

SETTLEMENT AGREEMENT
UNDER THE AMERICANS WITH DISABILITIES ACT BETWEEN
THE UNITED STATES OF AMERICA
AND
MEIJER, INC.

BACKGROUND

1. The parties to this Settlement Agreement (Agreement) are the United States of America (United States) and Meijer, Inc. (Meijer) (collectively, the Parties).
2. Meijer owns and/or operates www.meijer.com, which is available through the Internet to computers, mobile devices, tablets, and other similar devices. Through its vaccine registration website, currently found at <https://clinic.meijer.com> and <https://rx.meijer.com/appt/SV0001> (collectively, the Vaccine Registration Portal), Meijer provides the ability to privately and independently obtain information about, and schedule an appointment to receive, a COVID-19 vaccination.
3. The United States initiated a compliance review under Title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12181–12189, and its implementing regulation, 28 C.F.R. pt. 36, to determine whether individuals with disabilities have full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations offered by Meijer through its Vaccine Registration Portal.
4. Following this review, the United States determined that Meijer’s Vaccine Registration Portal was not accessible to some individuals with disabilities, including those who use screen reader software and those who have difficulty using a mouse to navigate the website, in violation of the ADA. The United States learned that, at the time of the compliance review individuals with disabilities who use screen reader software to access Meijer’s Vaccine Registration Portal encountered, for example, (1) images, buttons, and form fields that were unlabeled or had inaccurate alternative text or labels and (2) text that had low color contrast with the website’s background. The United States learned that, at the time of the compliance review, individuals who, because of disability, navigate the website without using a mouse were unable to navigate the Vaccine Registration Portal because, for example, (1) certain buttons and links lacked a focus indicator or could not be selected using a keyboard and (2) the button to enter the Vaccine Registration Portal could not be accessed using a keyboard. The United States learned that because of such barriers, at the time of the compliance review, individuals with disabilities were unable to fully and equally access the Vaccine Registration Portal to privately and independently obtain information about the COVID-19 vaccination and/or schedule a COVID-19 vaccination appointment.
5. Title III of the ADA, 42 U.S.C. §§ 12181–12189, and its implementing regulation, 28 C.F.R. pt. 36, prohibit discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation by any private entity that owns, leases (or leases to), or operates a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

TITLE III COVERAGE

6. Meijer is a private entity that owns and/or operates sales and service establishments whose operations affect commerce. 42 U.S.C. §§ 12181(7), 12182(a); 28 C.F.R. §§ 36.104, 36.201(a). Meijer is a public accommodation subject to Title III of the ADA. 42 U.S.C. § 12181(7)(E)–(F); 28 C.F.R. § 36.104.
7. The Attorney General is authorized to conduct periodic reviews of covered entities' compliance with Title III of the ADA. 42 U.S.C. § 12188(b)(1)(A)(i); 28 C.F.R. § 36.502(c).
8. The Attorney General is also authorized to bring a civil action on behalf of the United States in federal court if the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of discrimination or any person with a disability or group of persons with disabilities has been discriminated against and such discrimination raises an issue of general public importance. 42 U.S.C. § 12188(b)(1)(B).
9. Meijer represents that it has cooperated fully with the United States in the process of working toward an amicable resolution of this matter and to ensure the Vaccine Registration Portal is accessible to individuals with disabilities. Meijer denies that it has violated Title III of the ADA, and disputes that the Vaccine Registration Portal violates Title III of the ADA.
10. Meijer represents that it is dedicated to enriching lives in the communities that Meijer serves. Meijer further represents that during the COVID pandemic and national emergency, Meijer rapidly responded in a number of ways. For example, Meijer states that it has maximized the ability of the community to access the COVID vaccine by providing customers various tools to schedule an appointment, such as through in person registration, via phone or the Vaccine Registration Portal. Meijer further represents that it has conducted numerous on-site and off-site mass vaccination clinics, including in partnership with several federal agencies as well as state authorities in each state in which Meijer operates. Meijer also states that its prompt response in the midst of the COVID pandemic and national emergency allowed Meijer to administer over 2 million COVID vaccine doses. Meijer represents that it has a longstanding commitment to accessibility and, before being contacted by the United States about this Agreement, had engaged in efforts to ensure accessibility of the Vaccine Registration Portal.
11. Given the importance of ensuring that all individuals, including those with disabilities, have a full and equal opportunity to access information about the COVID-19 vaccination and to schedule a COVID-19 vaccination appointment at a Meijer location, the Parties agree that it is in their best interests, and the United States believes that it is in the public interest, to voluntarily enter into this Agreement. The Parties agree to the following provisions.

