

AGREEMENT BETWEEN
THE UNITED STATES AND THE
STATE OF NORTH CAROLINA
("AGREEMENT")

I. INTRODUCTION

1. On July 15, 2020, the United States began an investigation into the North Carolina Department of Adult Correction (NCDAC)¹ pursuant to the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc. Throughout the United States' investigation, NCDAC leadership and personnel have cooperated and facilitated remote interviews with staff and incarcerated persons, and document review.
2. NCDAC is committed to protecting the rights of individuals in NCDAC custody to participate in group religious worship and access religious diets consistent with RLUIPA.
3. NCDAC includes all adult correctional facilities operated by or on behalf of the State of North Carolina.

II. CHANGES TO POLICIES AND PRACTICES

4. NCDAC will revise its Religious Practices Operational Manual and any applicable statewide, regional, and facility-based policies and procedures to require that:
 - a. All religious groups with two or more adherents in a facility and within a given security level are afforded the opportunity for group worship and activities. If a facility cannot accommodate a particular meeting date or time because holding the particular service or activity would constitute a threat to the safety, security, or good order of the facility, the facility must document in writing the reasons for suspending the service.
 - i. The facility's warden will be responsible for reporting each occasion when the facility was unable to accommodate a religious group's meeting and justification for the inability to the relevant Regional Clinical Chaplain.
 - ii. On a monthly schedule, the Regional Clinical Chaplain will convey the month's data to the Director of Chaplaincy Services, who will maintain the

¹ At the time the United States began its investigation, NCDAC operated as a Division within the Department of Public Safety. Effective January 1, 2023, NCDAC began operating instead as an independent cabinet-level department.

monthly reports for the duration of this Agreement.

- b. NCDAC will not require an “offender faith helper” as a prerequisite for any religious group to gather for congregate activities or worship. An offender faith helper is an incarcerated person selected by NCDAC staff through an application and qualification process and designated to regularly conduct, lead, or facilitate worship or other religious services or programs.
 - i. Groups of two or more who gather for worship may request a faith helper, chaplain, or community volunteer to facilitate or assist. The faith helper is a resource for religious groups when a chaplain or community volunteer is unavailable. Nothing in this subparagraph is intended to create a faith helper requirement as a prerequisite to any religious gathering for congregate worship or other activity. In the absence of a chaplain, community volunteer, or faith helper, religious groups may engage in group worship or other activity without their assistance.
 - ii. Any NCDAC recognized faith group may have an approved offender faith helper who may conduct, lead, or facilitate worship or other religious services or programs in the absence of a NCDAC chaplain or community volunteer.
 - iii. Offender faith helpers must be approved by NCDAC. Assessment of whether to approve each offender faith helper will be based solely on an evaluation of safety, security, disciplinary history, and the individual’s exhibited prosocial behavior and positive engagement within the facility.
- 5. Consistent with NCDAC’s stated commitment in No. 2 above, during the course of the investigation, NCDAC voluntarily made changes to kosher menus, including:
 - a. Selecting a vendor to provide prepackaged kosher meals to offenders who request a kosher meal plan.
- 6. NCDAC will develop and implement a policy that sets out a procedure for incarcerated persons who celebrate the holiday of Passover to request and be provided with food certified as kosher-for-Passover for the eight days each year that constitute the holiday of Passover.
 - a. Certified meals will be provided for the dinner meal during the evening before the first day of Passover, then three meals per day through dinner on the eighth day of Passover.

- b. Kosher-for-Passover foods will include canned, bottled, and packaged foods that are marked with a kosher symbol and state that they are kosher for Passover. Kosher-for-Passover foods will also include fruits and vegetables.
 - c. Should NCDAC choose to provide each meal to those incarcerated persons requiring kosher-for-Passover food as self-contained individual meals, NCDAC will serve prepackaged meals that have been marked with a kosher symbol and state that they are kosher for Passover.
 - d. NCDAC will provide people who observe Passover with the opportunity to participate in two Seder ritual observances during each yearly celebration of Passover (one Seder ritual observance beginning at sundown the first day of the holiday and one Seder ritual observance at sundown on the next day of the holiday). For each Seder, in addition to any other necessary ritual items, NCDAC will provide a “Seder Plate” and the ritual foods necessary for each incarcerated person in attendance to participate. The ritual foods of the Seder do not constitute a meal and will not replace the evening, kosher-for-Passover meal that NCDAC facilities serve during the evenings when the Seder ritual is performed.
 - e. If NCDAC sets a procedure and deadline for signing up to participate in the Passover diet and Seders, NCDAC will provide notice to all incarcerated persons of the deadline and at least 30 days to sign up. NCDAC will establish a process for providing access to Passover diet and Seders to any people who are newly admitted to NCDAC custody or transferred between facilities after the sign-up period. NCDAC will also seek to accommodate other incarcerated people who have a reasonable basis for failing to sign up during the sign-up period.
7. NCDAC will revise other policies, facility-level procedures, memoranda, and guidance documents to conform, and expressly not to conflict, with the changes to policy described in paragraphs 4-6 above and will provide them to the United States for review and approval. The United States will review all documents revised according to this paragraph and respond to NCDAC within 30 days, either approving the revisions or providing NCDAC with additional revisions needed to bring the documents into compliance with the requirements of this Agreement. Document revisions will not be considered final without approval of the United States.

8. NCDAC will finalize revisions to policy and procedures in accordance with paragraphs 4-6 above and provide copies of the final approved documents to the United States within 90 days of the effective date of this Agreement.
9. NCDAC will provide notice to all incarcerated persons of the revised policy and procedures developed pursuant to paragraphs 4-6 within 60 days after the policy and procedures are finalized.

III. TRAINING

10. In order for NCDAC to ensure that staff fully and consistently implement the policy and practice changes described in Section II, NCDAC will:
 - a. Ensure that all NCDAC correctional facilities implement the revised Policy Directives, facility-level procedures, memoranda, and guidance documents described in Section II.
 - b. Draft and promulgate an official memorandum informing facilities of the changes to policy, operating procedures, and practices discussed in Section II of this Agreement. The memorandum will be sent to all Wardens, Deputy Wardens, the Director of Chaplaincy Services, Regional Chaplains, state-funded facility chaplains and volunteer and community-funded chaplains, Program Staff, and Correctional Officers (including any rank of security staff), and all food service staff at all facilities within 30 days after the policy and procedures are finalized as required by paragraph 8.
 - c. Train all Deputy Wardens, Program Staff, Correctional Officers, and Chaplains, including state-funded facility chaplains and volunteer and community-funded chaplains, regarding the changes to policy, operating procedures, and practices discussed in Section II of this Agreement within 120 days after the policy and procedures are finalized as required by paragraph 8.
 - d. Train all Dietitians, Food Service Managers and food service staff who prepare the religious diet of the changes required to select, purchase, and serve kosher-for-Passover foods and meals as required by Section II.
11. NCDAC will provide training materials regarding the changes to policy, operating procedures, and practices discussed in Section II of this Agreement to the United States for review, comment, and approval at least 30 days before any training programs. The

United States will review all training materials and respond to NCDAC within 20 days, either approving the training or providing NCDAC with comments or proposed revisions to the training. Training materials related to this Agreement shall not be considered final without the approval of the United States.

IV. COOPERATION AND REVIEW

12. The United States and NCDAC will review the effects of the changes to policy, operating procedures and practices discussed in Section II of this Agreement during the term of this Agreement.
13. NCDAC may consult with the United States if questions or challenges arise affecting implementation of this Agreement.
14. NCDAC will provide the United States with the following every six months during the pendency of the Agreement:
 - Step 3 grievances by incarcerated persons related to religious practices;
 - Monthly religious services and activities calendars, by facility;
 - Kosher menu accommodation request forms (DC 883 or its equivalent) and the response to each request;
 - All requests for group religious services and activities;
 - All written responses to requests for group religious services and activities;
 - All cancellations of group religious services and activities and documentation prepared as required by paragraph 4, relating to a facility's decision not to accommodate a group religious service or activity.
 - Documentation of any cancellations of group religious services;
 - Any NCDAC meeting minutes related to a request for group religious services and activities;
 - All incarcerated persons' requests for kosher-for-Passover meals;
 - Any NCDAC denials of requests for kosher-for-Passover meals;
 - All incarcerated persons' requests to attend a Seder, or for a facility to provide a Seder;
 - For all meals that are being provided as an accommodation for incarcerated persons whom NCDAC has approved to receive kosher-for Passover meals:

menus, sources of self-contained meals and individual food items, and documentation of the procurement process for self-contained meals, or detailed description of food preparation if meals are prepared within NCDAC facility; and

- Any NCDAC meeting minutes related to requests for kosher-for-Passover meals.

15. For purposes of assessing compliance with this Agreement, the United States and its consultants will have access to NCDAC staff, facilities, documents, and incarcerated persons, including site visits, to conduct staff and prisoner interviews. The United States and its consultants will cooperate with NCDAC to access staff, facilities, documents, and incarcerated persons in a reasonable manner. The United States will provide NCDAC with reasonable notice before requesting to access NCDAC facilities.
16. The United States will provide NCDAC with reasonable notice of a request for copies of documents other than those identified in this Agreement. Upon such request, NCDAC will provide electronic copies in a timely manner as agreed upon by the Parties.
17. NCDAC has designated counsel within the Office of the General Counsel to serve as the Agreement Coordinator. The Agreement Coordinator will serve as a liaison between NCDAC and the United States, and will assist with NCDAC's implementation of this Agreement. The Agreement Coordinator will prepare a semi-annual report that summarizes NCDAC's progress toward compliance with paragraphs 4 – 11 of this Agreement. The Agreement Coordinator's report will be submitted to the United States, at the same time as the document and reports listed in paragraph 14, above.

V. ENFORCEMENT AND TERMINATION

18. Based on the agreement of the parties, the United States will not file a complaint or otherwise initiate litigation against NCDAC for any of the matters addressed in the Agreement. The United States is not prohibited from filing a complaint on the matters addressed in the Agreement if NCDAC fails to implement and substantially comply with the policy changes addressed in this Agreement.
19. Before initiating litigation, the United States will provide NCDAC notice of any asserted material breach in writing, and shall engage in good-faith discussions in an effort to resolve the dispute. NCDAC will have 30 days from the date of the notice to cure the asserted

material breach. The notice will be sent by email to the Office of the General Counsel for NCDAC.

20. This Agreement shall terminate two (2) years from the Effective Date if the United States has determined that NCDAC has attained substantial compliance with all substantive provisions and sustained that compliance for one year. If NCDAC has not sustained substantial compliance of any of the substantive provisions for a minimum period of one year, then this agreement will be extended until the United States agrees that all substantive provisions have been achieved and sustained for a period of one year. At that time, this agreement will terminate and monitoring will end. NCDAC may seek early termination of any full substantive section of this Agreement with which it has attained and maintained substantial compliance for at least one year. The burden will be on NCDAC to demonstrate by a preponderance of the evidence that NCDAC has attained and maintained its substantial compliance as to that section for at least one year. "Substantial compliance" means that NCDAC has achieved compliance with the material components and has met the goals of the relevant provision of the Agreement. Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained non-compliance will not constitute substantial compliance.
21. The Parties agree to work collaboratively to achieve the purpose of this Agreement. In the event of any dispute over the language, requirements, or construction of this Agreement, the Parties agree to meet and confer in an effort to achieve a mutually agreeable resolution.
22. Any modification of this Agreement will be executed in writing by the Parties before becoming effective.

VI. GENERAL PROVISIONS

23. This Agreement is enforceable only by the Parties (State of North Carolina and the United States). No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement.
24. The "Effective Date" of this Agreement, as referenced herein, is the date upon which

representatives from both Parties have signed this Agreement.

25. The Parties agree that, as of the Effective Date of this Agreement, litigation is not reasonably foreseeable concerning the matters described in this Agreement. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in this Agreement, the Party is no longer required to maintain such a litigation hold.
26. This Agreement is applicable to, and binding upon, the Parties, their officers, agents, employees, assigns, and their successors in office.
27. NCDAC is committed to ensuring no person is retaliated against because that person assisted or provided information, or participated in any other manner in the United States' investigation or enforcement activities related to this Agreement. NCDAC will timely and thoroughly investigate any allegations of retaliation in violation of this Agreement and take any necessary corrective actions identified through such investigations.
28. Failure by either Party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein will not be construed as a waiver, including of its right to enforce other deadlines and provisions of this Agreement.
29. The Parties will promptly notify each other of any court or administrative challenge to this Agreement or any portion thereof.
30. The Parties represent and acknowledge this Agreement is the result of extensive, thorough, and good faith negotiations. The Parties further represent and acknowledge that the terms of this Agreement have been voluntarily accepted, after consultation with counsel, for the purpose of making a full and final compromise and settlement of the allegations set forth in the United States' investigation notice letter dated July 15, 2020, and the suit notice letter dated August 29, 2023.
31. Each Party to this Agreement represents and warrants that the person who has signed this Agreement on behalf of a Party is duly authorized to enter into this Agreement and to bind that Party to the terms and conditions of this Agreement.
32. This Agreement may be executed in counterparts, each of which will be deemed an original, and the counterparts will together constitute one and the same Agreement, notwithstanding that each Party is not a signatory to the original or the same counterpart.
33. The performance of this Agreement will begin immediately upon the Effective Date.
34. This Agreement constitutes the entire integrated Agreement of the Parties. No prior or

contemporaneous communications, oral or written, will be relevant or admissible for the purposes of determining the meaning of any provision herein in any litigation or any other proceeding.

35. The Parties agree that this Agreement, and information about this Agreement and the related investigation, is a public document and may be disclosed to the public.


FOR THE UNITED STATES

KRISTEN CLARKE
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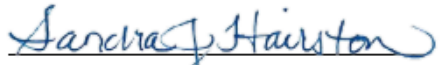
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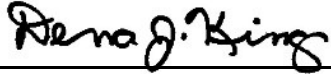

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Agreed to this 12th day of August, 2024.

FOR THE NORTH CAROLINA DEPARTMENT OF ADULT CORRECTION

/s/ Jodi Harrison
General Counsel

Agreed to this 12th day of August, 2024.