

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA  
AND CONSULATE MANAGEMENT COMPANY III, LLC AND NURSING  
FACILITIES THAT HAVE MANAGEMENT CONTRACTS WITH CONSULATE  
MANAGEMENT COMPANY III, LLC**

**U.S. DEPARTMENT OF JUSTICE DJ # 202-79-383**

**BACKGROUND**

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and Consulate Management Company, III, LLC (“CMC III”) and the skilled nursing facilities listed in Exhibit A that have management contracts with CMC, III (collectively, “the Facilities,” individually, a “Facility”). The Facilities and CMC, III represent that the Chief Executive Officer of CMC, III, whose signature appears below, is authorized to bind each of them to the terms, conditions and obligations of this Settlement Agreement.
2. This matter was initiated by a complaint filed with the United States, alleging violations of title III of the Americans with Disabilities Act of 1990, as amended (the “ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36. The United States Attorney’s Office received a complaint alleging that a Facility that had a management contract with CMC, III indicated that it would not provide an interpreter for an applicant for admission who is deaf and uses American Sign Language (“ASL”) as her primary means of communication (the “Complaint”).

**TITLE III COVERAGE**

3. The United States Attorney for the Eastern District of Virginia (“U.S. Attorney’s Office”) is authorized to investigate alleged violations of Title III of the ADA, to use alternative means of dispute resolution, where appropriate, including settlement negotiations, to resolve disputes, and to bring a civil action in federal court in any case that raises issues of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.
4. The aggrieved individual is deaf, and as such, is an individual with a “disability” within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 36.104.
5. The Facilities are places of public accommodations under the ADA because they own, operate, or lease places that provide healthcare and social services to its Residents. 42 U.S.C. § 12181(7)(F) & (K); 28 C.F.R. § 36.104.
6. Ensuring that medical care providers, including nursing facilities, do not discriminate on the basis of disability is an issue of general public importance. The United States is authorized to investigate alleged violations of Title III of the ADA and to bring a civil action in federal court in any case that involves a pattern or practice of discrimination or that raises issues of general public importance. 42 U.S.C. § 12188(b).
7. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). Discrimination includes: (1) imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or

accommodations; and (2) failing to take such steps as necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than any other individual because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A) (i) & (iii); 28 C.F.R. §§ 36.301(a) & 36.303.

8. On the basis of its investigation, the U.S. Attorney's Office has determined that:
  - a. A nursing facility that had a management agreement with CMC III maintained admission criteria for its nursing facility that screen out or tend to screen out individuals who are deaf;
  - b. When a local hospital attempted to discharge the aggrieved individual, who is deaf and primary method of communication is American Sign Language, to a nursing facility that had a management agreement with CMC III, it responded by writing that "we do not provide ASL translators."
  - c. The Facilities had written policies and procedures that violate ADA regulations (28 C.F.R. § 36.303(c)(3)), including encouraging nursing facilities to "utilize family and friends to interpreter whenever possible," which also meant that these nursing facilities were not ensuring that they were using qualified interpreters. 28 C.F.R. § 36.104.
9. The nursing facility's use of impermissible eligibility criteria and its failure to offer or furnish appropriate auxiliary aids and services to ensure effective communication with the aggrieved individual violates 42 U.S.C. § 12182; 28 C.F.R. §§ 36.301(a) & 36.303.
10. The Facilities and CMC III dispute the above findings and conclusions of the U.S. Attorney's office. However, the Parties have determined that the complaint filed with the United States can be resolved without litigation and have agreed to the terms of this Agreement; provided, however, that nothing herein shall be deemed as an admission of any violation or liability by the Facilities or CMC III.

## **DEFINITIONS**

11. The term "auxiliary aids and services" includes qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing. 28 C.F.R. § 36.303(b)(1).
12. The term "Facility Personnel" means all employees, both full and part-time, and employees of independent contractors with contracts to work for or with the Facilities,

including, without limitation, nurses, physicians, social workers, activities department employees, administrative staff, technicians, admitting personnel, billing staff, security staff, therapists, and volunteers, who have or are likely to have direct contact with Patients or Companions as defined herein.

13. The term “qualified interpreter” means an interpreter who, via a VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. 28 C.F.R. § 36.104.
14. The terms “Patient” and “Resident” may be used interchangeably in this agreement and shall be broadly construed to include any individual who is seeking or receiving the goods, services, facilities, privileges, advantages, or accommodations of the Facilities.
15. The term “Companion” means a person who is deaf or hard of hearing and is a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate. 28 C.F.R. § 36.303(c)(1)(i).
16. “Patient medical files, records or charts” means the medical files and related records for an individual patient, including both the paper and electronic records.