GENERAL NONDISCRIMINATION REQUIREMENTS

12. As required by Title III of the ADA and its implementing regulation, Meijer:
 - a. Shall not discriminate on the basis of disability in the full and equal enjoyment of Meijer's goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201;

- b. Shall not deny individuals with disabilities the opportunity to participate in and benefit from Meijer’s goods, services, facilities, privileges, advantages, and accommodations. 42 U.S.C. § 12182(b)(1)(A)(i); 28 C.F.R. § 36.202(a);
- c. Shall not provide individuals with disabilities an unequal opportunity to participate in or benefit from Meijer’s goods, services, facilities, privileges, advantages, and accommodations. 42 U.S.C. § 12182(b)(1)(A)(ii); 28 C.F.R. § 36.202(b);
- d. Shall take the necessary steps to ensure that individuals with disabilities are not excluded, denied services, segregated, or otherwise treated differently because of the absence of auxiliary aids and services (including accessible electronic and information technology), unless Meijer can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303; and
- e. Shall not utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability. 42 U.S.C. § 12182(b)(1)(D); 28 C.F.R. § 36.204.

ACTIONS TO BE TAKEN BY MEIJER

13. Vaccine Registration Portal Accessibility Conformance. Meijer shall do the following in order to comply with the obligations listed in Paragraph 12:

- a. Within thirty (30) days of the Effective Date (Conformance Date), Meijer shall ensure that the publicly available components of the Vaccine Registration Portal (at its current URLs or any others), any navigation path on www.meijer.com leading to the Vaccine Registration Portal, information contained on or linked to from the Vaccine Registration Portal, and any portion of any other page of its website that specifically provides information about the COVID-19 vaccine (Vaccine Content) conforms to Web Content Accessibility Guidelines 2.1, Level AA (June 5, 2018), published by the World Wide Web Consortium, available at www.w3.org/TR/WCAG/ (WCAG 2.1 AA). As used in this Agreement, WCAG 2.1 AA incorporates the Level A and Level AA Success Criteria. Vaccine Content includes, but is not limited to, all of the publicly available information, resources, files, images, graphics, text, audio, video, multimedia, services, included within Vaccine Content. Conformance shall have the same meaning as in WCAG 2.1.
- b. If Meijer is unable to comply with subparagraph (a) in a particular circumstance, including circumstances beyond Meijer’s control, it may request a limited exception from the United States in writing, which exception the United States shall not unreasonably deny. Such a request shall set forth the reason(s) limiting Meijer’s ability to comply with subparagraph (a) in the particular circumstance and the steps that Meijer will take to enhance accessibility.
- c. A limited number of isolated or temporary instances of noncompliance with subparagraph (a) shall not constitute a material breach of this Agreement if the incidents of noncompliance would not prevent a person with a disability from accessing the substantive information Meijer provides about the COVID-19 vaccine, scheduling a

vaccination appointment, or completing vaccination-related forms on the Vaccine Registration Portal.

- d. Nothing in this provision requires Meijer to modify, or seek the modification of, third-party content, unless the third-party content is necessary for the user to schedule a vaccination appointment or complete vaccination-related forms on the Vaccine Registration Portal.

14. Website Accessibility Notice and Feedback. Meijer provides a notice, and shall continue to provide such notice, prominently and directly linked from the www.meijer.com homepage and from the Vaccine Registration Portal, with a statement of Meijer's commitment to facilitate the accessibility and usability of its website and other digital properties for all individuals with disabilities. The notice includes, and shall continue to include, an email address and a toll-free telephone number (which shall accept calls made using video relay services) where customers with disabilities can provide feedback on how website accessibility can be improved and can request assistance if they experience technical difficulties with the website.

