

# EXHIBIT A

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement Agreement” or “Agreement”) is entered into by and between the American Council of the Blind (“ACB”), the Bay State Council of the Blind (“BSCB”), Kim Charlson, and Brian Charlson (collectively, “Plaintiffs”); and Hulu, LLC (“Hulu”).

### **RECITALS**

On November 20, 2017, Plaintiffs filed a Complaint against Hulu in the U.S. District Court for the District of Massachusetts, Civ. No. 1:17-cv-12285, alleging that Hulu is violating the rights of blind and visually impaired individuals under Title III of the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §§ 12181 et seq., and its implementing regulations. Plaintiffs allege that Hulu has and continues to discriminate against blind and visually impaired individuals by failing to maintain a website that is accessible to individuals who use screen reading software and by failing to provide audio description on any streaming content offered on www.hulu.com. The Complaint seeks an order awarding injunctive relief, declaratory relief, and attorneys’ fees and costs.

On March 2, 2018, Plaintiffs and Hulu (collectively, the “Parties”) entered a Structured Negotiations Agreement (“SNA”) outlining a process and timeline for negotiations. Pursuant to the timeline, the Parties have informally and confidentially exchanged information and exchanged settlement proposals in order to reach this Agreement.

The Parties have determined that it is in their mutual best interests to resolve all potential claims and disputes between them relating to the screen-reader accessibility of Hulu’s website and applications, and/or the availability of audio description services through Hulu’s video streaming services (collectively, the “Claims”). Thus, the Parties desire to settle the disputes between them, as this Settlement Agreement sets forth below.

In consideration of the mutual covenants, representations, warranties and other terms and conditions contained herein, the sufficiency of which all the Parties acknowledge, and without admission of liability by any of the Parties, each of the Parties agrees as follows:

### **TERMS**

#### **1. Incorporation of Recitals**

1.1. The Recitals above are incorporated herein by reference.

#### **2. Definitions**

2.1. “Audio Description” or “AD” means narration added to the soundtrack to describe important visual details that cannot be understood from the main soundtrack alone.

2.2. “BBC Mobile Accessibility Standards” means the British Broadcasting Corporation’s Mobile Accessibility Standards and Guidelines version 1.0 or its applicable successor.

- 2.3. “Controlled” describes content for which Hulu controls the necessary legal rights to create AD without consent of any third party.
- 2.4. “Effective Date” means the date of the last signature on this executed agreement.
- 2.5. “Existing” describes content that is licensed by Hulu as of the Effective Date, and is either (1) currently available on the streaming library and not scheduled to be removed within 2 months of the Effective Date, or (2) scheduled to be added to the streaming library at any point during the term of the Agreement.
- 2.6. “Hulu Website” means the website with the domain [www.hulu.com](http://www.hulu.com).
- 2.7. “Licensed” describes on-demand content (and not the Hulu Live service) that is licensed by Hulu from a third-party, and for which Hulu does not control the necessary legal rights to create AD without consent of any third party.
- 2.8. “Living Room Application” means the latest version of Hulu applications that run from any screen reader compatible device besides a smartphone, tablet, or web browser.
- 2.9. “Mobile Application” means the most recent version of Hulu’s application that runs on smartphones and tablets.
- 2.10. “New” describes content (i) that is newly licensed by Hulu after the Effective Date, or (ii) for which a license is renewed by Hulu after the Effective Date.
- 2.11. “Plaintiffs’ Counsel” means Disability Rights Advocates and Disability Law Center.
- 2.12. “Video Player Controls” means all controls used to control streaming videos including play, pause, stop, fast forward, rewind, volume, settings, etc.
- 2.13. “WCAG” means the Web Content Accessibility Guidelines Working Group of the World-Wide Web Consortium’s Web Content Accessibility Guidelines version 2.1 Level AA or applicable successor of the most current version of the Web Content Accessibility Guidelines (WCAG).

### **3. Accessibility of Mobile and Living Room Applications**

- 3.1. BBC Mobile Accessibility Standards for Mobile Applicable Devices. Hulu shall ensure that its Mobile Applications comply with the BBC Mobile Accessibility Standards on or before January 1, 2020.
- 3.2. Specific Improvements. By January 1, 2020, Hulu shall ensure that the latest Hulu Living Room Application and Mobile Application provide individuals using screen-reading technology with access to and use of the services, privileges, advantages, and accommodations that are also available to sighted users, including but not limited to the following features, where available:

- 3.2.1. Account management (e.g. membership sign up, log in/out, profile creation, manage notifications, manage subscription plan and add-ons, manage payment method and information, manage account information);
  - 3.2.2. Settings management (e.g. subtitles and captions, autoplay);
  - 3.2.3. Accessing all privacy policies, terms of use, licenses, and other information and legal documentation;
  - 3.2.4. Searching and browsing all available streaming content;
  - 3.2.5. Accessing all synopses, cast lists, reviews, or other information about videos available through the Hulu application;
  - 3.2.6. Selecting specific videos, including browsing and selecting seasons and episodes within a series, for viewing;
  - 3.2.7. Utilizing “My Stuff” and Hulu’s Cloud DVR function;
  - 3.2.8. Adding videos to “Watchlist” and rating videos; and
  - 3.2.9. Accessing all Video Player Controls, including controls for activating audio description services, where available.
- 3.3. Application Updates. Hulu shall implement written policies and procedures to ensure that, after January 1, 2020, prior to release all updates to Hulu applications (a) meet the standards in Paragraphs 3.1 and 3.2 of this Agreement, and (b) are tested for accessibility by one or more screen-reader user(s) prior to release. Hulu shall provide a copy of these policies and procedures to Plaintiffs’ Counsel prior to implementation.
- 3.4. Bug Fixes. In the event that Hulu identifies problems or bugs with an application for an Applicable Device that create nonconformance with the standards in Paragraphs 3.1 and 3.2 of this Agreement, Hulu shall cause said problems or bugs to be remedied in a manner consistent with equivalent losses of function unrelated to accessibility.

#### **4. Accessibility of the Hulu Website**

- 4.1. WCAG Compliance. On or before January 1, 2020, and for the term of this Agreement, Hulu shall ensure that the Hulu Website complies with WCAG.
- 4.2. Specific Improvements. On or before January 1, 2020, Hulu shall ensure that the Hulu Website provides individuals using screen-reading technology with access to and use of the services, privileges, advantages, and accommodations of the Hulu Website that are also available to sighted users including but not limited to:

- 4.2.1. Account management (e.g. membership sign up, log in/out, profile creation and modification, managing notifications, ad personalization, payment methods);
  - 4.2.2. Accessing all privacy policies, terms of use, and other information and documentation regarding their contractual relationship with Hulu;
  - 4.2.3. Searching and browsing all available streaming content;
  - 4.2.4. Accessing all synopses, cast lists, reviews, or other information about videos;
  - 4.2.5. Selecting specific videos, including browsing and selecting episodes within a series, for viewing;
  - 4.2.6. Utilizing “My Stuff” and Hulu’s Cloud DVR function;
  - 4.2.7. Utilizing the “Help Center” and other customer assistance features;
  - 4.2.8. Adding videos to “Watchlist” and rating videos; and
  - 4.2.9. Accessing all Video Player Controls, including controls for activating audio description services, where available.
- 4.3. Website Updates. Hulu shall implement written policies and procedures to ensure that, after January 1, 2020, prior to release all updates to the Hulu Website (a) meet the standards in Paragraphs 4.1 and 4.2 of this Agreement, and (b) are tested for accessibility by one or more screen-reader user(s) prior to release. Hulu shall provide a copy of these policies and procedures to Plaintiffs’ Counsel prior to implementation.
- 4.4. Bug Fixes. In the event that Hulu identifies problems or bugs within the Hulu Website that create nonconformance with WCAG, Hulu shall cause said problems or bugs to be remedied in a manner consistent with equivalent losses of function unrelated to accessibility.

## **5. Enhanced Customer Assistance**

- 5.1. Training. Hulu shall develop and implement training for customer service representatives pursuant to this Paragraph.
  - 5.1.1. On or before January 1, 2020, Hulu will develop training for customer service representatives regarding provision of assistance to Hulu users who use screen-reading technology. This training shall include: an explanation of screen-reading technology and how Hulu users using such technology interact with the website or application; guidance on appropriate interaction with customers who use screen readers (e.g. refraining from relying on visual cues or directions); and an explanation of audio description. Hulu shall provide a copy of this training to Plaintiffs’ Counsel prior to implementation.

- 5.1.2. Existing customer service representatives will be trained as soon as possible. New customer service representatives will be trained upon hire.
- 5.2. Internal Knowledge Base. On or before January 1, 2020, Hulu shall develop and implement knowledge base pages for customer service representatives to reference when responding to Hulu users' issues related to screen reader accessibility and audio description. In addition to relevant information on handling such user contact, the information will include a review of what screen-reading technology is and how individuals using this technology interact with the website or application; guidance on appropriate interaction with customers who use screen readers (e.g. refraining from relying on visual cues or directions); an explanation of audio description; and directions for seeking additional information regarding accessibility questions or elevating concerns. Upon implementation, Hulu will provide this information to Plaintiffs' Counsel for review.
- 5.3. Accessibility Page. On or before January 1, 2020, Hulu will provide a webpage titled "Accessibility" on the Hulu Website that contains information for individuals who are blind or visually impaired, including but not limited to customer service contact information, a list of which browsers support audio description, and instructions for reporting screen-reader access barriers. A jump link to the Accessibility page will be included on the Hulu Website. On Mobile Applications, Hulu will provide a link to this "Accessibility" page. On Living Room Applications, Hulu will provide directions on how to visit Hulu's "Help Center."

## **6. Audio Description for Video Content**

- 6.1. Audio Description Assets. Hulu recognizes the importance of the availability of audio description files for a valued portion of its user base. As a result, Hulu shall make efforts to obtain audio description assets pursuant to 6.1.1 through 6.1.3.
  - 6.1.1. For Existing Licensed Content, Hulu will make commercially reasonable efforts to obtain existing AD assets within a commercially reasonable timeframe.
  - 6.1.2. For New Licensed Content, Hulu will request AD assets in all new contracts and will use commercially reasonable efforts to secure AD assets.
  - 6.1.3. For Controlled Content, Hulu will provide AD as soon as practicable after the Effective Date.
- 6.2. Provision of Audio Description. For all content for which Hulu has been provided audio description tracks, Hulu shall make audio description available on the Hulu Website, Mobile Applications, and Living Room Applications. Hulu shall make audio description available on these interfaces as soon as practicable.
- 6.3. Audio Description Controls. On or before January 1, 2020, for each audio description-enabled video in the Hulu streaming library, Hulu shall provide a screen-reader accessible control in the menu available under the settings gear icon to activate

and deactivate audio description on all Hulu platforms where audio description is available.

- 6.4. Audio Description Library. On or before January 1, 2020, Hulu shall provide, on all Hulu platforms where audio description is available, a library of all streaming content that includes audio description. This library shall be browseable by the following categories: Popular, For You, Recently Added, New Audio Description Titles, A to Z, and each available genre and sub-genre.
- 6.5. Audio Description Filtering. On or before January 1, 2020, Hulu shall ensure that users can filter all browsing categories and subcategories in the main video library by audio description availability.

## **7. Assessment and Reporting**

- 7.1. Compliance Notices. Hulu will provide Plaintiffs' Counsel written notice upon initial compliance with each of the following Paragraphs of this Agreement: 3.1, 3.2, 4.1, 4.2, 5.2, 6.2, 6.3, and 6.4.
- 7.2. Hulu Live. The Parties shall meet and confer every six months for the term of this Agreement to discuss whether technical and commercial considerations that preclude providing audio description for Hulu Live have changed sufficiently to allow Hulu to provide existing audio description assets through Hulu Live.
- 7.3. Usability Feedback. Plaintiffs may provide, through Plaintiffs' Counsel, written feedback to Hulu regarding the accessibility of Hulu's Website and Applications. Hulu agrees to fairly consider any changes to Hulu's Website and Applications that Plaintiffs propose through this process.
- 7.4. Accessibility Updates. Hulu shall regularly submit accessibility updates to Plaintiffs' Counsel, beginning on the first business day of the month that is more than 90 days after execution of the Agreement. These Accessibility Updates will be submitted every four months. Each Accessibility Update shall include the following information for the preceding period:
  - 7.4.1. A list of content for which Hulu has acquired audio description assets;
  - 7.4.2. A list of content for which Hulu has determined that audio description assets are unavailable;
  - 7.4.3. The efforts that Hulu has taken to secure and offer audio description for any Hulu Original product; and
  - 7.4.4. Each complaint Hulu has received regarding audio description or screen-reader access barriers.
- 7.5. Sustainability Plan. The final Accessibility Update will include an explanation of the actions Hulu has taken and intends to take in order to sustain compliance with

accessibility standards following the conclusion of this Agreement. Plaintiffs will provide comments and suggestions within two weeks of receiving the sustainability plan and Hulu will implement all reasonable proposals.