## **EQUITABLE RELIEF**

### **A. Prohibition of Discrimination**

17. Nondiscrimination. The Facilities shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless a Facility can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden, as defined in 42 U.S.C. § 12182(b)(2)(A)(iii). Pursuant to 42 U.S.C. § 12182(a), the Facilities shall also provide Patients and Companions, who are deaf or hard of hearing, with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of the hospital as required by this Agreement and the ADA.
18. Discrimination by Association. The Facilities shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. See 42 U.S.C. § 12182(b)(1)(E).
19. Retaliation and Coercion. No Facility shall retaliate against or coerce in any way any person who made, or is making, a complaint according to the provisions of this Agreement or exercised, or is exercising, his or her rights under the ADA or this Agreement. See 42 U.S.C. § 12203.

### **B. Effective Communication**

20. Appropriate Auxiliary Aids and Services. Pursuant to 42 U.S.C. § 12182(b)(2)(A)(iii), the Facilities will provide to Patients and Companions, who are deaf or hard of hearing, any appropriate auxiliary aids and services that are necessary for effective communication after making the assessment described in paragraph 22 of this Agreement. Appropriate auxiliary aids and services will be provided as soon as practicable (without compromising patient care), except that the provision of on-site interpreters must be within the time frame described in paragraph 31 of this Agreement. The Facilities will advise Patients and Companions who require auxiliary aids or services, in writing, that these are available throughout the Patient's stay.
21. General Assessment Criteria. The determination of appropriate auxiliary aids or services, and the timing, duration, and frequency with which they will be provided, will be made by the Facilities in consultation with the person with a disability. The assessment made by Facility Personnel will take into account all relevant facts and circumstances, including, but not limited to the following:
- a. The method of communication used by the individual and the individual's communication skills, which may, but is not required to, include a professional assessment of the individual's communication skills conducted by a clinician, who is qualified to perform such an assessment;
  - b. The nature, length, complexity, and importance of the communication at issue, and the context in which the communication is taking place;
  - c. The Resident's health status or changes thereto including, without limitation, any other disabilities that could interfere with the Resident's ability to articulate a request for or use an auxiliary aid and service; and
  - d. The Resident's and Companion's request for, or statement of need for, auxiliary aids or services, including a qualified interpreter.

The assessment performed by the Facility shall ensure that, for any individual or third party on behalf of an individual with a disability, who requests an auxiliary aid or service, or who the Facility reasonably believes may need an auxiliary aid or service based on objective factors, such individual enjoys equal access to the goods, services, facilities, privileges, advantages, or accommodations offered by the Facility. The Facility shall provide assistance in completing the assessment Form referenced below at the Resident's or Companion's request. After being completed, the assessment Form(s) shall be maintained in the Resident's file, whether kept in paper or electronic form. If a Resident identifies a Companion who is not presently at the Facility but is expected at the Facility during the time when the Resident will be receiving services, Facility Personnel shall provide the Resident with the contact information of Facility Personnel who can assist the Companion in completing the assessment Form. As part of this Agreement, the Facilities agrees that if at any point during a Resident's stay, a Companion identifies themselves as deaf or hard of hearing, the Facility shall promptly provide them with the Form, if it has not already done so.

22. Form for Assessment. The Facilities shall conduct the above-described assessment using a Form, including any electronic versions thereof, approved by the U.S. Attorney's office, within 60 days from the execution of this Agreement which meets the criteria for such assessments. An example of such a form is at Exhibit B.
23. Time for Assessment. The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration, and frequency with which they will be provided,

must be made at the time a Facility learns that a Patient or Companion who is deaf or hard of hearing will be using its services or on the arrival of the Patient or Companion who is deaf or hard of hearing at the Facility, whichever is earlier. Facility Personnel will perform an assessment (see paragraph 22) as part of each initial inpatient assessment and document the results in the Patient's medical chart (including the results of the assessments of companion's need for auxiliary aids and services). Facility Personnel will reassess, as appropriate but no less than quarterly, which auxiliary aids and services are necessary, in consultation with the person with a disability, where possible, and provide such aid or service based on the reassessment.