15. Website Accessibility Subject Matter Expert. Meijer shall continue to retain its current website accessibility subject matter expert (Website Accessibility Subject Matter Expert), and Meijer shall continue to retain a Website Accessibility Subject Matter Expert throughout the Term of the Agreement. During the Term of the Agreement, Meijer may retain a different Website Accessibility Subject Matter Expert approved by the United States, which approval shall not be unreasonably withheld. The Website Accessibility Subject Matter Expert's duties include, and shall continue to include: (1) advising Meijer on how to conform Vaccine Content to WCAG 2.1 AA and (2) verifying that the Vaccine Content complies with Paragraph 13 by conducting manual testing, as described in Paragraph 16.

16. Vaccine Registration Portal Evaluation. Meijer agrees to periodically test for accessibility of the Vaccine Registration Portal, evaluate conformance with WCAG 2.1 AA, and verify that Vaccine Content conforms to WCAG 2.1 AA. To comply with its obligations under this Paragraph, Meijer shall do the following:

- a. Automated Testing. By the Effective Date, obtain an automated accessibility testing tool acceptable to the United States. Meijer shall use the tool referenced in the previous sentence to conduct automated testing of Vaccine Content before content is launched, as an integrated and routine part of its content development, assessment, and quality control processes. Any barriers to the accessibility of Vaccine Content identified by the automated testing conducted pursuant to this subparagraph (a) will be addressed within no more than fifteen (15) days following identification of the barrier if the barrier can be addressed by Meijer via Meijer's content management system and without support from a third-party vendor. If a barrier cannot be addressed by Meijer via Meijer's content management system and without support from a third-party vendor, Meijer will address the barrier as soon as practicable, but within no more than thirty (30) days following identification of the barrier.
- b. Manual Testing. Within ninety (90) days of the Effective Date and then every ninety (90) days for the Term of the Agreement, Meijer shall instruct its Website Accessibility Subject Matter Expert to conduct manual testing. Any barriers to the accessibility of Vaccine Content identified by testing conducted pursuant to this subparagraph (b) will be

addressed within no more than fifteen (15) days following identification of the barrier if the barrier can be addressed by Meijer via Meijer's content management system and without support from a third-party vendor. If a barrier cannot be addressed by Meijer via Meijer's content management system and without support from a third-party vendor, Meijer will address the barrier as soon as practicable, but within no more than thirty (30) days following identification of the barrier.

- c. User Accessibility Testing Group. Within ninety (90) days of the Effective Date, and then every ninety (90) days for the Term of this Agreement, manual tests for accessibility of Vaccine Content shall be conducted by individuals with different disabilities, including individuals who are blind, individuals who have low vision, and individuals with disabilities who have difficulty using a mouse. If the manual testing conducted by the Website Accessibility Subject Matter Expert pursuant to subparagraph (b) involves testing by an individual (or individuals) with a disability who use(s) a screen reader and who cannot use(s) a mouse for reasons related to their disability, the testing conducted by the Website Accessibility Subject Matter Expert pursuant to subparagraph (b) shall satisfy the requirement for manual testing under this subparagraph (c), if the individual(s) with a disability use(s) screen readers or keyboard navigation technology during the testing. Any barriers to the accessibility of Vaccine Content identified by testing conducted pursuant to this Paragraph will be addressed within no more than fifteen (15) days following identification of the barrier if the barrier can be addressed by Meijer via Meijer's content management system and without support from a third-party vendor. If a barrier cannot be addressed by Meijer via Meijer's content management system and without support from a third-party vendor, Meijer will address the barrier as soon as practicable, but within no more than thirty (30) days following identification of the barrier.
 - d. If Meijer is unable to comply with the remediation timeframes in subparagraphs (a)–(c) in a particular circumstance, including circumstances beyond Meijer's control, it may request a limited extension from the United States in writing no later than three (3) business days in advance of the deadline, which extension the United States shall not unreasonably deny. Such a request shall set forth the reason(s) limiting Meijer's ability to comply with subparagraphs (a)–(c) in the particular circumstance.
17. Website Accessibility Training. Within forty (40) days after the Effective Date of this Agreement, and at least once annually thereafter for the Term of this Agreement, Meijer shall provide training to all persons (Meijer's employees and contractors) who design, develop, maintain, manage, or otherwise have responsibility for the content and format of the Vaccine Content (Vaccine Content Personnel). This training shall include instruction on how to conform Vaccine Content with WCAG 2.1 AA and the terms of this Agreement (Website Accessibility Training). For persons who must receive Website Accessibility Training pursuant to this Agreement, but who did not receive training on a designated annual training date required under this Agreement (for instance, because they were on leave or because they began their affiliation with Meijer subsequent to the training date), Meijer shall provide the Website Accessibility Training to such persons within thirty (30) days after the individual's hire or return from leave. Meijer will require that consultants (other than consultants retained for their digital accessibility experience) used for the design, development, maintenance, and/or management of the Vaccine Content shall, prior to commencing work for Meijer, either be, or at some point in the one (1) year prior to working with Meijer have been, provided with Website Accessibility Training.

