MEMORANDUM OF UNDERSTANDING
MASSACHUSETTS EYE AND EAR INFIRMARY
AND
BAY STATE COUNCIL OF THE BLIND AND JEANETTE SPALDING

This Memorandum of Understanding ("Agreement" or "MOU") is entered into by and between the Bay State Council of the Blind and Jeanette Spalding (collectively referred to as "Claimants") and Massachusetts Eye and Ear Infirmary ("MEEI") for the purposes and on the terms specified herein and operates in conjunction with the Appendices and Addenda to this Agreement. Together Claimants and MEEI are referred to herein as the Parties.

This agreement is based on the following facts:

A. On March 21, 2014 the Parties entered into a Structured Negotiations Agreement for the purpose of exploring whether claims regarding care received by patients with visual impairments at Massachusetts Eye and Ear Infirmary (MEEI) could be resolved without the need for formal litigation.

B. The items that were subject to negotiations included, but were not limited to:
   a. Accessible information and technology and adaptive equipment, including making material available in all formats and making digital content accessible;
   b. Procedures, practices and training including, but not limited to, those related to MEEI’s service animal policy;
   c. Methods of facility navigation and orientation;
   d. Scope and format of written agreement addressing the above issues, monitoring, and other relevant issues.

As a result of these negotiations, Bay State Council of the Blind ("BSCB") and Jeanette Spalding (the "Claimants") and MEEI, have reached the following agreement:

1. Definitions

Definitions of capitalized terms contained in this Agreement appear in Appendix A.

2. Effective and Expiration Dates.

The provisions of this MOU are effective as of August 1, 2016 (the “Effective Date”) and shall remain in effect through July 31, 2021 (the “Expiration Date”). If MEEI does not fully satisfy its obligations under this agreement, the expiration date shall be extended until such obligation has been satisfied.

3. Alternative Formats.

3.1 MEEI provides written information to patients regarding healthcare matters including, but not limited to:
• Medical exam, test, and lab results
• Appointment reminders
• Pre and post-op instructions
• Admissions, discharge and/or orientation
• Explanation of follow-up care, treatment, therapies, test results or other recovery care direction
• Descriptions of the types of programs and/or services provided in the form of brochures, pamphlets and application materials
• Information about security and privacy rights, and billing and other medical records
• Prescriptions and medication information and instructions including drug interaction information

3.2 MEEI will provide all written patient and visitor forms, documents, publications, and materials (including but not limited to those items listed above) to Persons with Visual Impairments in Alternative Formats without cost. MEEI shall use best efforts to provide the information via a patient’s or visitor’s requested format and delivery method in a timely manner. To the extent that MEEI cannot provide the information via patient’s or visitor’s requested format and delivery method in a timely manner, MEEI and the patient or visitor will consider all alternatives that can be provided in a timely manner.

3.3 MEEI will provide methods for Persons with Visual Impairments to request the Alternative Formats set forth in this Agreement, including but not limited to a toll free telephone number, secure email, in person, or through its website. Depending on the particular information and format chosen, as set forth below MEEI will deliver the requested material by conventional email, secure email, U.S. mail, the MEEI website, telephone/voicemail, or compact disc (CD). MEEI will document in the patient’s medical record the patient’s preferred Alternative Format and will use its best efforts to provide information in that format whenever possible given the nature of the information being provided. As with all patient information, patients will be asked to update this preference periodically.

3.4 The following formats will be considered Alternative Formats:

   a) Braille Format: Braille materials provided to patients and visitors shall satisfy the Braille Authority of North America’s standards (“BANA Standards”) for printing and binding Braille materials, currently found at www.brailleauthority.org.