24. ADA Administrators. CMC, III will designate at least one employee as an ADA Administrator to train, counsel and assist the Facilities with their compliance with the requirements of the ADA and this Agreement. Each Facility will also designate one or more persons ("Facility designee") to work in his absence such that someone will always be on duty and available twenty-four (24) hours a day, seven (7) days a week, to in conjunction with the ADA Administrator at CMC, III and to answer questions of and provide appropriate assistance regarding prompt access to, and proper use of, the appropriate auxiliary aids and services, including qualified interpreters. The Facility designees will know where the appropriate auxiliary aids are stored and how to operate them and will be responsible for their maintenance, repair, replacement, and distribution. Each Facility will circulate and post in public locations, including public bulletin boards and its main notice board within the Facility, the name, telephone number, function, and office location of the Facility designees, including a TTY telephone number, through which a Facility designee on duty can be contacted twenty-four (24) hours a day seven days a week by Patients and Companions who are deaf or hard of hearing. The Facility's designee will be responsible for the complaint resolution mechanism described below in this Agreement. The ADA Administrator and each Facility designee will be appointed by CMC, III and the Facilities no later than 30 days following execution of this Agreement and will be subject to approval by the U.S. Attorney's Office.
25. Auxiliary Aid and Service Log. Each Facility will maintain a log in which requests for auxiliary aids or services will be documented. The log will indicate:
  - a. The name of the Resident or Companion who is deaf or hard of hearing, who made the request;
  - b. The time and date the request was made;
  - c. The time and date the request was made for, i.e., for immediate use (emergent need) or for a scheduled meeting (stating the date and time of the meeting);
  - d. The identity of the Facility personnel who conducted the assessment and made the determination of which auxiliary aid or service to provide;
  - e. The name of the Facility personnel member making the request and time and date the request was made by staff;
  - f. The auxiliary aid or service provided; and
  - g. All times and dates the auxiliary aid or service was provided.

If the requested Auxiliary Aid or Service was not provided, or another auxiliary aid or service was selected by the Facility, or was provided outside of the timeliness provisions contained in this agreement, the log shall contain a statement explaining why. Such logs will be maintained by the Facility designees for the entire duration of the Agreement,

and will be incorporated into the semi-annual Compliance Reports as described below in this Agreement.

26. Complaint Resolution. Each Facility will establish a grievance resolution mechanism for the investigation of disputes regarding effective communication with Patients and Companions who are deaf or hard of hearing. Each Facility will maintain records of all grievances regarding effective communication, whether oral or written, made to the Facility and actions taken with respect thereto. Each Facility will notify deaf and hard of hearing residents of its grievance resolution mechanism, to whom complaints should be made, and of the right to receive a written response to the grievance at the same time it conducts its initial assessment of the need for auxiliary aids for the resident. A written response to any grievance filed shall be completed promptly, but no later than within seven (7) days of receipt of the complaint. Copies of all grievances related to provision of services for Patients or Companions who are deaf or hard of hearing and the responses thereto will be maintained by the ADA Administrator or designee for the entire duration of the Agreement, and will be incorporated into the semi-annual Compliance Reports as described below in this Agreement.
27. Prohibition of Surcharges. All appropriate auxiliary aids and services provided by the Facilities will be provided free of charge to the Patient or Companion who is deaf or hard of hearing.
28. Record of Need for Auxiliary Aid or Service. The Facilities will take appropriate steps to ensure that all of their personnel are made aware of a Patient or Companion's disability and auxiliary aid and services needed so that effective communication with such person will be achieved. These steps will include designating this information in the medical record. The Patient's medical record shall be conspicuously labeled (such as with a sticker, indicator, or label on the cover) to alert Personnel to the fact that the Patient and/or Companion is deaf or hard of hearing. The medical record shall indicate the mode of communication requested by and provided to the Patient or Companion.

### **C. Qualified Interpreters**

29. Circumstances Under Which Interpreters Will Be Provided. Depending on the complexity and nature of the communication, a qualified interpreter may be necessary to ensure effective means of communication for Patients and Companions. When an interpreter is needed, the Facility shall provide qualified sign language interpreters to Patients and Companions who are deaf or hard of hearing and whose primary means of communication is sign language, and qualified oral interpreters to such Patients and Companions who rely primarily on lip reading as necessary for effective communication. Examples of circumstances when the communication may be sufficiently lengthy or complex so as to require an interpreter include the following:
  - a. When federal and/or state regulations and/or state manuals and/or a Facility's policies require Residents to have a meaningful opportunity to participate in discussions regarding services that affect them;
  - b. When federal and/or state regulations and/or state manuals and/or a Facility's policies require Residents to have access to information that is in a language that is understandable to the Resident;
  - c. Providing admission tours of a Facility to potential patients and companions;

- d. Initial orientation discussions including explanations of program services, policies, rules, and the Resident handbook;
- e. Discussing a patient's symptoms and medical condition, medications, and medical history;
- f. Notices and explanations of legal, civil and human rights;
- g. When a Facility conducts its initial and periodic assessments of a patient;
- h. Meetings in which care and service planning is discussed;
- i. Interviews of patients as a part of incident investigations, including but not limited to those that involve injury of a patient;
- j. Execution of legal documents;
- k. Explaining medical conditions, treatment options, tests, medications, surgery and other procedures;
- l. Providing a diagnosis and recommendation for treatment;
- m. Communicating with a patient during treatment, including physical and occupational therapies, testing procedures, and during physician's rounds;
- n. Obtaining informed consent for treatment;
- o. Providing instructions for medications, pre- and post-surgery instructions, post-treatment activities and follow-up, treatments;
- p. Providing mental health services, including group or individual counseling for patients and family members;
- q. Providing information about blood or organ donations;
- r. Discussing how the facility will treat the Resident's powers of attorney, living wills, etc. and/or complex billing and insurance matters;
- s. During educational presentations;
- t. Discussing discharge planning and discharge instructions; and
- u. When a Facility provides religious services and spiritual counseling.

