for Plaintiffs with a copy of the proposed revisions to its Call Center scripts and other appropriate communication tools, omitting any confidential information, no later than 14 days before such revisions are to be implemented. Counsel for Plaintiffs shall provide any feedback within 7 days of receiving the proposed revisions from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback. (III.B.3.c)
- Develop and make available on Medicare.gov non-PDF, accessible versions of the forms referenced in item III.D.6 that will be fillable and printable. (III.D.7)
- Utilize the Environmental Scan of Medicare Health and Drug Plan Accessibility programs to (a) explore ways to recognize Medicare Health and Drug Plans that excel in accessibility and (b) update the accessibility best practices to Medicare Health and Drug Plans. (IV.C.2)

**ADDENDUM 2**  
**Reporting<sup>1</sup>**

- Provide a copy of any proposed policy guidance for its operations clarifying that if the document for which an accessible format is requested requires a response within a specified time period, such period shall be extended by at least the number of days it took Defendant to process the accessible format request. Defendant shall provide counsel for Plaintiffs with a copy of the proposed policy guidance, omitting any confidential information, no later than 14 days before it is to be published or otherwise distributed. Counsel for Plaintiffs shall provide any feedback within 7 days of receiving the draft statement from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback. (12 months) (III.A.1)
- Provide list of manuals, publications, and websites where the policy guidance referenced in III.A.1 has been included or promoted. (24 months) (III.A.2)
- Provide a copy of proposed revisions to Defendant's Call Center scripts and other appropriate communication tools, to explain when standard-print communications and their accessible format counterparts can be provided in the same notice, omitting any confidential information, no later than 14 days before such revisions are to be implemented. Counsel for Plaintiffs shall provide any feedback within 7 days of receiving the proposed revisions from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback. (6 months for MSNs; 18 months for Medicare Part D Low Income Subsidy Notices, Medicare Fee-for-Service Redetermination (level 1) and Reconsideration (level 2) notices; 24 months for Medicare Premium Bills) (III.B.3)
- Provide a draft written plan to promote to Medicare beneficiaries the availability of accessible formats (including examples of such formats) across Major Medicare Communications Channels no later than 28 days before it is to be finalized, published, distributed, or otherwise implemented. Counsel for Plaintiffs shall provide any feedback within 14 days of receiving the draft plan from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback. (18 months) (III.C.2)
- Provide a copy of any proposed revisions to Medicare Call Center scripts and Call Center processes to ensure that users who experience problems accessing information on Medicare.gov with screen reader technologies are accurately directed and receive support from appropriate sources, omitting any confidential information, no later than 14 days before they are to be finalized, published, distributed, or implemented. Counsel for Plaintiffs shall provide any feedback within 7 days of receiving the proposed revisions from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback. (9 months) (III.D.12)

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<sup>1</sup> This addendum will not be construed as modifying, changing, supplementing, or diminishing the obligations in the Agreement, but only as a summary thereof.

- Provide proposed training materials and resources offered on Web accessibility that are provided to CMS staff who create or post content for the Medicare.gov website. (9 months) (III.E.1)
- Provide summary of planned study to include an Environmental Scan of Medicare Health and Drug Plan Accessibility programs and analysis of plan performance and compliance no later than 28 days before it is to be initiated. Counsel for Plaintiffs shall provide any feedback within 14 days of receiving the proposed study from Defendant and Defendant shall provide due consideration to incorporating Plaintiffs' feedback. Defendant shall provide Plaintiffs with the results of this study. (6 months) (IV.C.1)
- With respect to each item in this Agreement to be performed within a specified time period, Defendant shall report to Plaintiffs as to whether the item has been performed at the close of the specified time period. (VII.A)
- Within 6 months, and every 6 months thereafter, Defendant shall report to Plaintiffs any relevant policy changes and any relevant status updates affecting Defendant's ability to perform the items contained in Sections III and IV, as well as the following information for the preceding 6-month period:
  1. Broken down by accessible format type (Braille, large print, etc.), the number of requests received by CMS for accessible formats, including custom formats, the number of requests granted, descriptions (without personal identifying details) of all complaints received related to accessible formats, how such complaints were resolved if applicable, and the time it took to resolve such complaints.
  2. Summaries of email feedback received by CMS related to accessibility of the Medicare.gov and CMS.gov websites and how such complaints were resolved if applicable.
  3. Summaries of complaints received in the CMS Complaint Tracking Module (CTM) regarding accessibility of materials from Medicare Health and Drug Plans, including the number of complaints resolved, if applicable, and the time taken to resolve such complaints.
  4. A description of how the written outreach plan required under Section III.C.1 has been implemented.
  5. Summary results of all automated and user testing performed on the Medicare.gov website, as required under Section III.D.
  6. Summary results of trainee evaluation of the effectiveness of Defendant's website accessibility training programs, as required under Section III.E.

(VII.B)

- For each item in this Agreement that Defendant commits to explore (Sections III (C)(1); III (D)(5); III (D)(11); IV (C)(2)), within 30 days of concluding each required exploration, Defendant shall provide to Plaintiffs the result of the exploration and Defendant's reasoning for reaching such result. (VII.C)

- If Defendant determines during the process of exploring or implementing an item that a deadline will not be met, Defendant will report to Plaintiffs during the reporting cycle in Section VIII(B) why the deadline could not be met, and when Defendant expects to meet the deadline. (VII.D)
- If Defendant modifies or removes an item pursuant to Section VIII(A), Defendant must notify Plaintiffs in writing of the nature, scope, and reasons for the modification(s) or removal(s). Within seven (7) calendar days of Defendant’s notification, Plaintiffs may request in writing from Defendant additional information about the proposed modification or removal. If Plaintiffs object to the modification or removal of an item, they may invoke the dispute resolution process provided for in Section IX within twenty-one (21) calendar days of receiving notice of such modification or removal. If Plaintiff does not invoke the dispute resolution process within twenty-one (21) calendar days of receiving such notice, then any objections to such modifications or removals are deemed waived. (VIII.B)
- If either party determines that technological changes create opportunities for meeting the needs of blind individuals more efficiently or effectively than is provided for under this Settlement Agreement, the proposing party shall present written notice to the other party. The receiving party shall consider such proposed changes and will advise the proposing party as to whether it agrees to modify this Settlement Agreement. (VIII.C)

### **“Exploration” Results**

- Develop a written plan to promote to Medicare beneficiaries the availability of accessible formats (including examples of such formats) across Major Medicare Communications Channels. In developing the written plan, Defendant shall explore a variety of options, including, but not limited to, using appropriate static call center messaging, posting Medicare publications on public accessibility resources, and outreach opportunities such as giving presentations and distributing outreach materials for dissemination with appropriate groups that represent the blind (e.g., the National Federation of the Blind) and serve the blind (e.g., libraries for the blind, ophthalmologists) (18 months) (III.C.1)
- Explore options for increased user testing of the Medicare.gov website, as well as code-inspection based accessibility testing approaches through mechanisms such as the Trusted Tester program developed by the United States Department of Homeland Security, to include testing of web content for compliance with the new Section 508 Board Standards as defined by the United States Access Board and for usability. (12 months) (III.D.5)
- Explore updating MyMedicare.gov to allow Medicare beneficiaries to change their default media preference to an accessible format (e.g., large print, Braille, audio CD, data CD) (18 months) (III.D.11)

- Utilize the Environmental Scan to (a) explore ways to recognize Medicare Health and Drug Plans that excel in accessibility and (b) update the accessibility best practices to Medicare Health and Drug Plans. (24 months) (IV.C.2)