## **8. Dispute Resolution**

- 8.1. The Parties agree that Chief Judge Patti B. Saris of the U.S. District Court for the District of Massachusetts shall maintain jurisdiction of this case for enforcement purposes for the term of this Agreement, including the resolution of any disputes that arise hereunder. Should Chief Judge Saris become unavailable, the Parties agree to accept the jurisdiction of any other Judge assigned by the Federal District Court for continuing jurisdiction purposes.
- 8.2. If any disputes arise as to compliance with this Agreement, the Parties agree to resolve the dispute via the following three steps:
  - 8.2.1. Step One – Notice and Conference: Plaintiffs’ Counsel will send a letter to counsel for Hulu concerning any dispute, and the Parties will meet and confer in a good faith effort to resolve any dispute.
  - 8.2.2. Step Two – Mediation: In the event the Parties are unable to resolve their dispute through meet and confer negotiations within six (6) weeks of receipt of the letter raising the dispute, the dispute may be submitted to mediation with a mutually agreeable mediator, to try to reach agreement. If the Parties cannot agree on a mediator and schedule mediation within four (4) weeks (or a longer number of days mutually agreed in writing) after the first mediator is proposed, then either Party may request that the U.S. District Court for the District of Massachusetts assign a mediator.
  - 8.2.3. Step Three – Resolution by District Court: In the event that the Parties are unable to resolve a dispute through Step Two, either Party may submit the dispute for binding resolution by the Federal District Court for the District of Massachusetts under the Court’s continuing jurisdiction over this case pursuant to Paragraph 8.1. Plaintiffs may seek to recover reasonable fees and costs in connection with proceedings under this Step Three according to the standard set forth in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978) or then applicable law.

## **9. Attorneys’ Fees and Costs**

- 9.1. The Parties agree that Exhibit A: Confidential Rider shall resolve claims for attorneys’ fees and costs in this matter.

## **10. Release**

- 10.1. ACB, BSCB, Kim Charlson, and Brian Charlson hereby release Hulu from any and all claims, liabilities, obligations, demands, and actions concerning screen-reader accessibility of the Hulu Website, Hulu’s applications, and the availability of audio

description on the Hulu service through the term of this Agreement. Notwithstanding this release, ACB, BSCB, Kim Charlson, and Brian Charlson retain the right to enforce the terms of this Agreement pursuant to the dispute resolution provisions of the agreement for the term of the Agreement.

- 10.2. ACB, BSCB, Kim Charlson, and Brian Charlson further waive any and all rights or benefits that they as individuals may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation under the terms of § 1542 of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH DEBTOR.**

## **11. Term of the Settlement Agreement**

- 11.1. The term of this Settlement Agreement shall be until January 1, 2022.

## **12. Miscellaneous Terms**

- 12.1. **Entire Agreement.** This Settlement Agreement, including Exhibit A, thereto, contains the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersedes all other prior negotiations, agreements, documents, arrangements and undertakings with respect to matters set forth herein, which have been and are merged into this Settlement Agreement.
- 12.2. **Amendment and Modification.** The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of the Plaintiffs and Hulu.
- 12.3. **Power and Authority.** Each person executing this Settlement Agreement warrants and represents that he or she has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to this Settlement Agreement to effectuate its terms.
- 12.4. **No Assignment of Claims.** Plaintiffs represent and warrant that they own the claims, demands, rights, and interests that are the subject of this Settlement Agreement, have not assigned or transferred any of those claims, demands, rights, and interests, including by operation of law, and those claims, demands, rights, and interests are free of encumbrances and rights of other persons.
- 12.5. **Counterparts and Signatures.** This Settlement Agreement may be executed in one or more counterparts, and may be executed by facsimile or electronic signature. All executed counterparts and each of them shall be deemed to be one and the same instrument.

- 12.6. **Preparation and Construction.** All Parties have contributed substantially and materially to the preparation of this Settlement Agreement and the terms of the agreement shall not be construed more strictly against one Party than another.
- 12.7. **Headings.** The section headings in this Settlement Agreement are for the Parties' convenience and shall not be deemed a part of the various terms and provisions of this Settlement Agreement, nor used to limit the construction thereof.
- 12.8. **Severability.** If any provision of this Settlement Agreement is unenforceable or invalid under any applicable law or is so held by applicable court decision, such unenforceability or invalidity shall not render this Settlement Agreement unenforceable or invalid as a whole, and, in such event, the provision shall be changed and interpreted so as to best accomplish the objectives of the Parties within the limits of applicable law or applicable court decision.
- 12.9. **No Admission of Liability.** This Settlement Agreement is made in settlement and compromise of a dispute, and no Party to this Settlement Agreement, by entering into it, admits wrongdoing, fault, or liability. This Settlement Agreement shall not be asserted by any Party as an admission of wrongdoing, fault, or liability.
- 12.10. **Successors and Assigns.** No party may assign any of its rights nor delegate any of its duties under this Settlement Agreement to any third party without the express prior written consent of the other Party to this Settlement Agreement; provided that, notwithstanding the foregoing, Hulu may assign this Settlement Agreement to: (1) any corporation or other entity resulting from any merger, consolidation, or other reorganization involving Hulu, (2) any of its subsidiaries, franchises or affiliates, or (3) any person or organization to which it transfers all or substantially all of its assets. Any prohibited assignment shall be null and void for all purposes. The obligations and requirements set forth in this Settlement Agreement shall bind the agents, successors, affiliates, and actual assigns of each of the Parties.
- 12.11. **Confidentiality.** The Parties shall not disclose any of the terms of Exhibit A:, Confidential Rider, or, without Hulu's written consent, any materials that Hulu may provide under Section 7 (Assessment and Reporting), to any third party, except: (i) as may be required by any state or federal statute or by court order or subpoena; (ii) in a proceeding brought for the purpose of enforcing this Settlement Agreement; or (iii) to the Parties' respective professional advisors who agree to comply with this confidentiality provision, such as attorneys or accountants. All other terms of the Settlement Agreement are not confidential.

**SIGNATURES**

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

By: \_\_\_\_\_  
Kim Charlson, an individual

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

By: \_\_\_\_\_  
Brian Charlson, an individual

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

American Council of the Blind

By: \_\_\_\_\_  
Kim Charlson, President

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

Bay State Council of the Blind

By: \_\_\_\_\_  
Brian Charlson, President

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

Hulu LLC

By: \_\_\_\_\_  
Elaine Paul, Chief Financial Officer

**APPROVED AS TO FORM**

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

Disability Rights Advocates

By: \_\_\_\_\_  
Rebecca Williford, Senior Staff Attorney

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

Disability Law Center

By: \_\_\_\_\_  
Caitlin Parton, Staff Attorney

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

Morrison & Foerster LLP

By: \_\_\_\_\_  
David McDowell

DocuSign Envelope ID: DA78DD05-40C9-42B6-8C19-2F654108FE4E

**SIGNATURES**

Dated: 10/1/2018 11:29:37 AM PDT

DocuSigned by:  
E Kim Charlson  
883BA1C45F03413, an individual

Dated: 10/1/2018 5:04:46 PM PDT

DocuSigned by:  
E Erin Clark  
82D4F418DA014E0, an individual

Dated: 10/1/2018 11:29:37 AM PDT

American Council of the Blind

DocuSigned by:  
E Kim Charlson  
883BA1C45F03413, President

Dated: 10/1/2018 5:04:46 PM PDT

Bay State Council of the Blind

DocuSigned by:  
E Erin Clark  
82D4F418DA014E0, President

Dated: October 8, 2018

Hulu LLC

By: Elaine Paul  
Elaine Paul, Chief Financial Officer



**APPROVED AS TO FORM**

Dated: 10/2/2018

Disability Rights Advocates

By: Rebecca Williford  
Rebecca Williford, Senior Staff Attorney

Dated: 10/2/2018

Disability Law Center

By: Caitlin Parton  
Caitlin Parton, Staff Attorney

Dated: 10/08/2018

Morrison & Foerster LLP

By: David McDowell  
David McDowell