In the above circumstances, the Facility will presume that a qualified interpreter is necessary for effective communication with a Patient or Companion who relies upon such Auxiliary Aid and Service.

30. Chosen Method for Obtaining Interpreters.

Within sixty (60) days after execution of this Agreement, the Facility agrees:

- a. To have written agreements with two or more interpreter services to ensure that

interpreting services will be available on a priority basis, twenty-four hours per day, seven days a week. If the U.S. Attorney's office, in its review of the documentation provided to it by any Facility required by this Agreement, determines that the interpreter services are not providing timely or competent services to residents, it may require the Facility to enter into up to five contracts for interpreter services.

- b. To select qualified interpreters or interpreter services that have been screened for the quality and skill of its interpreters to work with a Facility's residents. Each Facility will review and update this list annually.
- c. To establish internal procedures for its personnel to order interpreting services that are consistent with the interpreter or interpreter agencies' procedures. At a minimum, all of a Facility's requests for interpreters, including the time, date and location, will be confirmed in writing at the time of the request. If a Facility receives verbal confirmation or speaks with the vendor regarding the Facility's request for an interpreter, the Facility will confirm such conversations in writing and this information will be documented in the Interpreter's Log. The Facility will retain a copy of all written correspondence with interpreting services. Additionally, for the duration of this Agreement, the Facility will file a copy of its written correspondence with interpreters and interpreting agencies in the Auxiliary Aid and Service Log described above.

A Facility may also hire qualified sign language interpreter(s) to be staff interpreter(s) that have been screened for the quality and skill of its interpreters to work with the population that resides at the Facility.

31. Provision of Interpreters in a Timely Manner.

- a. Non-scheduled Interpreter Requests: A "non-scheduled interpreter request" means a request for an interpreter made by a Patient or Companion who is deaf or hard of hearing with less than two (2) hours advance notice. For non-scheduled interpreter requests, Facility Personnel will complete the assessment described above. The interpreter shall be provided no more than (a) two hours from the time the Facility completes the assessment if the service is provided through a contract interpreting service or a staff interpreter who is located off-site or (b) 30 minutes from the time the Facility completes the assessment if the service is provided through a Video Remote Interpreting service as described below. Deviations from this response time will be addressed with the interpreting service provider, and performance goals will be reviewed with the U.S. Attorney's Office. If no interpreter can be located, Facility Personnel will take the following additional steps:
  - i. Facility Personnel will exert reasonable efforts (which shall be deemed to require no fewer than five (5) telephone inquiries and/or emails and/or text messages unless exceptional circumstances intervene) to contact any interpreters or interpreting agencies already contracted with the Facility and request their services;
  - ii. Inform the Facility designee and the ADA Administrator of the efforts made to locate an interpreter and solicit assistance in locating an interpreter;

- iii. Inform the Patient or Companion of the efforts taken to secure a qualified interpreter and that the efforts have failed, and follow up on reasonable suggestions for alternate sources of qualified interpreters; and
  - iv. Document all of the above efforts.
- b. Scheduled Interpreter Requests. A “scheduled interpreter request” is a request for an interpreter made two (2) or more hours before the services of the interpreter are required. For scheduled interpreter requests, the Facility will complete the assessment described above in advance, and, when an interpreter is appropriate, the Facility will make a qualified interpreter available at the time of the scheduled appointment. If an interpreter fails to arrive for the scheduled appointment, upon notice that the interpreter failed to arrive, the Facility will immediately contact an interpreter service for another qualified interpreter.
- c. Data Collection on Interpreter Response Time and Effectiveness. The Facility will monitor the performance of each qualified interpreter it uses to provide communication to Patients or Companions who are deaf or hard of hearing by monitoring their response time and seeking feedback from the individual who requires the services of the interpreter. As part of the Auxiliary Aid and Service Log, described above, the Facility shall collect and maintain information regarding response times and effectiveness for requests for interpreters.
32. Video Remote Interpreting (VRI). VRI can provide immediate, effective access to interpreting services in a variety of situations including emergencies and unplanned incidents. When using VRI services, the Facility shall ensure that it provides: (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) A sharply delineated image that is large enough to display the interpreter’s face, arms, hands, and fingers, and the participating individual’s face, arms, hands, and fingers, regardless of his or her body position; (3) A clear, audible transmission of voices; and (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI. 28 C.F.R. § 36.303(f). VRI shall not be used when it is not effective due, for example, to a patient’s limited ability to move his or her head, hands or arms; vision or cognitive issues; significant pain; or due to space limitations in the room. If, based on the circumstances, VRI is not providing effective communication after it has been provided or is not available due to circumstances outside of the Facility’s control, VRI shall not be used as a substitute for an on- site interpreter, and an on-site interpreter shall be provided in accordance with the timetable set forth above in which case the determination that VRI is not effective shall count as the completion of assessment for timing purposes. Further, if the VRI device is not functioning properly and Facility’s staff is unable to get the VRI device to function properly within 30 minutes of when it started to malfunction, it will call for an on-site interpreter.
33. Notice to Patients and Companions Who are Deaf or Hard of Hearing. As soon as Facility Personnel have determined that auxiliary aids or services are necessary for effective communication with a Patient (and his or her authorized representative) or Companion who is deaf or hard of hearing, the Facility will inform the Patient or Companion of the current status of efforts being taken to secure such auxiliary aids or services on his or her behalf. The Facility will provide additional updates to the Patient or Companion as necessary until the auxiliary aids or services are secured. Notification

of efforts to secure a qualified interpreter does not lessen a Facility's obligation to provide qualified interpreters in a timely manner as required by this Agreement.

34. Other Means of Communication. Each Facility agrees that between the time an interpreter is requested and the interpreter is provided, Facility Personnel will continue to try to communicate with the Patient or Companion who is deaf or hard of hearing for such purposes and to the same extent as they would have communicated with the person but for the disability, using all available methods of communication, including using sign language pictographs. This provision in no way lessens a Facility's obligation to provide qualified interpreters in a timely manner as required by this Agreement.
35. Restricted Use of Certain Persons to Facilitate Communication.
- a. A Facility shall not require an individual who is deaf or hard of hearing to bring another individual to interpret for him or her. 28 C.F.R. § 36.303(c)(2).
  - b. A Facility shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except –
    - (1) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
    - (2) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. 28 C.F.R. § 36.303(c)(3). Consent of, and for, the accompanying adult to facilitate communication must be provided freely and voluntarily both by the individual with a disability and the accompanying adult. A Facility may not coerce or attempt to persuade another adult to provide effective communication for the individual with a disability. See 28 C.F.R. Part 36, App. A.
  - c. A Facility will not rely on a minor child or another Resident to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available. 28 C.F.R. § 36.303(c)(4). The imminent threat exception in this paragraph and its subparts is not intended to apply to the typical and foreseeable emergency situations that are a part of the normal operations of the Facility's programs, services, and activities. Personnel may rely on an accompanying individual to interpret or facilitate communication under this paragraph only in truly emergency circumstances, i.e., where any delay in providing immediate services to the individual could have life-altering or life-ending consequences. See 28 C.F.R. Part 36, App. A (discussion of 28 C.F.R. § 36.303(c)(3)-(4)). Once the emergency has lifted, personnel should revisit the decision of what auxiliary aids and services are appropriate.
  - d. The Facility will not use its personnel as sign language interpreters unless, as discussed above, the employee's sign language interpreting skills have been evaluated and the Facility can document that the individual is a "qualified interpreter" pursuant to 28 C.F.R. §36.104. Further, the Facility will not use its personnel as sign language interpreters or oral transliterators if the

employee's presence poses a conflict of interest or raises confidentiality and privacy concerns. 28 C.F.R. § 36.303(c)(1)(ii).

36. Individuals May Revise Their Communication Requests. If a Patient or Companion indicates to Facility Personnel that he or she wants an auxiliary aid or service, including an interpreter, after failing to request one on the Deaf or Hard of Hearing Communication Request Form, Facility Personnel shall conduct a new assessment as required above.