Each braille document provided pursuant to the Agreement shall include all of the text and other content that is contained in the standard print version of the same document that is made available to the general public. Non-text content that is pure decoration, is used for visual formatting only, or duplicates information provided in the text need not be included in braille format. After documents have been prepared in a braille format, MEEI will provide the electronic rendering of the braille document to patients upon request.
b) Large Print Format: Large Print materials provided to patients shall be a sans serif font (e.g. Arial or Verdana) of at least 18 point and consistent with the terms of the Alternative Format/Communications Policy developed in subsection 3(f) of this Agreement. Each Large Print document provided to Persons with Visual Impairments pursuant to this Agreement shall include all of the information contained in the standard print version of the same document that is provided to the general public.

c) Audio Formats: MEEI shall use best efforts to provide materials that do not have Protected Health Information (PHI) via MEEI’s automated phone reading system. When appropriate for the needs of the patient and the workflow, MEEI will permit patients to record on the patient’s phone or similar recording device PHI and non-PHI materials that are not available in MEEI’s automated phone reading system. Where a recording on a personal device is not an effective format for a patient, MEEI shall provide such materials in MP3 format.

d) Electronic Formats: By September 30, 2016, all electronic document files shall satisfy WCAG 2.0 Conformance Level AA Success Criteria and be able to be opened in a commonly used software program (Microsoft Word, Adobe Reader, Acrobat) and read using text to speech and magnification adaptive technology, including but not limited to JAWS, NVDA, Voice Over, and ZoomText.

e) Medication Labeling: MEEI shall provide in an accessible format information on prescription drug container labels and accompanying educational materials for all medications dispensed by MEEI for use by Persons with Visual Impairments outside of MEEI Facilities. Formats shall include labels and accompanying education materials in Large Print that satisfies Section 3.4(b).

f) Alternative Format/Communications Policy: Pursuant to this agreement, no later than September 30, 2016, MEEI will adopt and implement an Alternative Format/Communications Policy to provide for the timely delivery of alternative formats for print information as described above. The policy shall address the provision of Alternative Formats for both protected and non-protected health information. The Alternative Format/Communications Policy will be available to the public and is a corollary to policies and procedures already in place that are intended to provide for the delivery of Alternative Formats for print information to Persons with Visual Impairments. The Parties shall collaborate in good faith in the development of such policy.

4. Website and Mobile App Accessibility.

a) Conformance with WCAG 2.0 AA: MEEI will ensure that the MEEI Website and any Applications for Mobile Devices substantially comply with the Web Content Accessibility Guidelines (WCAG) 2.0, Conformance Level AA Success Criteria (“Access Standard”), by September 30, 2016.

b) At least once before the date set forth in Section 4(a), and prior to any major releases MEEI will ensure that the MEEI Website and any Applications for Mobile Devices are tested by a cross-section of People with Visual Impairments using various types of
devices, adaptive technology, browsers, and operating systems. MEEI will also ensure that any consumer groups convened or surveyed to evaluate and/or test products, services and content on the MEEI Website any Applications for Mobile Devices include at least one Person with a Visual Impairment. Throughout the Term of the Agreement, MEEI will also solicit and consider feedback from Claimants regarding the accessibility and usability of the MEEI Website. As part of its semi-annual report, MEEI will notify Claimants of any requests for remediation and actions taken in response.

c) MEEI shall retain Site Improve, an outside consultant to conduct an annual audit of the MEEI Website and any Applications for Mobile Devices for conformance with WCAG 2.0 to the Level A and Level AA Success Criteria. A written report shall be a part of the evaluation and it shall identify any barriers and provide recommendations to enhance the accessibility and usability of the MEEI Website and any Applications for Mobile Devices. MEEI shall also perform an annual assessment by Persons with Visual Impairment. The recommendations will be reviewed with Claimants during the term of this Agreement for prioritization and the Parties will work collaboratively to develop a plan to implement such recommendations.

d) If any Completely Automated Public Turing Test to Tell Computers and Humans Apart or similar visual or textual Turing or reverse-Turing verification tests (referred herein as “CAPTCHA”) is used on the MEEI Website, MEEI will incorporate an alternative security measure that is accessible to and usable by Persons with Visual Impairments, including those who are deaf/blind.

e) No later than September 30, 2016, MEEI will develop a website accessibility policy (the “Web Accessibility Policy”), to be published and made available to vendors. MEEI will provide Claimants with a draft of the Web Accessibility Policy prior to its being finalized. Claimants will provide their input on the draft policy within fifteen (15) days of receipt, and MEEI will consider the input provided by Claimants in good faith. MEEI is responsible for implementing the policy, including communicating to vendors responsible for web content.

f) By the Effective Date, MEEI shall designate an employee, who shall report directly to the Vice-President for Communications, as the Web Accessibility Coordinator for the MEEI Websites and Applications for Mobile Devices, and provide the name of and contact information for that person to Claimants.

