

## **SETTLEMENT AGREEMENT**

This agreement (the “Agreement”) is entered into by and between Deborah C. Grubb, Douglas E. Hall, Carl F. McCoy, James K. Kracht, Dolor Ginchereau, and The Florida Council of the Blind, Inc. (collectively, “Plaintiffs”), and, in their official capacities, Florida’s sixty-seven Supervisors of Elections and the Florida Secretary of State (collectively, “Defendants,” and, together with Plaintiffs, the “Parties”).

WHEREAS, the Parties seek the deployment and implementation of procedures that, consistent with Florida law and with the integrity and orderly administration of Florida’s elections, will allow registered voters in Florida who are blind to mark secret, independent, and verifiable vote-by-mail ballots without the assistance of another person;

WHEREAS, on July 14, 2020, the Florida Department of State approved, on an interim basis, Democracy Live’s OmniBallot system (“OmniBallot”), which provides a means for blind voters to mark secret, independent, and verifiable vote-by-mail ballots without the assistance of another person; and

WHEREAS, the Parties seek to accomplish the important purpose of this Agreement cooperatively, and to avoid unnecessary litigation;

NOW, THEREFORE, the Parties agree as follows:

### **1. Definitions.**

a. “Accessible Vote-By-Mail System” means procedures that allow registered voters in Florida who are blind to mark secret, independent, and verifiable vote-by-mail ballots without the assistance of another person.

b. “Litigation” means *Williams v. DeSantis*, No. 1:20-cv-00067-RG-GRJ (N.D. Fla.), consolidated under the main docket with *Nielsen v. DeSantis*, No. 4:20-cv-00236-RH-MJF (N.D. Fla.).

c. “Pilot Counties” means Miami-Dade, Nassau, Orange, Pinellas, and Volusia Counties.

**2. Pilot Program.** The provisions of this paragraph 2 are binding on the Supervisors of Elections for the five Pilot Counties and are not binding on any other Supervisor of Elections.

a. The Supervisors of Elections for the Pilot Counties will make good-faith efforts to deploy and implement, for use at the 2020 general election, Accessible Vote-By-Mail Systems for their respective counties. An Accessible Vote-By-Mail System deployed and implemented pursuant to this paragraph 2 may, but need not, utilize OmniBallot. This Agreement does not require any Supervisor of Elections to deploy or implement an Accessible Vote-by-Mail System that does not comply with Florida law or which, if it requires the Florida Department of State’s approval, has not received that approval.

b. If, pursuant to subparagraph 2(a), a Supervisor elects to deploy and implement an Accessible Vote-By-Mail System developed by a vendor, and, during deployment and implementation of the Accessible Vote-By-Mail System, the vendor fails to perform, and the Supervisor determines in good faith that the continued deployment and implementation of the Accessible Vote-By-Mail System might interfere with the integrity or orderly administration of the 2020 general election, then nothing in this Agreement requires the Supervisor to continue to deploy and implement the Accessible Vote-By-Mail System for use at the 2020 general election. A vendor's failure to perform includes:

1. In the case of Democracy Live:
  - A. Failure to configure the balloting portal within ten business days after a timely preparatory meeting between Democracy Live and the Supervisor's office;
  - B. Failure of Democracy Live's system to function correctly using the standard export files available to county elections staff from their state-certified voting systems; and
  - C. Failure to deliver all ballot styles for quality-assurance review within ten business days after the export of files by county elections staff and their transmittal to Democracy Live; and
2. In the case of any vendor, including Democracy Live:
  - A. Any condition that would be sufficient for a breach of contract between the vendor and the Supervisor; and
  - B. The vendor's cancellation or breach of the contract between the vendor and the Supervisor.

c. If a recount is required in the 2020 primary election, and the recount takes more than fourteen days, then nothing in this Agreement requires the Supervisor to continue to deploy and implement an Accessible Vote-By-Mail System for use at the 2020 general election.