**D. Telephones and Related Equipment**

37. Telephones in Patient Rooms. Within sixty (60) days of the Effective Date of this Settlement Agreement:
- a. Portable access technology – defined. Each Facility will make available portable access technology. Such technology, as referred to in this section, shall include TTY's with printout capability, other electronic devices, visual notification devices for incoming telephone calls, volume control telephones, and telephones that are hearing aid compatible. The Facility will ensure that each volume control telephone complies fully with § 704.3 of the 2010 Standards.
  - b. Portable access technology - general obligation. Each Facility will make portable access technology available to Patients and Companions who are deaf or hard of hearing who are admitted to (or are accompanying Patients who are admitted to) rooms equipped with a telephone. In units where patients normally do not have telephones in their rooms, if hearing patients are given access to common area telephones other than the public phones identified in this Settlement Agreement. The Facility will maintain appropriate portable access technology that can be used by Patients and Companions so that such persons have equal access to make outgoing calls and receive incoming calls as do hearing persons.
  - c. Electrical Outlets. Each patient room with a telephone shall have an electrical outlet or power strip within sufficient distance of the telephone connection to facilitate the use of a TTY device or other portable access technology.
  - d. Timeliness. Within sixty (60) days of the Effective Date of this Settlement Agreement, each Facility will make the equipment required by this section available within thirty (30) minutes of a Patient's arrival in a patient room when requested, regardless of the hour of the day or night. The Facility will notify all relevant Personnel of the availability and location of this equipment.
38. Televisions and Caption Decoders. Within sixty (60) days of the Effective Date of this Settlement Agreement, the Facility will ensure that its televisions used in public areas have closed captioning capability and that such captioning is turned on when any Patients and Companions are viewing television in that public area. If requested by a Patient or Companion, Facility Personnel will ensure that any televisions owned by the Patient or Companion and located within a Patient's room have the television's closed captioning feature activated. This provision is not to be interpreted as a requirement that a Facility acquire and provide private televisions for Residents or their companions.
39. Visual Alert Notifications.
- a. Facility Residents who are deaf or hard of hearing should not miss announcements, alarms, or any other auditory information from Facility staff

because of the lack of effective communication of their disability. 2010 ADA Standards for Accessible Design, § 215.

- b. Each Facility shall provide an effective visual notification system that will notify Residents who are deaf or hard of hearing, of nursing facility events. *Id.*
- c. The Facility will provide Residents who are deaf or hard of hearing with an effective visual notification system, which will advise them of an emergency evacuation or other emergency. *Id.*

**E. Effective Communication Policies and Procedures.**

- 40. Within thirty (30) days of the effective date of this Agreement, each Facility will submit for review and approval to the United States its policies and procedures to implement fully the Settlement Agreement. The United States Attorney's Office will not unreasonably withhold approval. Upon receipt of the United States' comments, the Facilities will address all of the United States' concerns, if any, and will resubmit a draft for final approval, if any changes are needed. The adoption of the final policies and procedures will occur within 30 days of the Facilities receipt of approval by the United States.

**F. Notice to Community**

- 41. Policy Statement. Within sixty (60) days of the entry of this Agreement, each Facility shall post and maintain signs of conspicuous size and print in each Facility's admissions area and wherever a Patient's Bill of Rights is required by law to be posted. Such signs shall be to the following effect (and shall include the appropriate contact information):

Sign language and oral interpreters, TTYs, and other auxiliary aids and services are available free of charge to people who are deaf or hard of hearing. For assistance, please contact any [name of Facility] Personnel or the Information Office at \_\_\_\_\_(voice/TTY), room\_\_\_\_\_.

- 42. Website. All of the Facilities will include on their websites the policy statement described above.
- 43. Patient Handbook. Within sixty days of executing this agreement, each Facility will include in its Patient Handbook (or equivalent) and all similar publications a statement to the following effect:

To ensure effective communication with Patients and their Companions who are deaf or hard of hearing, we provide appropriate auxiliary aids and services free of charge, such as: sign language and oral interpreters, video remote interpreting services, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with caption capability or closed caption decoders, and open and closed captioning of most [name of facility] programs.

Please ask your nurse or [name of Facility] Personnel for assistance, or contact the Information Office at\_\_\_\_(voice

or TTY), room\_\_\_\_\_.

Each Facility will also include in its Patient Handbook (or equivalent) a description of its complaint resolution mechanism.

## **G. Notice to Facility Personnel and Physicians**

44. Policy Statement. Each Facility shall publish on its intranet or post on its main notice board a policy statement regarding the Facility's policy for effective communication with persons who are deaf or hard of hearing. This policy statement shall include, but is not limited to, language to the following effect:

If you recognize or have any reason to believe that a Patient or a relative, close friend, or Companion of a Patient is deaf or hard of hearing, you must advise the person that appropriate auxiliary aids and services, such as sign language and oral interpreters, video remote interpreting services, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with captioning or closed caption decoders, and open and closed captioning of most programs, will be provided free of charge when appropriate. If you are the responsible health care provider, you must ensure that such aids and services are provided when appropriate. All other personnel should direct that person to the appropriate ADA Administrator at \_\_\_\_\_ and reachable at \_\_\_\_\_.

Each Facility will deploy this policy on the intranet within thirty (30) days of the Effective Date of this Agreement to all Facility Personnel and to physicians who provide services to Patients at the Facility.