The Web Accessibility Coordinator shall be knowledgeable about the terms of this agreement, as well as web accessibility generally and WCAG 2.0 A and AA; shall be responsible for overseeing, managing, and coordinating the obligations set forth in Paragraph 4 of this Agreement; and shall be responsible for reporting and documenting annually to hospital leadership and Claimants (1) that all new releases have been made accessible pre-production, (2) that any post-production accessibility bugs have been remediated, (3) whether the requirements set forth in paragraph 4 of this agreement have been met, and, if not, what requirements have not been satisfied and why, (4) any plans for future remediation.
5. Third-Party Content.

a) MEEI will make reasonable efforts to ensure that all features, functionality, and content of MyChart meet the Access Standard. Feedback on any features, functionality or content that fails to meet the Standard about which MEEI becomes aware will be shared with Partners ECare leadership with a request that they seek remediation with the MyChart developers.

b) Other Third-Party Content: For each new, renewed, or renegotiated contract with a vendor of Third-Party Content for the MEEI Websites or any Applications for Mobile Use, MEEI will require the contracting party to use best efforts to comply with the Access Standard. If during the contracting process, MEEI issues a request for proposal for development or inclusion of Third Party Content on the MEEI Website or any Applications for Mobile Use, MEEI shall include conformance with the Access Standard as a criterion. MEEI will notify Claimants of any third party content that the vendor says cannot meet the Access Standard despite best efforts before finalizing such a contract.

6. Accessibility Information Page on the MEEI Websites.

a) By September 30, 2016, MEEI will post an Accessibility Information page or pages on the MEEI Website. The Accessibility Information Page(s) will be prominently available from the MEEI Home Page and throughout the website. MEEI will provide Claimants with a copy of the Accessibility Information page(s) and prior to it being finalized. Claimants will provide their feedback on this information within fifteen (15) days of receipt, and MEEI will consider the feedback provided by Claimants in good faith.


a) By March 1, 2017, MEEI will review hospital policies and procedures that relate to patient registration, communication of disability-related needs data within and across the hospital and clinics and retention of that information for future patient visits; auxiliary aids and services; use of service animals; and use of personal adaptive equipment. In its review, MEEI will determine whether these policies and procedures effectively address the access needs of patients and visitors with visual impairments, whether they are consistent with this agreement and whether additional policies and procedures are needed to ensure proper care for, and effective communication with, persons with disabilities.

b) MEEI shall consult with Claimants during the review of relevant policies and procedures and on the preparation of new and revised policies. MEEI will consider in good faith any proposal from Claimants. MEEI will promptly implement any new and revised policies developed under the process described above in accordance with its procedures for adopting and implementing hospital policies.

c) MEEI shall develop and implement annual training for staff on disability awareness, effective communication with and providing equal access to services for patients with disabilities, including, among other things, physical and programmatic barriers for persons with disabilities, the particular needs and concerns of patients with visual impairments, the Disability Rights Laws, and reasonable accommodations. MEEI will
also provide additional training for employees whose responsibilities require further specialized disability training. The training module will vary for different categories of employees, and training methods will be adapted as necessary.

d) MEEI shall require all newly hired employees providing direct patient assistance to have training appropriate for their responsibilities on the Disability Rights Laws within a reasonable time from their initial hire date. MEEI shall also provide opportunities for new contractors to receive similar training.

e) Web Accessibility Training: MEEI shall provide training to Web Content Personnel on website accessibility and the Website Policy.

8. Facilities and Equipment.

a) All of MEEI’s Facilities shall be in full compliance with ADAAG and Massachusetts Accessibility Code, including ATMs, Signage, Elevator Tones, and Lighting. Should MEEI decide to purchase and install kiosks for patient registration, the kiosks shall meet the ADAAG and Massachusetts Accessibility Code requirements for ATMs.

b) Should MEEI decide to use point of sale terminals or mobile devices (e.g. iPads) for payment and/or to provide information, it shall only purchase and install POS Terminals and mobile devices that ensure equal use and private input and output of confidential information for Persons with Visual Impairments. Such access may be achieved, for example, through the use of Tactile Keypads and/or built-in accessibility features of the device.


MEEI will ensure participation by individuals with disabilities, including Persons with a Visual Impairment, on its Patient Family Advisory Council.

10. Reporting.

a) During the term of this Agreement, the parties will meet at least semi-annually to review the work completed in meeting the obligations and goals of this agreement and the work planned for the next quarter. During these meetings, MEEI shall provide updates on:

   • The extent to which MEEI has modified the planned work under any provision of this agreement and the reason(s) for the modifications;
   
   • What problems, if any, MEEI has encountered that has resulted in a delay of or modification to proposed work under specific provisions of this agreement; and
   
   • MEEI’s proposal to remedy any problems that have resulted in a delay of work required under any provision of this agreement.

b) Annual Status Reports: MEEI shall provide Claimants with annual status reports which include:
• The extent to which MEEI has completed the work under each provision of this agreement;

• The extent to which MEEI has modified the work under any provision of this agreement and the reason(s) for the modifications;

• What problems, if any, MEEI has encountered that has resulted in a delay of or modification to proposed work under specific provisions of this agreement; and

• MEEI’s proposal to remedy any problems that have resulted in a delay of work required under any provision of this agreement.

c) Final Status Report: MEEI shall submit to Claimants a final report three months before the expiration date of this agreement. This report shall describe MEEI’s compliance with this agreement, and any unmet obligations under this agreement, the reasons they are unmet, and the proposed resolutions.

11. Dispute Resolution.

Except as otherwise specified, the Parties agree that any dispute arising out of this agreement relating to its interpretation and application, including the performance of obligations set forth herein shall be addressed in the following manner:

a) Any party complaining that a violation has occurred or that a dispute has arisen as to the interpretation and application of this agreement will give notice to counsel for the other party. Such notice shall set forth the complaint/dispute and shall propose a resolution.

b) Within two weeks of delivery of the written claim of such alleged violation or dispute the parties shall meet and confer in an effort in good faith, through informal negotiation, to resolve the issue.

c) If the issue remains unresolved after a reasonable period of meeting and conferring, the parties will attempt to resolve the matter in mediation, using a mediator who is jointly selected by the parties.

d) If mediation does not resolve the dispute, it will be settled by means of arbitration. The matter must be submitted to arbitration by the complaining party within 30 days after the conclusion of mediation. Any dispute arising under the Agreement shall be submitted to arbitration and shall be conducted pursuant to the Judicial Arbitration and Mediation Services (JAMS) Streamlined Arbitration Rules and Procedures. A fourth arbitrator may be added to the panel after execution of this Agreement upon agreement by both parties. The arbitration shall take place in Boston. The award of the arbitrator will be enforceable in a court of competent jurisdiction.
Dated: ______________________  BAY STATE COUNCIL OF THE BLIND

By: ______________________
    Brian Charlson, President

Dated: ______________________  JEANETTE SPALDING

_________________________________

Dated: ______________________  MASSACHUSETTS EYE AND EAR INFIRMARY

By: ______________________
Appendix A—Definitions

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

“Access” and “Accessible” mean and refer to conditions that comply with the relevant and applicable standards set forth in the Disability Rights Laws.

“Accessible PDF” means a PDF document that satisfies WCAG 2.0 Conformance Level AA Success Criteria.


“ADAAG” means and refers to the ADA Standards for Accessible Design, commonly referred to as the Americans with Disabilities Act Access Guidelines, as codified at Appendix A to 28 C.F.R. Part 36.

“Agreement” shall mean this Memorandum of Understanding.

“Alternative Formats” means braille, large print, audio, and electronic formats as further described in Section 3 of this Agreement.

“Applications for Mobile Devices” means a program created by or for MEEI for use on mobile devices (commonly known as “apps”).

“Claimants” means and refers to Bay State Council of the Blind and Jeanette Spalding collectively.

“Claimants’ Counsel” means and refers to Greater Boston Legal Services (“GBLS”) and the Law office of Lainey Feingold, and the attorneys and other employees therein.

“Days” means calendar days.

“Disability” means and refers to the definition of disability in the ADA and implementing regulations.


“Effective Date” shall mean the date set out in Section 2 of this Agreement as the Effective Date.

“Expiration Date” shall mean the date set out in Section 2 of this Agreement as the Expiration Date.
“Facilities” means and refers to all portions MEEI owned and/or operated premises where healthcare services are provided and to which the public is invited. As of the Effective Date, MEEI owned and/or operated premises include the following MEEI locations: Mass. Eye and Ear Main Campus (243 Charles St., Boston), Mass. Eye and Ear Longwood (800 Huntington Ave., Boston), MEEI Joslin (1 Joslin Pl., Boston), Mass. Eye and Ear Stoneham (1 Montvale Ave., Stoneham), Mass. Eye and Ear Medford (101 Main St., Medford), Mass. Eye and Ear Retina Consultants (3 Woodland Rd., Suite 210, Stoneham), Mass Eye and Ear Concord (54 Baker Ave. Ext., Suite 303, Concord), Mass. Eye and Ear Newton (2000 Washington St., Ste. 668, Newton), Mass. Eye and Ear Waltham (Reservoir Place, Ste. 184, 1601 Trapelo Rd., Waltham), Mass. Eye and Ear Quincy (Crown Colony Office Park, 500 Congress St., Suites 2B & 1C, Quincy), Mass. Eye and Ear Weymouth (825 Main St., South Weymouth), Mass. Eye and Ear Milton (100 Highland St., Lintz Medical Building, Milton), Mass. Eye and Ear Duxbury (20 Tremont St., Bldg. 9 (Suite 20), Duxbury), Mass. Eye and Ear Braintree (250 Pond St., Braintree), Mass. Eye and Ear East Bridgewater (400 N. Bedford St., E. Bridgewater), Mass. Eye and Ear Providence (One Randall Sq., Ste. 203, Providence, RI), and Mass. Eye and Ear Plainville (30 Man Mar Dr., Ste. 2, Plainville). Facilities include, but are not limited to (a) physical structures, such as hospital buildings, (b) emergency rooms, exam rooms, patient bedrooms, public restrooms, waiting areas, treatment rooms, laboratories (to the extent they are utilized by patients), pharmacies (in areas open to the public), gift shops and cafeterias within hospital buildings, (c) paths of travel and entrances serving these physical structures and (d) parking facilities under the control of MEEI.

“Massachusetts Accessibility Code” means and refers to Chapter 521 of the Code of Massachusetts Regulations.

“MEEI” means and refers to the Massachusetts Eye & Ear Infirmary, a Massachusetts nonprofit corporation.

“MEEI Website” means and refers to the public website owned and operated by MEEI. As of the effective date of the Agreement, the MEEI Website has the url of www.masseyeandear.org.

“Parties” means and refers to MEEI and the Claimants.

“Person or Persons with a Visual Impairment” means any person who has a physical, mental, or sensory impairment that substantially limits him or her in the major life activity of seeing, including people who are deaf/blind and not limited to people who are legally blind.

“Personal Identification Number,” or “PIN” means a unique numerical code used to identify an individual that must be entered into a POS Terminal before conducting certain transactions on the POS Terminal.

“Point of Sale Terminal,” or “POS Terminal” means a device used by a customer at a point of purchase that allows the customer to pay for items with a debit, credit or cash card. Point of Sale Terminal does not include other equipment that may be used by a customer in conjunction with the Terminal to scan, price, or weigh products.
“Protected Health Information” means any information about health status, provision of health care, or payment for health care that can be linked to a specific individual.”

“Tactile Keypad” means a number keypad on which each key is tactually discernable from surrounding surfaces and adjacent keys. Numeric keys shall be arranged in a 12 key ascending telephone keypad layout. The number five key shall be tactually distinct from the other keys by means of a raised dot. The following function keys on the Tactile Keypad shall be to the right of the number keys: Enter (Accept), colored green and marked with a raised circle; Cancel, colored red and marked with a raised “X,” and Correct, colored yellow and marked with a raised left arrow. All text and numerals on all keys shall be colored to contrast with the key color.

“Third-Party Content” means web content that is generated by a third party and not owned, coded, managed, operated by MEEI, or hosted on the MEEI Websites. As of the Effective date, Third-Party Content used by MEEI includes Patient Gateway and One Medical Passport.

“Web Content Personnel” means and refers to all MEEI personnel who design, develop, maintain, manage, write, or otherwise have responsibility for the content and format of the MEEI Websites and any Applications for Mobile Devices.