d. In addition to the provisions of subparagraphs 2(b) and 2(c), if, during the deployment and implementation of an Accessible Vote-By-Mail System, the Supervisor of Elections for Miami-Dade County (i) determines in good faith, and in her reasonable discretion, that continued deployment and implementation of an Accessible Vote-By-Mail System would create an undue hardship, as stated in 28 C.F.R. § 35.150, because it might interfere with the integrity or orderly administration of the 2020 general election in Miami-Dade County; or (ii) if acts or occurrences beyond the Supervisor's control reasonably prevent her from making such a determination, then this paragraph 2 does not apply to the Supervisor of Elections for Miami-Dade County, and nothing in this Agreement requires her to continue to deploy and implement an

Accessible Vote-By-Mail System for use at the 2020 general election. If the Supervisor of Elections for Miami-Dade County determines that she will be unable to deploy and implement an Accessible Vote-By-Mail System for use at the 2020 general election based on the conditions provided in this subparagraph 2(d), then she will give notice to the Plaintiffs within a reasonable time after such decision.

e. Regardless of whether Florida law requires an Accessible Vote-By-Mail System to be approved by the Florida Department of State as a condition of use or implementation, a Supervisor of Elections may request the issuance of an advisory opinion by the Florida Department of State regarding an Accessible Vote-By-Mail System's compliance with the requirements of the Florida Election Code. The Supervisor of Elections may condition use or implementation of the Accessible Vote-By-Mail System on the issuance of an advisory opinion that the Accessible Vote-By-Mail System complies with the requirements of the Florida Election Code, provided that the Supervisor of Elections sought the advisory opinion in a reasonable and timely fashion before the mailing of vote-by-mail ballots for the 2020 general election.

### **3. Task Force.**

a. By January 31, 2021, the Supervisor of Elections who is then the President of Florida Supervisors of Elections, Inc., will establish a task force to evaluate possible methods of allowing registered voters in Florida who are blind to mark secret, independent, and verifiable vote-by-mail ballots without the assistance of another person.

b. The membership of the task force will include Supervisors of Elections, a representative of the Florida Department of State, individuals with relevant technical expertise, and representatives of the disability community, including a member selected by The Florida Council of the Blind, Inc. In selecting the Supervisors of Elections who will serve on the task force, consideration will be given to geographical diversity and to the representation of small, medium, and large counties. A Supervisor of Elections will chair the task force.

c. By September 30, 2021, the task force will adopt a report of its findings, which may include recommendations. The report will evaluate, at a minimum, the cost, feasibility, administrability, security, and effectiveness of possible methods of allowing registered voters in Florida who are blind to mark secret, independent, and verifiable vote-by-mail ballots without the assistance of another person, including Accessible Vote-By-Mail Systems that might be developed independently of private vendors.

### **4. Implementation.**

a. By March 31, 2022, each Supervisor of Elections will deploy and implement an Accessible Vote-by-Mail System that is consistent with Florida law. An Accessible Vote-By-Mail System deployed and implemented pursuant to this paragraph 4 may, but need not, utilize OmniBallot. This Agreement does not require any Supervisor of Elections to deploy or implement an Accessible Vote-by-Mail System that does not comply with Florida law or which, if it requires the Florida Department of State's approval, has not received that approval.

b. If, pursuant to subparagraph 4(a), a Supervisor elects to deploy and implement for any election an Accessible Vote-By-Mail System developed by a vendor, and, during deployment and implementation, the vendor fails to perform, and the Supervisor determines in good faith that the continued deployment and implementation of the Accessible Vote-By-Mail System might interfere with the integrity or orderly administration of that election, then nothing in this Agreement requires the Supervisor to continue to deploy and implement the Accessible Vote-By-Mail System for that election. The vendor's failure to perform includes:

1. In the case of Democracy Live:
  - A. Failure to configure the balloting portal within ten business days after a timely preparatory meeting between Democracy Live and the Supervisor's office;
  - B. Failure of Democracy Live's system to function correctly using the standard export files available to county elections staff from their state-certified voting systems; and
  - C. Failure to deliver all ballot styles for quality-assurance review within ten business days after the export of files by county elections staff and their transmittal to Democracy Live; and
2. In the case of any vendor, including Democracy Live:
  - A. Any condition that would be sufficient for a breach of contract between the vendor and the Supervisor; and
  - B. The vendor's cancellation or breach of the contract between the vendor and the Supervisor.