## **H. Training**

45. Training of ADA Administrator. CMC, III and each Facility will provide mandatory training for the ADA Administrator(s) and designees at the Facilities within thirty (30) days of designation as provided in paragraph 24 of this Agreement. Such training will be sufficient in duration and content to train the ADA Administrator(s) in the following areas:
- a. Ensuring that each Facility is in compliance with all aspects of this settlement agreement;
  - b. to promptly identify communication needs of Patients and Companions who are deaf or hard of hearing and which auxiliary aids are effective in different circumstances;
  - c. the mandatory use of the Communication Assessment form designed by the Facilities and approved by the U.S. Attorney's office;
  - d. to secure qualified interpreter services as quickly as practicable when necessary;
  - e. the need to document all communications with sign language interpreting services, including the order and confirmation that the service will be sending an

interpreter at the time, date and location requested;

- f. to encourage clinical staff members to notify the Facility designee at each Facility of Patients and Companions who are deaf or hard of hearing as soon as Patients schedule admissions, tests, rehabilitation, or other health care services at the Facility;
- g. to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that will ensure the effectiveness of the communication);
- h. if a Facility decides to use VRI, how and when to use this service and the appropriate use of VRI;
- i. making and receiving calls through portable access, including TTYs and the relay service; and
- j. The Facility's complaint resolution procedure described in paragraph 26 of this Agreement.

46. Training of Facility Personnel. Each Facility will provide mandatory annual in-service training to all Facility Personnel.

- a. The training will address the needs of Patients and Companions who are deaf or hard of hearing and will include the following objectives:
  - i. Ensuring Facility Personnel are complying with the terms of this Settlement Agreement;
  - ii. to promptly identify communication needs of Patients and Companions who are deaf or hard of hearing;
  - iii. the mandatory use of the approved Communication Assessment form referenced above;
  - iv. to secure qualified interpreter services or video remote interpreting services as quickly as possible when necessary;
  - v. the need to document all communications with sign language interpreting services, including the order and confirmation that the service will be sending an interpreter at the time, date and location requested; and to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication).
- b. Such training must be provided within ninety (90) days of the Effective Date of this Agreement.
- c. New employees must be trained within thirty (30) days of their hire. A screening of a video of the original training will suffice to meet this obligation.

47. Training of Telephone Operators. All Facility Personnel who receive incoming telephone calls from the public will receive instructions by the Facility on using TTYs or

relay services to make, receive, and transfer telephone calls and will receive training generally on the existence in the Facility of a designated individuals and CMC III's ADA Administrator, and the complaint resolution process, both as described above. Such training must be provided within 90 days of the Effective Date of this Agreement and will be conducted annually thereafter.

48. Training Attendance Sheets. Each Facility will maintain in electronic form for the duration of this Agreement, confirmation of training as required above, which will include the names, signature, and respective job titles of the attendees, as well as the date and time of the training session.
49. Notice to Active Medical Staff. In addition to providing the training of Facility Personnel required above, each Facility will create and send an email blast advising active healthcare staff of its policy on the communication needs of Patients or Companions who are deaf or hard of hearing and will invite physicians with active medical staff privileges at the Facility to complete ADA specific training. This email will direct active healthcare staff to the Facility's web page which will include: (1) the Facility's Policy Statement on addressing the needs of individuals who are deaf or hard of hearing; and (2) a request that active healthcare staff notify the Facility of Patients and Companions who are deaf or hard of hearing as soon as they schedule admissions, tests, or other health care services at the hospital.
50. Use of Outside Trainer. The Facility will use an independent agency or group to conduct the initial trainings described in this Agreement. The independent agency shall be subject to the approval of the U.S. Attorney's Office. For the required annual trainings thereafter, the Facility may conduct trainings without the assistance of an independent group, but must sufficiently update and/or create training materials in order to ensure the trainings include any new developments to the ADA and its requirements. The Facility may also videotape the initial trainings for annual trainings as long as the Facility also ensures that it supplements such training with any new developments to the ADA and its requirements.

## **I. Reporting, Monitoring, and Violations**

51. Training Materials. Within sixty (60) days of the effective date of this Agreement, the Facilities will provide the United States with a copy of all training materials that it plans to use to train its staff for its review. Additionally, within 60 days of receiving the United States' approval of the training materials, the Facilities will provide training attendance sheets required above, and photographs of the notices posted in its offices pursuant to this Agreement.
52. Compliance Reports. Beginning six months after the Effective Date of this Agreement and every six months thereafter for the entire duration of the Agreement, each Facility will provide a written report ("Compliance Report") to the U.S. Attorney's Office regarding the status of its compliance with this Agreement. The Compliance Report will include data relevant to the Agreement, including but not limited to:
  - a. the Auxiliary Aid and Service Log; and
  - b. the number of complaints received by each Facility from Patients and Companions who are deaf or hard of hearing regarding auxiliary aids and services and/or effective communication, and the resolution of such

complaints including any supporting documents, as described above.

The Facilities will maintain records to document the information contained in the Compliance Reports and will make them available, upon request, to the U.S. Attorney's Office.

53. Complaints. During the term of this Agreement, the Facilities or CMC, III will notify the U.S. Attorney's Office if any person files a lawsuit, complaint or formal charge with a state or federal agency, alleging that a Facility failed to provide auxiliary aids and services to Patients or Companions who are deaf or hard of hearing, or otherwise failed to provide effective communication with such Patients or Companions. Such notification must be provided in writing via certified mail within twenty (20) days of the date a Facility receives notice of the allegation and will include, at a minimum, the nature of the allegation, the name of the person making the allegation, and any documentation possessed by the Facility relevant to the allegation. The Facility will reference this provision of the Agreement in the notification to the U.S. Attorney's Office.

**J. Compensatory Relief for Complainants and Release**

54. Within thirty (30) days after receiving the complainant's signed release (a blank release form is at Exhibit C), CMC III will send a check in the amount of twenty-thousand dollars (\$20,000) made out to the aggrieved individual, whose name will be provided by the United States. Within sixty days after receiving the complaint's signed release, CMC III will send a second check for twenty thousand dollars made out to the aggrieved individual. These checks are compensation to the aggrieved party pursuant to 42 U.S.C. § 12188(b)(2)(B), for the effects of the alleged discrimination suffered as described in paragraph 2 above. The checks shall be mailed to:

Financial Litigation Unit  
United States Attorney's Office for  
Eastern District of Virginia  
101 W. Main Street #8000  
Norfolk, VA 23510

A copy of the checks shall be sent to:

Steven Gordon  
Assistant United States Attorney  
2100 Jamieson Avenue  
Alexandria, VA 22314  
steve.gordon@usdoj.gov

**K. Payment of Civil Penalty to the United States**

55. Within Ninety (90) days of the Effective Date of this Agreement, the CMC III will commence payment of \$50,000.00 to the United States of America. The payments will be in \$10,000 increments over the five-month period commencing 90 days after the Effective Date of this Agreement. These payments are pursuant to 42 U.S.C. §12188(b)(2)(C). The checks shall be mailed to:

Financial Litigation Unit  
United States Attorney's Office  
for Eastern District of Virginia

101 W. Main Street #8000  
Norfolk, VA 23510

A copy of each of the checks shall be sent to:

Steven Gordon  
Assistant United States Attorney  
2100 Jamieson Avenue  
Alexandria, VA 22314  
steve.gordon@usdoj.gov

**L. Enforcement and Miscellaneous**

56. This Agreement will be in effect for three (3) years from the Effective Date. At the discretion of the United States, the agreement may terminate after two (2) years if CMC III and the Facilities are in compliance with all of its provisions and the compliance appears durable.
57. In consideration of the terms of this Agreement as set forth above, the Attorney General agrees to refrain from undertaking further investigation or from filing a civil suit under title III of the ADA related to the allegations in paragraph 2, except as provided below. 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 the Facilities 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.
58. The United States may review compliance with this Agreement at any time and can enforce this Agreement if the United States believes that it or the requirements thereof has been materially violated by instituting a civil action in the U.S. District Court. If the United States believes that this Agreement or the requirements thereof have been materially violated, it will raise its claim(s) in writing to CMC III and, at the United States' discretion, to the affected Facility and the parties will attempt to resolve the concern(s) in good faith. The United States will allow any Facility thirty (30) days from the date it notifies a Facility of any breach of this Agreement to cure said breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.
59. This Agreement and the attachments hereto constitute the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, shall be enforceable. This Agreement is limited to the facts set forth herein and does not purport to remedy any other potential violations of the ADA or any other federal law.
60. This Agreement is final and binding on the parties and any transferee or successor in interest of a Facility. A Facility shall inform any transferee or successor in interest of this Agreement prior to any transfer of the operational control of the Facility. Any failure by the transferee or successor in interest to thereafter consent to, accept and/or perform the terms and conditions of this Agreement shall not be deemed a breach of the Agreement by the Facilities or CMC, III.
61. Failure by the United States to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

62. The effective date of this Settlement Agreement is the date of the last signature below.
63. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Electronically transmitted signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**FOR THE UNITED STATES:**

JESSICA D. ABER  
United States Attorney  
Eastern District of Virginia

By:



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STEVEN GORDON  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of Virginia  
Justin W. Williams U.S. Attorney's Bldg.  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
Telephone: 703-299-3817  
[steve.gordon@usdoj.gov](mailto:steve.gordon@usdoj.gov)

DATED: 8/17/23

For CONSULATE MANAGEMENT COMPANY III, LLC and the facilities that have management contracts with CMC III:

/s/

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Jeron Walker  
Chief Executive Officer  
Consulate Management Company III, LLC

DATED: 8/17/23