18. Recordkeeping and Reporting. Within thirty (30) days after Meijer's receipt of the results of the Website Accessibility Subject Matter Expert's manual testing required under Paragraph 16(b), Meijer shall submit a report via email to the United States summarizing Meijer's compliance efforts pursuant to Paragraphs 13-17 of this Agreement (Compliance Report). Each Compliance Report shall also include a summary of the results of all testing conducted pursuant to Paragraph 16, all written communications providing feedback relating to the accessibility of the Vaccine Content pursuant to the Accessibility Notice discussed in Paragraph 14, a summary of every call received from customers regarding the accessibility of the Vaccine Content, and a summary of what, if any, action Meijer has taken or plans to take to address each issue regarding the accessibility of Vaccine Content identified by the testing required under Paragraph 16 and customer feedback pursuant to Paragraph 14 during the relevant reporting period, or, if Meijer has not taken and does not plan to take any action in response to any issue identified, Meijer shall include an explanation regarding its inaction. Meijer will retain the complete test results and any written records of the calls that it summarizes for the United States pursuant to this paragraph for not less than the Term of the Agreement.
19. Delivery of Information. Meijer agrees to deliver each report per Paragraph 19 to the United States to the undersigned counsel via electronic mail at anne.langford@usdoj.gov and joy.welan@usdoj.gov, or other persons subsequently specified by the Department. Notice to Meijer pursuant to Paragraph 35 will be provided to Meijer at Legal-notices@meijer.com and Cynthia.Rogowski@meijer.com, with copies to annemarie.estevez@morganlewis.com and stephanie.schuster@morganlewis.com, and/or other persons subsequently provided by Meijer.

OTHER PROVISIONS

20. Effective Date. The effective date of this Agreement is the date of the last signature below.
21. Term. The duration of this Agreement will be thirty (30) months from the Effective Date, or the time between the Effective Date and the date on which Meijer ceases to offer the Vaccine Registration Portal (at its current URL or another) to the public, whichever is sooner.
22. Revised Technical Standards. If the Department promulgates a final ADA Title III regulation setting out a website accessibility technical standard or if the United States Supreme Court rules that a website is not subject to the provisions of Title III of the ADA during the Term of this Agreement, then the Parties agree to promptly and in good faith discuss the impact, if any, of such developments on the terms of the Agreement. If the Parties agree, this discussion may lead to modification of the Agreement. However, in no circumstance shall any difference of opinion regarding the impact of such developments on the terms of the Agreement be subject to the Dispute Resolution procedure laid out in Paragraph 23.
23. Dispute Resolution. Any disputes under this Agreement shall be resolved according to the following procedure:
- a. Notification in Writing. Counsel for a Party shall promptly notify counsel for the other Party in writing of any perceived non-compliance with the terms of this Agreement, or any other perceived dispute(s) related to the terms, processes, or obligations set forth in this Agreement. Counsel for a Party may also notify counsel for another Party that they

wish to meet and confer in good faith regarding issues related to Meijer's obligations under this Agreement other than perceived non-compliance or disputes.