**5. Force Majeure.** If the performance of any part of this Agreement by any Supervisor of Elections is prevented, hindered, or delayed by Act of God; war; riots; fire; explosion; flood; strike; lockout; injunction; inability to obtain fuel, power, raw materials, labor, containers, or transportation facilities; accident; breakage of machinery; national-defense requirements; pandemic affecting in material part the Supervisor's personnel; or any other cause beyond the Supervisor's control, as the case may be, and which cannot be overcome by due diligence, the Supervisor shall be excused from such performance to the extent that it is necessarily prevented, hindered, or delayed thereby, during the continuance of any such happening or event, and this Agreement shall be deemed suspended so long as and to the extent that any such cause prevents, hinders, or delays such performance.

## **6. Fee Payment.**

a. Within thirty days after the date of this Agreement, each Supervisor of Elections will pay or cause to be paid to Plaintiffs the sum of one thousand dollars (the "Settlement

Payment") in full and final settlement of Plaintiffs' claim for attorney's fees and costs as to that Supervisor. The Settlement Payment will be made by check payable to Disability Independence Group, Inc. Except as provided in this paragraph 6, all Parties will bear their own attorney's fees and costs.

b. No action to enforce this paragraph 6 will be brought against any Supervisor of Elections until Plaintiffs provide notice of the alleged breach by email and certified mail to the Supervisor's attorneys identified in this Agreement, and the Supervisor fails, within twenty days after receipt of written notice, to pay or cause to be paid the Settlement Payment. The prevailing party may recover reasonable attorney's fees and costs incurred in any action brought in compliance with this subparagraph 6(b) to enforce subparagraph 6(a).

c. No action may be brought against any Party for any other Party's violation of this paragraph 6, and no Party is liable for attorney's fees or costs in the event any action is brought against another Party for violation of this paragraph 6.

**7. Voluntary Dismissal.** Within three days after the date of this Agreement, pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiffs will file in the Litigation a motion for voluntary dismissal with prejudice of all claims they asserted against any party to the Litigation. It is the intent of the Parties—and Plaintiffs' motion will request—that the Court not retain continuing jurisdiction to enforce this Agreement, or for any other purpose. If Plaintiffs do not strictly comply with this paragraph 7, then this Agreement is of no force or effect.

**8. No Admission of Liability.** The Parties agree that this Agreement and the Parties' negotiations of this Agreement are not and will not be construed as an admission of the truth of any allegation made or of any liability, fault, or wrongdoing. Neither this Agreement nor any of its terms, nor any communications made during the confidential settlement conference, shall be offered as or received into evidence in any pending or future civil, criminal, or administrative proceeding or action against any of the Parties in any court, administrative agency, or other tribunal, for any purpose whatsoever, except as may be necessary to adjudicate claims to enforce this Agreement or for breach of this Agreement.

**9. No Third-Party Beneficiaries.** This Agreement is not intended and shall not be construed to create rights in or grant remedies to any non-party as a beneficiary of this Agreement.

**10. Amendments.** This Agreement may be amended only by written agreement duly executed by the Parties.

**11. Counterparts.** This Agreement may be executed in counterparts and signed electronically. Each counterpart shall constitute an original, and all counterparts together shall constitute a single instrument.

**12. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

**13. Entire Agreement.** This Agreement represents the entire agreement between the Parties. All prior agreements, representations, statements, negotiations, and undertakings are expressly superseded hereby, have no force or effect, and have no weight in the construction of this Agreement.

**14. Interpretation.** All Parties acknowledge that they and their counsel have had a full opportunity to review and contribute to the drafting of this Agreement, and that the rule of construction that resolves ambiguities against the drafter shall not be employed in the interpretation of this Agreement.

**15. Representations.** The Parties and their signatories represent that they have read and understand the Agreement. The signatories to this Agreement represent that they are authorized to execute this Agreement on behalf of the Parties whom they respectively represent.

Dated July 31, 2020.

*[Signature Pages Follow]*

**Deborah C. Grubb; Douglas E. Hall; Carl F. McCoy; James K. Kracht; Dolor Ginchereau; and The Florida Council of the Blind, Inc.:**

*/s/ Matthew W. Dietz*

MATTHEW W. DIETZ, ESQ.  
Florida Bar No.: 00849  
Disability Independence Group, Inc.  
2990 Southwest 35th Avenue  
Miami, Florida 33133  
Tel: (305) 669-2822  
Fax: (305) 442-4181  
Mdietz@justDIGit.org  
aa@justdigit.org

**Supervisors of Elections for Charlotte, Clay, Duval, Leon, Martin, Osceola, Palm Beach, Polk, and St. Lucie Counties:**

*/s/ Ronald A. Labasky*

Ronald A. Labasky, Esquire  
Florida Bar No.: 206326  
Brewton Plante, P.A.  
215 S. Monroe St., Ste. 825  
Tallahassee, FL 32301  
Telephone: (850) 222-7718  
Facsimile: (850) 222-8222  
Primary email: rlabasky@blawfirm.net  
Secondary email: fsase@bplawfirm.net

**Supervisors of Elections for Broward, Collier, Indian River, Lee, Lake, Manatee, Marion, Monroe, Pasco, and Seminole Counties:**

*/s/ Andy Bardos*

Andy Bardos (FBN 822671)  
GRAYROBINSON, P.A.  
Post Office Box 11189  
Tallahassee, Florida 32302-3189  
Telephone: 850-577-9090  
andy.bardos@gray-robinson.com

**Supervisors of Elections for Charlotte, Clay, Duval, Leon, Martin, Osceola, Palm Beach, Polk, and St. Lucie Counties:**

*/s/ John T. LaVia, III*

John T. LaVia, III, Esquire  
Florida Bar No.: 853666  
Gardner, Bist, Bowden, Bust, Dee,  
Lavia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Primary email: jlavia@gbwlegal.com  
Secondary email: shari@gbwlegal.com

**Supervisors of Elections for Glades,  
Hardee, Hendry, Holmes, Levy, and  
Okeechobee Counties:**

HENDERSON, FRANKLIN,  
STARNE & HOLT  
Post Office Box 280  
Fort Myers, Florida 33902-0280  
Telephone: 239.344.1346  
Facsimile: 239.344.1501  
Primary:  
Jerry.olivo@henlaw.com  
Robert.shearman@henlaw.com  
Secondary:  
Courtney.ward@henlaw.com

*/s/ Robert C. Shearman*  
\_\_\_\_\_  
Geraldo F. Olivo  
Florida Bar No. 60905  
Robert C. Shearman  
Florida Bar No. 614025

**Supervisors of Elections for Brevard,  
Flagler, Gilchrist, Gulf, Highlands,  
Jefferson, and Madison Counties:**

*/s/ Frank M. Mari*  
\_\_\_\_\_  
Frank M. Mari  
Florida Bar No. 93243  
Primary: fmari@bellroperlaw.com  
Secondary: ihaines@bellroperlaw.com  
Bell & Roper, P.A.  
2707 E. Jefferson St.  
Orlando, FL 32803  
Telephone: 407-897-5150  
Facsimile: 407-897-3332

**Supervisors of Elections for Baker, Bay,  
Bradford, Calhoun, Columbia, DeSoto,  
Dixie, Franklin, Gadsden, Hamilton,  
Jackson, Lafayette, Liberty, Nassau,  
Putnam, Santa Rosa, St. Johns, Sumter,  
Suwannee, Taylor, Union, Wakulla,  
Walton, and Washington Counties:**

*/s/ Susan S. Erdelyi*  
\_\_\_\_\_  
Susan S. Erdelyi  
Florida Bar No.: 0648965  
MARKS GRAY, P.A.  
1200 Riverplace Blvd., Suite 800  
Jacksonville, Florida 32207  
Telephone: (904) 398-0900  
Facsimile: (904) 399-8440  
serdelyi@marksgray.com  
pcuffe@marksgray.com  
jmcduffle@marksgray.com

**Supervisor of Elections for Citrus County:**

*/s/ Dale A. Scott*  
\_\_\_\_\_  
Michael J. Roper, Esq.  
Fla. Bar No. 0473227  
Dale A. Scott, Esq.  
Fla. Bar No. 0568821  
dscott@bellroperlaw.com  
ehemphill@bellroperlaw.com  
2707 East Jefferson Street  
Orlando, FL 32803  
Tel: 407-897-5150  
Fax: 407-897-3332

**Supervisor of Elections for Miami-Dade County:**

Abigail Price-Williams  
Miami-Dade County Attorney

By: /s/ Michael B. Valdes  
Michael B. Valdes and Oren Rosenthal  
Assistant County Attorney  
Florida Bar No. 93129

Miami-Dade County Attorney's Office  
111 N.W. 1st Street, Suite 2810  
Miami, Florida 33128  
Phone: (305) 375-5151  
Fax: (305) 375-5634  
E-mail: mbv@miamidade.gov

**Supervisor of Elections for Okaloosa County:**

/s/ Gregory T. Stewart  
GREGORY T. STEWART  
Florida Bar No. 203718  
ELIZABETH DESLOGE ELLIS  
Florida Bar No. 97873  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
(850) 224-4070  
(850) 224-4073 (Facsimile)  
gstewart@ngnlaw.com  
ellis@ngnlaw.com  
legal-admin@ngnlaw.com

**Supervisor of Elections for Hernando County:**

/s/ Jon Jouben  
Jon Jouben, Esq.  
Deputy County Attorney  
Florida Bar No. 149561  
Board Certified in City, County, and Local  
Government Law  
Hernando County Attorney's Office  
20 North Main Street, Suite 462  
Brooksville, Florida 34601  
(352) 754-4122  
(352)754-4001 - Fax  
jjouben@co.hernando.fl.us

**Supervisor of Elections for Sarasota County:**

/s/ Morgan R. Bentley  
MORGAN R. BENTLEY, ESQ.  
Florida Bar No. 0962287  
mbentley@bentleyandbruning.com  
JILL M. BOWEN  
Florida Bar No. 1019549  
jbowen@bentleyandbruning.com  
783 South Orange Ave., Suite 300  
Sarasota, Florida 34236  
Telephone: 941-556-9030  
Facsimile: 941-312-5316  
vengel@bentleyandbruning.com

**Supervisor of Elections for Escambia  
County:**

*/s/ Kia M. Johnson* \_\_\_\_\_

KIA M. JOHNSON  
Assistant County Attorney  
Florida Bar Number: 124746  
221 Palafox Pl, Ste. 430  
Pensacola, FL 32502  
Phone: (850) 595-4970  
Fax: (850) 595-4979  
kmjohnson@myescambia.com

**Supervisor of Elections for Alachua  
County:**

*/s/ Robert C. Swain* \_\_\_\_\_

Robert C. Swain  
Senior Assistant County Attorney  
Florida Bar No. 366961  
*/s/ Corbin F. Hanson* \_\_\_\_\_  
Corbin F. Hanson  
Senior Assistant County Attorney  
Florida Bar No. 99435  
12 Southeast 1st Street  
Gainesville, Florida 32601  
Phone: (352) 374-5218/Fax: 374-5216  
bswain@alachuacounty.us  
cfhanson@alachuacounty.us  
CAO@alachuacounty.us

**Supervisor of Elections for Pinellas  
County:**

*/s/ Ashley N. Donnell* \_\_\_\_\_

ASHLEY N. DONNELL, ESQ.  
FBN 100535  
Assistant County Attorney  
Pinellas County Attorney's Office  
315 Court Street, Sixth Floor  
Clearwater, Florida 33756  
Phone: (727) 464-3354  
Fax: (727) 464-4147  
adonnell@pinellascounty.org  
eservice@pinellascounty.org

**Supervisor of Elections for Volusia  
County:**

*/s/ Francis J. Carroll* \_\_\_\_\_

FRANCIS J. CARROLL, Esq.  
Assistant County Attorney  
County of Volusia  
Fla. Bar No. 363928  
123 W. Indiana Avenue, Suite 301  
Deland, Florida 32720  
Phone: (386)736-5950  
Fax: (386)736-5990  
Email: Fcarroll@volusia.org  
Email: tterry@volusia.org

**Supervisor of Elections for Orange  
County:**

/s/ Nicholas A. Shannin

Nicholas A. Shannin, Esquire  
Florida Bar No. 0009570  
Shannin Law Firm, P.A.  
214 South Lucerne Circle East  
Suite 200  
Orlando, Florida 32801  
Tel: (407) 985-2222  
Email: [nshannin@shanninlaw.com](mailto:nshannin@shanninlaw.com)  
[service@shanninlaw.com](mailto:service@shanninlaw.com)

**Supervisor of Elections for Hillsborough  
County:**

/s/ Stephen M. Todd

Stephen M. Todd, Esquire  
Sr. Assistant County Attorney  
Hillsborough County Attorney's Office  
Florida Bar No. 0886203  
Post Office Box 1110  
Tampa, Florida 33601-1110  
(813) 272-5670 – Fax: (813) 272-5758  
[ToddS@hillsboroughcounty.org](mailto:ToddS@hillsboroughcounty.org)  
[MatthewsL@hillsboroughcounty.org](mailto:MatthewsL@hillsboroughcounty.org)  
[ConnorsA@hillsboroughcounty.org](mailto:ConnorsA@hillsboroughcounty.org)

**Florida Secretary of State:**

/s/ Bradley R. McVay

Bradley R. McVay (FBN 79034)  
General Counsel  
Ashley E. Davis (FBN 48032)  
Deputy General Counsel  
Florida Department of State  
R.A. Gray Building Suite, 100  
500 South Bronough Street  
Tallahassee, Florida 32399-0250  
Phone: (850) 245-6536  
Fax: (850) 245-6127  
[brad.mcvay@dos.myflorida.com](mailto:brad.mcvay@dos.myflorida.com)  
[ashley.davis@dos.myflorida.com](mailto:ashley.davis@dos.myflorida.com)

*/s/ Mohammad O. Jazil*

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Mohammad O. Jazil (FBN 72556)  
Gary V. Perko (FBN 855898)  
Edward M. Wenger (FBN 85568)  
Hopping Green & Sams, P.A.  
119 South Monroe Street, Suite 300  
Tallahassee, Florida 32301  
Phone: (850) 222-7500  
Fax: (850) 224-8551  
mjazil@hgslaw.com  
gperko@hgslaw.com  
ewenger@hgslaw.com

*/s/ George N. Meros, Jr.*

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George N. Meros, Jr. (FBN 263321)  
Tara R. Price (FBN 98073)  
Holland & Knight LLP  
315 South Calhoun Street, Suite 600  
Tallahassee, Florida 32301  
Telephone: (850) 224-7000  
Facsimile: (850) 224-8832  
george.meros@hklaw.com  
tara.price@hklaw.com