- b. Meet and Confer. Unless otherwise agreed to by the Parties in writing, the Parties agree to meet and confer in good faith within fifteen (15) business days after receipt of a written notification pursuant to the previous subparagraph.
 - c. Application for Further Relief. If the meeting required by part (b) of this Paragraph 23 does not lead to a resolution of a dispute, then, no sooner than fifteen (15) business days after providing the other Parties with written notice of an intent to terminate the meet and confer process, any party may seek to enforce the terms of this Agreement with an appropriate Federal District Court.
24. Non-Waiver. Failure by the United States to enforce any provision or deadline of this Agreement shall not be construed as a waiver of its right to enforce any provision or deadline of the Agreement.
25. Non-Admissions. Nothing contained in this Settlement Agreement is intended or shall be construed as an admission by Meijer that Meijer was in violation of or liable under the ADA or any other law or regulation. By entering into this Agreement, Meijer does not admit liability or wrongdoing in any respect as to any matter related to the Meijer.com website or the Vaccine Registration Portal or agree that the Meijer.com website and/or Vaccine Registration Portal is subject to the provisions of Title III of the ADA.
26. Titles. Titles and other headings contained in this Agreement are included only for ease of reference and shall have no substantive effect.
27. Timelines. Any timelines for performance fixed by, or pursuant to, this Agreement may be terminated, shortened, or extended by mutual written agreement of the Parties.
28. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. Electronic signatures are acceptable.
29. Severability. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.
30. Binding Nature of Agreement. This Agreement shall be binding upon the Parties. Meijer acknowledges that regardless of whether it relies on agents, contractors, or employees for the creation, maintenance, or alteration of Vaccine Content, Meijer remains responsible for compliance with this Agreement.
31. Authority. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Agreement.
32. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the matters raised herein and no other statement or promise, written or oral, made by any party or agents of any party, that is not contained in this written Agreement shall be enforceable.

33. Modification of Agreement. Any modification of this Agreement shall be by written agreement of the Parties.
34. Consideration and Waiver. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from filing a civil suit under Title III as a result of the investigation leading to this Agreement, except as provided in this Paragraph and in Paragraph 36. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against Meijer for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA for violations unrelated to this matter. Similarly, nothing contained in this Agreement is intended or shall be construed as a waiver by Meijer to dispute or defend any proceeding by the United States for violations of any statutes, regulations, or rules administered by the United States.
35. Review and Enforcement. The United States may review or monitor Meijer's compliance with this Agreement or the ADA at any time. Meijer will provide any information and/or documents that the United States requests to evaluate Meijer's compliance with this Agreement by no later than ten (10) days of the United States' request. If the United States believes that the Agreement or any requirement thereof has been breached, the United States may institute a civil action in an appropriate Federal District Court to enforce this Agreement or the ADA.
36. Other Violations. This Agreement is not intended to remedy any potential violations of the ADA or any other law, other than those specifically addressed by this Agreement. Nothing in this Agreement shall preclude the United States from filing a separate action under the ADA for any alleged violation not covered by this Agreement or limit any defenses available to Meijer.
37. Continuing Responsibility. This Agreement does not affect Meijer's continuing responsibility to comply with all aspects of the ADA.

By their signatures below, the Parties respectfully consent to the execution of all aspects of this Agreement.

FOR THE UNITED STATES OF AMERICA:

ANDREW BYERLY BIRGE
United States Attorney



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2/1/2022

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February 2, 2022

Dated:

FOR MEIJER, INC.:



JANET KELLEY
Senior Vice President, General Counsel &
Secretary
Meijer, Inc.
2929 Walker Avenue NW
Grand Rapids, MI 49544

2/1/22
Dated: