

**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
WISCONSIN DEPARTMENT OF CORRECTIONS  
UNDER THE AMERICANS WITH DISABILITIES ACT  
DJ # 204-85-131**

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**I. BACKGROUND & JURISDICTION**

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and the Wisconsin Department of Corrections (“WDOC”).
2. This Agreement resolves the United States’ investigation of WDOC for alleged discrimination against individuals with disabilities under Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131-12134 (“Title II”), and its implementing regulation, 28 C.F.R. Part 35.
3. The United States initiated its investigation after receiving complaints from incarcerated individuals at the Felmers O. Chaney Correctional Center (“FCCC”), alleging that WDOC failed to provide auxiliary aids and services necessary to ensure effective communication to incarcerated individuals with hearing disabilities. The United States also received complaints from incarcerated individuals at Racine Correctional Institution (“RCI”) that WDOC fails to provide effective communication for incarcerated individuals with hearing disabilities and thereby denied them participation in educational, vocational, religious, and other programs on the basis of their disabilities. They further allege that WDOC failed to timely repair and return hearing aids to incarcerated individuals, thereby preventing them from participating fully in counseling, educational, recreational, religious, and social programs. The United States also received a complaint from an incarcerated individual at Taycheedah Correctional Facility (“TCI”) alleging that WDOC failed to provide access to auxiliary aids and services to ensure effective communication. The United States’ investigation included document review and interviews with WDOC incarcerated individuals at FCCC, RCI and TCI and interviews and discussions with personnel, and administrators at FCCC and RCI.
4. The United States conducted an investigation of the programs, services, activities, and facilities of WDOC at FCCC, RCI, and TCI.
5. The ADA applies to WDOC because it is a “public entity” as defined by Title II of the ADA. 42 U.S.C. § 12131(1). Title II prohibits discrimination against qualified individuals with disabilities on the basis of disability in the “services, programs, or activities of a public entity.” 42 U.S.C. § 12132.

6. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this matter without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement.
7. In consideration of, and consistent with, the terms of this Agreement, the United States Attorney General agrees to refrain from filing a civil suit in this matter, except as provided in the section entitled “Implementation and Enforcement.”

## **II. DEFINITIONS**

8. **“ADA Compliance Director”** means an employee of WDOC who has responsibility and authority to ensure that: WDOC facilities are readily accessible to and usable by incarcerated individuals with disabilities; and WDOC provides incarcerated individuals with disabilities equal opportunity to participate in and benefit from its services, programs, and activities, to include the provision of appropriate auxiliary aids and services to ensure effective communication; and that incarcerated individuals’ requests for accommodations, complaints, and grievances are addressed and resolved as set forth in this Agreement.
9. **“Auxiliary aids and services”** means those aids and services as set forth in 28 C.F.R. § 35.104, and accordingly, include qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; computer-aided real-time transcription services (CART); 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, hard of hearing, or who have a speech disability.
10. **“Communication Plan”** means the individualized description of accommodations, including appropriate auxiliary aids and services that will be provided to each incarcerated individual with hearing disabilities to ensure effective communication and access to programs, services, facilities, and activities. The Communication Plan is based on information collected at Intake, and/or from the Secondary Hearing Assessment. It is developed in coordination with the ADA Compliance Director and the Facility ADA Coordinator.
11. **“Correctional Facility”** means any institution or correctional center or facility, community corrections location, or resource center where WDOC operates, supervises, controls, manages, or contracts to receive services for incarcerated individuals who are serving the confinement portion of their sentence in WDOC’s physical custody, or who are subject to reincarceration during extended supervision.

12. **“Critical Interactions”** means those interactions in which the risk of miscommunication or misunderstanding are high, and the consequences of miscommunications or misunderstandings may have serious repercussions for incarcerated individuals with hearing disabilities. Examples of Critical Interactions at WDOC facilities include, but are not limited to: medical care treatment and appointments, including dental, vision, audiological, mental health care and referral appointments; individual therapy and group counseling sessions; disciplinary matters, including investigations and disciplinary hearings; interviews with Internal Affairs or investigators; interviews or proceedings regarding protective custody; pre-release meetings and programs, including pre-release to extended supervision; grievance hearings; educational programs, specific training sessions and general educational opportunities and testing that include a verbal or aural component; vocational programs that include a verbal or aural component; transfer and classification meetings; religious services; prison job responsibilities; and meetings with the ADA Compliance Director or the Facility ADA Coordinator to discuss what auxiliary aids and services to include in the incarcerated individual’s Communication Plan.
13. **“Effective Communication”** means communication with individuals who have hearing disabilities that is as effective as communication with others. Effective communication is achieved by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs, or activities of a public entity.
14. **“Facility ADA Coordinator”** means the designated person at each WDOC Correctional Facility with the responsibility and authority to develop an incarcerated individual’s Communication Plan to provide incarcerated individuals with disabilities the auxiliary aids and services necessary to ensure effective communication and access to programs, services, facilities, and activities.
15. **“Intake Hearing Screening”** means the initial inquiry, conducted during an incarcerated individual’s Intake, regarding whether an incarcerated individual may have a hearing disability. The Intake Hearing Screening forms the basis for follow up by WDOC if a hearing disability is identified, and, where a hearing disability is identified, triggers the development of an incarcerated individual’s Communication Plan. If a hearing disability is suspected, but not identified, during the Intake Hearing Screening, a Secondary Hearing Assessment may be ordered to confirm or rule out a hearing disability.
16. **“Intake”** means the process from the point in time at which an incarcerated individual is taken into the custody of WDOC at a WDOC Correctional Facility, through the point in time the incarcerated individual is received at, and assigned to, a unit within a maintaining WDOC Correctional Facility. Intake includes orientation, medical and psychological assessment, educational testing and evaluation, and classification and housing assignment. This term also applies to any similar process for short-term detainees.
17. **“Incarcerated individual with Hearing Disabilities”** means an incarcerated individual who, if unaided by hearing aids or any medical device, is unable to hear in either one or

both ears to a sufficient degree to be able to understand the spoken word. Throughout this document, the term “incarcerated individuals with hearing disabilities” is used to refer to individuals who are deaf or hard of hearing.

18. **“Personnel”** means all WDOC employees and contractors who are responsible for the custody, oversight, and care of incarcerated individuals in WDOC facilities.
19. **“Qualified Individual with a Disability”** means “an individual with a disability who with or without reasonable modifications to policies, practices, or procedures, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. § 12131(2). *See also* 28 C.F.R. § 35.108.
20. **“Qualified Interpreter”** means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, given the individual with hearing disabilities’ language, skills and education. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. *See* 28 C.F.R. § 35.104, Pt. 35, App. A. “Qualified Interpreter.” For the purposed of this Agreement, a Certified Deaf Interpreter is also considered a qualified interpreter.
21. **“Secondary Hearing Assessment”** means a hearing assessment to (1) determine whether an incarcerated individual has a hearing disability, (2) obtain additional information on the extent of an incarcerated individual’s hearing disability, and/or (3) help determine what auxiliary aids and services are required to ensure effective communication. It may be ordered either after the initial Intake Hearing Screening, or when an incarcerated individual presents with a suspected hearing disability during incarceration. A Secondary Hearing Screening can be ordered at any time during incarceration and may require a third-party provider.
22. **“Text Telephone/Teletype Terminal/Teletypewriter” (TTY)** means a device that allows individuals with hearing disabilities to use a telephone to type and send text messages.
23. **“Telecommunications Relay Service” (TRS)** means an operator service that allows people with hearing disabilities to place calls to standard telephone users via keyboard or assistive device.
24. **“Videophone”** means a telephone with a camera and screen for visual, real-time communication.
25. **“Video Relay Service” (VRS)** means a telephone service using interpreters connected to callers by video hook-up that is designed to provide persons with hearing disabilities who use American Sign Language with telephone services that are functionally equivalent to those provided to users who are hearing.

26. **“Video Remote Interpreting”** (VRI) means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering a high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in 28 C.F.R. § 35.160(d).

### III. GENERAL

27. **Nondiscrimination Based on Disability.** WDOC and its officers, employees, agents, successors, and assigns, will ensure that individuals with hearing disabilities are not discriminated against on the basis of disability in WDOC’s services, programs, and activities, and will comply with all requirements of Title II of the ADA, 42 U.S.C. §§ 12131–12134, and its implementing regulation, 28 C.F.R. Part 35. WDOC’s obligations under the ADA include, but are not limited to, the following:
- a. WDOC will not discriminate against or exclude qualified incarcerated individuals with disabilities from participation in, or deny such incarcerated individuals the benefits of, WDOC’s services, programs, or activities, including, but not limited to, housing, recreation, commissary, dayrooms, telephones, regular meals, education, postsecondary education, and work and study release, on the basis of an incarcerated individual’s disability, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a), (b)(1)(i);
  - b. WDOC will not, on the basis of disability, deny qualified incarcerated individuals with hearing disabilities the opportunity to participate in or benefit from WDOC’s aids, benefits, or services, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(i).
  - c. WDOC will not, on the basis of disability, provide aids, benefits, or services to qualified incarcerated individuals with hearing disabilities that are unequal to, or different or separate from, those afforded to incarcerated individuals who do not have disabilities, unless different or separate services are necessary to provide such incarcerated individuals with disabilities benefits, aids, or services that are as effective as those provided to others, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(ii), (iv);
  - d. WDOC will reasonably modify its policies, practices, and procedures where necessary to avoid discrimination on the basis of disability unless WDOC demonstrates that such modifications would fundamentally alter the nature of its services, programs, or activities, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(7).
  - e. WDOC will not impose or apply eligibility criteria that screen out or tend to screen out incarcerated individuals with disabilities from fully and equally enjoying WDOC’s services, programs, or activities, unless WDOC demonstrates that such criteria are necessary for its provision of those services, programs, or activities, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(8); and

**IV. EFFECTIVE COMMUNICATION AND  
AUXILIARY AIDS AND SERVICES**

29. WDOC will provide appropriate auxiliary aids and services to ensure effective communication and the equal opportunity to participate in and enjoy the benefits of WDOC's services, programs, and activities. This includes all programs, services, and activities provided by entities pursuant to a contract with WDOC, such as third-party vendors, contractors, or state funded entities such as community colleges.
30. All auxiliary aids and services required by this Agreement will be provided promptly and free of charge to incarcerated individuals with hearing disabilities. In determining what types of auxiliary aids and services are necessary, WDOC will give primary consideration to an incarcerated individual's request for a particular auxiliary aid or service and will honor that request unless WDOC can demonstrate that another equally effective means of communication exists or unless providing the requested auxiliary aid or service would fundamentally alter the nature of the program, service, or activity, or result in an undue financial or administrative burden. 28 C.F.R. §§ 35.160, 35.164. If a determination is made by WDOC that a particular request would fundamentally alter the service, program, or activity, or would result in an undue financial or administrative burden, WDOC will provide an appropriate alternative auxiliary aid or service to accommodate the incarcerated individual. WDOC will create a written record of any such denial documenting the reasons for the denial with specificity, and identify the appropriate alternative auxiliary aid or service provided in lieu of the original request. Such records will be maintained for the duration of this Agreement.
31. WDOC will provide and maintain written instructions for incarcerated individuals and WDOC personnel that describe the proper procedures for when and how to request auxiliary aids and services and the proper operation for each type of auxiliary aid or service.

**Hearing Aids, Cochlear Processor Devices, and Batteries**

32. Consistent with its custodial role, WDOC will provide the appropriate type and number of hearing aids and cochlear processor devices, free of charge, to incarcerated individuals who have been prescribed hearing aid(s) or who have cochlear implants. Standard hearing aids and cochlear processor devices will be provided to incarcerated individuals requesting them as soon as reasonably possible after a request is received from the incarcerated individual or the incarcerated individual's treating health care provider. WDOC will place the order through the Health Services Unit (HSU) for the hearing aids and cochlear processor devices within 2 business days of receipt of the request. A copy of the order will be provided to the Facility ADA Coordinator for tracking purposes. Upon receipt of the hearing aids or cochlear processor devices at the Correctional Facility, WDOC will provide the item to the incarcerated individual within 3 business days. If more than 14 days elapses between ordering and providing the hearing aids or cochlear processor devices, WDOC will supply a temporary means of effective communication, investigate the delay, and provide the incarcerated individual with an update on the status of the order.

33. WDOC will provide the appropriate type and number of hearing aid and cochlear processor replacement batteries or battery chargers, free of charge, to incarcerated individuals who have been prescribed hearing aid(s) or who have cochlear implants. Replacement batteries will be provided to incarcerated individuals requesting them as soon as reasonably possible. The WDOC will place the order for the replacement through the Health Services Unit (HSU) within 2 business days of receipt of the request. A copy of the order will be provided to the Facility ADA Coordinator for tracking purposes. Upon receipt of the replacement batteries or battery chargers at the Correctional Facility, WDOC will provide the replacement item to the incarcerated individual within 3 business days. If more than 14 days elapses between ordering and providing the replacement batteries, battery chargers, or cochlear processor devices, WDOC will provide a temporary means of effective communication, investigate the delay, and provide the incarcerated individual with an update on the status of the order.
34. When an incarcerated individual's hearing aid, cochlear processor, or other such device is inoperable or malfunctioning, WDOC will send the device to an appropriate repair company as soon as reasonably possible. The WDOC will make every reasonable effort to send the device to the appropriate repair company within 2 business days after an individual health services request (form DOC-3035) is received from the individual. A temporary means of effective communication will be provided to the individual for use during the time that the original hearing aid is out for repairs. WDOC will inform the individual when the device was sent for repair and when it is expected to be returned by the repair company. WDOC will provide the individual with any written documentation provided by the repair company regarding the vendor used, the date of the repair, and the specific repairs performed.
35. If the incarcerated individual's hearing loss warrants clinical reassessment, WDOC will ensure the individual retains the original device (if functional), and WDOC will schedule an appointment for evaluation as soon as reasonably possible based on the availability of the third-party provider. WDOC will take additional appropriate steps to ensure effective communication with the incarcerated individual during any period in which the incarcerated individual is without their hearing aid, cochlear processor, or other such device.

#### **Interpreting Service Agencies**

36. WDOC will maintain contracts with one or more interpreter service agencies to ensure that qualified interpreting services, including VRI, are available, 24 hours per day and 7 days a week. Alternatively, WDOC may make other appropriate arrangements such as contracting directly with, or hiring, qualified interpreters on a fee for service basis. Documentation of interpreter services contracts will be provided in the compliance reports required in "Monitoring and Reporting Requirements" in this Agreement.

#### **Use of Others to Facilitate Communication**

37. WDOC will not use another incarcerated individual to interpret for an individual who has a hearing disability unless (1) the individual with a disability specifically requests such

assistance from another incarcerated individual, the incarcerated individual agrees, and reliance on that incarcerated individual is appropriate under the circumstances; or (2) in an emergency involving an imminent threat to the safety or welfare of the individual or the public where there is no interpreter available. 28 C.F.R. § 35.160(c).

38. Except for WDOC personnel hired specifically to serve as qualified sign language interpreters, WDOC will not use its personnel to serve as sign language interpreters except in appropriate circumstances, such as: informal communications, providing basic information to an incarcerated individual with a hearing disability while waiting for a qualified interpreter to arrive, or in an emergency involving an imminent threat to the safety or welfare of the individual or the public where there is no qualified interpreter available. 28 C.F.R. § 35.160(c).

### **Video Remote Interpreting (VRI)**

39. To the extent WDOC utilizes VRI to provide effective communication, WDOC will provide access to, and have available for emergency situations and otherwise as deemed necessary by WDOC, on-demand video remote interpreting. WDOC will ensure that the VRI provides:
- a. 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.
  - b. 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.
  - c. A clear, audible transmission of voices; and
  - d. Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.
40. WDOC will require that the VRI provider(s) use only Qualified Interpreters. WDOC will ensure that at least one of the VRI systems is housed in WDOC Correctional Facilities at which incarcerated individuals with hearing disabilities are incarcerated.
41. When use of a qualified interpreter is necessary to provide effective communication for interactions, on-site interpreter services are required when VRI is not available or the use of VRI is not feasible or does not result in effective communication, such as where the incarcerated individual is unable to see clearly the video monitor (for example, due to vision difficulties or because the video monitor is out of the incarcerated individual's sightline), where the signal is interrupted causing unnatural pauses in communication, or where the image is grainy or otherwise unclear. 28 C.F.R. § 35.160(d).

### **Telecommunication and Audio Devices**



42. Within 30 days of the effective date of this Agreement, WDOC will make the following communication technologies available at all its WDOC Correctional Facilities where incarcerated individuals with hearing disabilities are incarcerated to facilitate communication between incarcerated individuals with hearing disabilities and people outside of WDOC Correctional Facilities. This list of equipment is not exhaustive.
  - a. **TTY (teletypewriter) and Telephone.** Every WDOC Correctional Facility will provide access to a TTY and speech-to-text telephone that is compatible with hearing aids, and, where necessary, modified to enable volume control, in each unit housing individuals with hearing disabilities. WDOC will ensure that at least one TTY will be available and readily accessible during the same hours as the standard telephone.
  - b. **Relay Services.** Incarcerated individuals with hearing disabilities at WDOC Correctional Facilities using relay services may not be charged any more than individuals not using relay services and will be charged the per minute rate established by WDOCs' contract with its telephone service provider, consistent with applicable law.
  - c. **Videophones.** WDOC will make videophones, either portable or non-portable, available at every WDOC Correctional Facility housing incarcerated individuals with hearing disabilities. WDOC will provide a videophone at a location easily accessible to individuals with hearing disabilities and that provides privacy in a manner equal to individuals without hearing disabilities. Individuals with hearing disabilities will be provided access to these devices in a manner equivalent to the access afforded to individuals who use a standard telephone.
  - d. **Over-the-Ear Headphones.** WDOC will make over-the-ear headphones available to incarcerated individuals with hearing disabilities who wear hearing aids to the same extent that individuals without hearing disabilities are provided earbuds or on-the-ear headphones for television and radio. Over-the-ear headphones enable the individual who wears hearing aids to listen to television and radio without removing their hearing aids.
43. WDOC agrees to keep abreast of evolving technology and to consider adding new equipment and technologies to reflect technological advances.
44. WDOC Correctional Facilities housing incarcerated individuals with hearing disabilities will provide a list of communications equipment available to individuals with hearing disabilities upon their arrival at WDOC Correctional Facility.
45. WDOC will maintain all auxiliary aids and services for incarcerated individuals with hearing disabilities at WDOC Correctional Facilities in working condition, or promptly repair them.

46. WDOC staff will resolve complaints about any malfunctioning equipment used for auxiliary aids and services (e.g., TTY, videophone) within one week of receiving that complaint, including initiating a work order if appropriate. WDOC will not be considered in breach of this provision if the delay is caused by third party vendors, delivery errors, or any other issue caused by third parties or circumstances outside of WDOC control. However, any delay beyond one week requires WDOC to identify and implement an interim solution to ensure effective communication until the device is repaired and returned to the incarcerated individual with hearing disabilities.
47. **Telecommunication Services.** WDOC will provide incarcerated individuals with hearing disabilities at WDOC Correctional Facilities with telecommunication devices to ensure communication with people outside of WDOC that is substantially similar to the access to telecommunication services WDOC provides to individuals who do not have hearing disabilities.
48. **Monitoring Communications.** WDOC may monitor communications between incarcerated individuals with hearing disabilities at WDOC Correctional Facilities and individuals outside of WDOC to the same extent and with the same discretion applied to the monitoring of communications between incarcerated individuals that do not have hearing disabilities and individuals outside of WDOC.
49. **Additional Time.** WDOC will maintain a written policy that provides incarcerated individuals with hearing disabilities at its WDOC Correctional Facilities three times the amount of time to use telecommunication services such as TTY or VRI, as incarcerated individuals who do not have hearing disabilities. WDOC will notify incarcerated individuals with hearing disabilities and correctional staff of such additional time for telecommunications.
50. **Privacy of Communications.** WDOC will ensure that the privacy of telephone calls by incarcerated individuals using a videophone, TTY, telephone with volume control, or other telecommunication device is equal to that of other incarcerated individuals' telephone calls.

**Process for Identification and Accommodation of Incarcerated individuals with Hearing Disabilities**

51. **Intake Policies and Procedures.** WDOC will provide incarcerated individuals with access to Qualified Interpreters or appropriate auxiliary aids and services, as are necessary to afford the incarcerated individuals effective communication at Intake. Access to Qualified Interpreters or appropriate auxiliary aids and services will be provided from the point that an incarcerated individual with a hearing disability notifies WDOC of their disability, or WDOC suspects an incarcerated individual of having a hearing disability. Qualified Interpreters or auxiliary aids and services will be provided to aid in the explanation of WDOC policies and procedures. Primary consideration will be given to the request of the incarcerated individual for a Qualified Interpreter or a specific auxiliary aid or service.
  - a. WDOC will provide access to a Qualified Interpreter or other auxiliary aids and

services necessary for the incarcerated individual with a hearing disability to understand and complete the Intake process. In the event WDOC is not aware, prior to Intake, that the incarcerated individual will require an interpreter or other auxiliary aid or service to ensure effective communication, WDOC will immediately notify the ADA Compliance Director or their designee, who will be responsible to obtain an interpreter, either in person or by video telephone or video relay. The interpreter must be provided within 2 hours of a request.

- b. WDOC will provide written notification on Intake and orientation materials for incarcerated individuals with hearing disabilities with information on how to request a Qualified Interpreter or other auxiliary aids or services for assistance in understanding information during the Intake process.
52. Within 30 days of the Effective Date of this Agreement, WDOC will implement a comprehensive procedure to identify and provide every incarcerated individual with hearing disabilities with appropriate auxiliary aids and services. The procedure will include, at a minimum, (1) an Intake Hearing Screening; (2) a Secondary Hearing Assessment if necessary, and (3) the development of a Communications Plan.
  53. **Timeline Screening, Assessment, and Communication Plan.** The Intake Hearing Screening will occur within 3 business days of initial entry into WDOC. A referral for a Secondary Hearing Assessment, if needed, will be made within 10 business days of the Intake Hearing Screening. The incarcerated individual and the Facility ADA Coordinator or their designee will meet to finalize the Communication Plan as soon as reasonably possible, but no later than 10 business days following the Intake Hearing Screening. Regardless of whether a Secondary Hearing Assessment is ordered, the Communications Plan shall be finalized within 10 business days of the Intake Hearing Screening.
  54. **Intake Hearing Screening.** Within 3 business days of entry into WDOC, WDOC will screen every incarcerated individual for hearing disabilities as part of WDOC intake process. WDOC will document the Hearing Screening with the Intake Hearing Screening Assessment Form, Attachment B, of this Agreement. In the event there is a disagreement about the type and number of hearing aids an incarcerated individual requires, WDOC will seek a Secondary Hearing Assessment, and will use the results of the Secondary assessment in its determination about the number and type of hearing aids and cochlear processor devices an incarcerated individual receives. If the incarcerated individual has a hearing disability or an apparent hearing disability (e.g., wears hearing aids), WDOC personnel will complete as much of the Communication Plan, Attachment C, as possible at Intake. Instead of using Attachments B and C, WDOC may electronically gather and document the information required by Attachments B and C in the incarcerated individual's Electronic Medical Record (EMR) and/or Wisconsin Integrated Corrections System (WICS) profile. If WDOC opts to use EMR and WICS to gather and document the information required in Attachments B and C, WDOC will include all the same substantive information from Attachments B and C, including the auxiliary aids and services and a complete copy of the incarcerated individual's Communication Plan.
  55. **Secondary Hearing Assessment.** If WDOC determines a need for, or an incarcerated individual requests at any time during incarceration, assessment for a hearing disability,

WDOC will make a referral to an appropriate licensed professional (e.g., ENT, audiologist, licensed hearing aid dispenser), within 10 days of the determination or request, for Secondary Hearing Assessment. The Secondary Hearing Assessment may include an audiological examination or other appropriate diagnostic procedures. Information from the Secondary Hearing Assessment will be used to augment an incarcerated individual's existing Communication Plan, or to develop a new Communication Plan for incarcerated individuals who are suspected of having hearing disabilities during incarceration. If hearing aids or other auxiliary devices are recommended as a result of the Secondary Hearing Assessment, WDOC will review and, if appropriate, order those devices, through the Health Services Unit (HSU), within 7 business days upon receipt of the Secondary Hearing Assessment report. A copy of the Secondary Hearing Assessment will be provided to the Facility ADA Coordinator for tracking purposes. Any hearing aids or auxiliary devices will then be provided within 3 business days of their receipt at the incarcerated individual's Correctional Facility. If more than 14 days elapses between ordering and providing the hearing aids or other auxiliary devices, WDOC will supply a temporary means of effective communication, investigate the delay, and provide the incarcerated individual with an update on the status of the order. At the same time, WDOC will notify the United States of the delay and the plan to resolve it. If WDOC does not implement the recommendations of the Secondary Hearing Assessment, WDOC must fully document and explain the rationale for doing so. A copy of such rationale will be retained in the incarcerated individual's records and shall be available to the United States for review during the term of this Agreement.

56. **Communication Plan.** Within 10 business days of an Intake Hearing Screening, or Secondary Hearing Assessment, WDOC will finalize a Communication Plan, as set forth in Attachment C to this Agreement, for every incarcerated individual with a hearing disability. Instead of using Attachment C, WDOC may electronically gather and document the information required by Attachment C in the incarcerated individual's EMR and/or WICS profile. The Communication Plan will identify the auxiliary aids and services WDOC will provide to the incarcerated individual to ensure effective communication. Any interactions not covered by an incarcerated individual's individual Communications Plan will be governed by the other applicable provisions of this Agreement. To the extent that Attachment C is used in paper format, WDOC will also maintain an electronic copy of the Communication Plan in the incarcerated individual's EMR and/or WICS record. The most current version of the Communication Plan supersedes any previous versions and will be updated periodically to reflect changes to the incarcerated individual's hearing status.
- a. **Primary Consideration.** WDOC in consultation with the incarcerated individual will make the determination of the appropriate auxiliary aids and services necessary to ensure effective communication. In determining what type of auxiliary aids and services are necessary, WDOC will give primary consideration to the expressed choice of the incarcerated individual and must honor that choice unless WDOC can demonstrate that another equally effective means of communication exists. 28 C.F.R. § 35.160(b)(2).
  - b. **List of Auxiliary Aids and Services.** The Communication Plan will include a list of the auxiliary aids and services the incarcerated individual is entitled to for

effective communication for critical interactions as defined above in paragraph 12.

- c. **Amending the Communication Plan.** WDOC will establish and implement a procedure for incarcerated individuals with hearing disabilities to work with the ADA Compliance Director and/or the Facility ADA Coordinator to make amendments or modifications to the Communication Plan. An incarcerated individual with a hearing disability may change their preferences, including modifying, adding, or waiving services. An incarcerated individual with a hearing disability may request the ADA Compliance Director and/or ADA Facility Coordinator to supplement or modify the information contained on their Communications Plan at any time during their incarceration even if the incarcerated individual had previously declined services.
57. **Transfers within WDOC.** WDOC will ensure that every incarcerated individual who transfers between WDOC facilities receives the same auxiliary aids and services at the receiving facility as were provided at the former WDOC facility. WDOC receiving facility is required to provide auxiliary aids and services, including Qualified Interpreters, to the incarcerated individual based on the Communication Plan.
58. WDOC will inform all personnel having contact with an incarcerated individual with hearing disabilities of the incarcerated individual's disability and the auxiliary aids and services necessary to facilitate effective communication. An incarcerated individual's identity as someone with a hearing disability needing appropriate auxiliary aids and services for effective communication will be shared with WDOC personnel who have a job-related need to know. This obligation may be satisfied by including the information in an incarcerated individual's WICS profile and providing WDOC personnel access to the profile.
59. During the Intake process, the incarcerated individual will be offered the opportunity to have a modified identification ("ID") card that clearly identifies the incarcerated individual as having a hearing disability on the card. This ID card will use the designation "Deaf" or "Hard of Hearing" or "Hearing Disability." The incarcerated individual can decline the modified card in favor of a standard issue identification card. The waiver of the modified card does not waive the incarcerated individual's right and/or access to eligible services. The incarcerated individual will not be precluded from changing their preference during the period of incarceration to remove the waiver and may opt to have a modified ID card issued at any time, and WDOC will provide the modified ID card within 10 business days.

### **Unanticipated Interactions**

60. **Interactions not Addressed in Communication Plan.** WDOC will implement policies to timely address unanticipated interactions and to resolve conflicts that arise when determining the type of auxiliary aids and services to provide to an incarcerated individual with hearing disabilities. In the event an unanticipated interaction or condition arises that is not addressed in the Communication Plan, WDOC will construe the obligation to provide auxiliary aids and services broadly and will use the most appropriate auxiliary aid or service that is analogous to other similar types of interactions required under the Communication

Plan.

61. **Time for Interpreter Response.** To the extent an interaction, meeting, or other event is not anticipated by the Communications Plan, or to the extent an incarcerated individual does not yet have a Communications Plan in place, WDOC will provide qualified interpreters accordingly:
- a. WDOC will provide a qualified interpreter when a qualified interpreter is necessary to ensure effective communication. The activity, service, or program may be delayed until the interpreter is made available or within 4 hours, whichever is earlier, or the incarcerated individual may elect to delay participation in the activity, service, or program until the interpreter is available, except in situations or circumstances involving an emergency as described in this Agreement.
  - b. Unless an interpreter is scheduled in advance (e.g., for an upcoming disciplinary hearing or a scheduled medical appointment), the qualified interpreter will be provided at the earliest reasonable time, and in all events no later than 4 hours from the time an incarcerated individual with hearing disabilities requests an interpreter. The incarcerated individual will not be required to attend the event without a qualified interpreter except in situations involving an emergency. However, the event (if it is specific to the individual) may be rescheduled until an interpreter can participate, but no later than 72 hours from the scheduled event, absent exigent circumstances.
  - c. WDOC will use the most effective, readily available means of communicating with the incarcerated individual until such time as a qualified interpreter is present and will notify the incarcerated individual of the status of WDOC's efforts to secure a qualified interpreter on the incarcerated individual's behalf, within 30 minutes of WDOC making the request for the interpreter service. WDOC will provide additional updates to the incarcerated individual, as necessary, until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not obviate WDOC's obligation to provide qualified interpreters in a timely manner.

### **Documentation and Records**

62. WDOC will document all requests it receives for qualified interpreters and the action taken in response to each request, including denials of services. When an oral request for a qualified interpreter is received by WDOC personnel, the employee receiving the request will document the request and the action taken in response to the request, including denials of services, in the incarcerated individual's WICS profile within one (1) hour from the time of the request, absent exigent circumstances. The documentation will be promptly provided to the United States for review of compliance with this Agreement upon reasonable notice and request by the United States and included in the compliance reports required in "Monitoring and Compliance" in this Agreement.

63. **Incarcerated Individuals' Records.** WDOC will maintain copies of the Intake Hearing Screening, Secondary Hearing Assessment, and Communication Plan in each incarcerated individual's records.

### **Policies and Procedures**

64. **Effective Communication Policy.** WDOC will adopt and implement the Effective Communication Policy that is set forth in Attachment D. WDOC will ensure that all correctional and program staff, contractors, agents, and employees of WDOC are aware of, and comply with, the Effective Communication Policy.
65. If any incarcerated individual who has a hearing disability requires a different auxiliary aid or service than originally provided, WDOC will provide that other aid or service unless doing so would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens. 28 C.F.R. § 35.164.
66. **Adoption of the Policy and Procedure to Identify and Accommodate Incarcerated Individuals with Hearing Disabilities.** Within 60 days of the effective date of this Agreement, WDOC will adopt and implement the Identification and Accommodation of Incarcerated Individuals with Hearing Disabilities Policy set forth in Attachment D.

### **Centralized Database of Incarcerated individuals with Hearing Disabilities**

67. Within 90 days of the Effective Date, WDOC will modify its existing database, or create a new database, that provides a centralized location for information that identifies each incarcerated individual with a hearing disability and the incarcerated individual's requirements for auxiliary aids and services. This centralized database will include at a minimum the following information:
- a. The name of the incarcerated individual;
  - b. The facility at which the incarcerated individual is housed;
  - c. Whether the incarcerated individual has an identification card or placard with the designation, "Hearing Disability";
  - d. Copies of the incarcerated individual's Intake Hearing Screening, Secondary Hearing Assessment, if applicable, and the Communication Plan;
  - e. An inventory of specific auxiliary aids and services WDOC provides to the incarcerated individual, as described in the incarcerated individual's Communication Plan; and
  - f. Copies of authorizations and maintenance records for the incarcerated individual's auxiliary aids and services.
68. WDOC will promptly and regularly update the centralized database to account for information relating to all incarcerated individuals identified with a hearing disability and

any changes to the Communication Plan.

69. The centralized database will be available to all WDOC custody and program staff.

### **Interpretation of Written Materials**

70. WDOC will provide an incarcerated individual with a hearing disability the written materials it provides to all incarcerated individuals, and upon request, provide a Qualified Interpreter to ensure the incarcerated individual with a hearing disability understands the contents of the written materials.
71. WDOC will effectively communicate the contents of the Inmate Handbook and other written materials, and if provided, the orientation video, and similar policies and publications to all incarcerated individuals who have a hearing disability, including those for whom written language is not an effective means of communication. WDOC may choose to meet this obligation by providing a video of a qualified interpreter signing the contents of the Inmate Handbook, Inmate Orientation Video, and similar policies, publications, and videos, along with appropriate technology for viewing, or by providing a qualified interpreter who will read and interpret the contents of the Inmate Handbook and similar policies and publications to the incarcerated individual who has a hearing disability.
72. During the term of this Agreement, WDOC will include in all future printings of its Inmate Handbook and all similar publications a statement to the following effect:

“To ensure effective communication with incarcerated individuals who have a hearing disability, the Wisconsin Department of Corrections will provide appropriate auxiliary aids and services free of charge, which may include: qualified sign language interpreters and oral transliterators, TTYs, videophones, note-takers, computer-assisted real time transcription services, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, closed caption decoders or TVs with built-in captioning, and open and closed captioning of Wisconsin Department of Corrections’ programs.”

### **Visual Alerts and Notification Systems**

73. Incarcerated individuals with hearing disabilities incarcerated at WDOC Correctional Facilities shall not miss announcements, alarms, or any other auditory information from WDOC staff to the general incarcerated individual population solely because of their disability. Within 6 months of the effective date of this Agreement, WDOC will provide an effective visual or other notification system that will advise incarcerated individuals with hearing disabilities of announcements, alarms, or other auditory information provided to incarcerated individuals who do not have hearing disabilities. The visual notification system will include notification of emergencies, evacuations, education, work assignments, and daily prison activities, such as wake-up calls, mealtimes, recreational time, and other announcements.



74. WDOC will provide personal pagers, watches, or another similar device, that include visual as well as vibrating functions, in all WDOC Correctional Facilities that house incarcerated individuals with hearing disabilities. These personal devices will be used as supplemental notification systems to aid in daily notification of routine announcements and protocols, including wake-up calls, mealtimes, recreational times, and other normal and customary notifications. Incarcerated individuals may opt to forgo the use of these personal devices, in which case this information will be documented in the incarcerated individual's file and in the centralized database.
75. WDOC personnel will be properly trained in how to use the personal devices described in paragraph 74 and will be responsible for transmitting messages and alerts to the devices at the same time messages and alerts are broadcast to incarcerated individuals without hearing disabilities.

### Audio/Visual Media

76. WDOC will ensure that incarcerated individuals who have hearing disabilities have access to captioned audio-visual media and television programming available to incarcerated individuals.
77. WDOC will ensure that all audio-visual media purchased for incarcerated individual use in WDOC Correctional Facilities housing incarcerated individuals with hearing disabilities includes open or closed captioning and that captioning will be turned on for an incarcerated individual who has hearing disabilities, upon request.

### Medical Care

78. **Medical Emergencies.** If an incarcerated individual who has a hearing disability and requires a qualified interpreter for effective communication has a medical need that cannot wait for the assistance of a qualified interpreter to facilitate communication, WDOC will not delay in providing whatever medical care, treatment, evaluation, or service would be provided to other persons under similar circumstances. In such event, WDOC will use the most effective, readily available means of communicating with the incarcerated individual and will provide a qualified interpreter as soon as possible, but within no more than 2 hours. WDOC will require the interpreter service agencies with whom it contracts for VRI services to provide a qualified interpreter within 2 hours.
79. **Onsite Medical Care.** WDOC will provide auxiliary aids and services, including Qualified Interpreters, for scheduled appointments between incarcerated individuals with hearing disabilities and medical personnel at WDOC Correctional Facilities, including, but not limited to, review of medical history, medical appointments, follow-up meetings or appointments, and treatment meetings, consistent with the incarcerated individual's Communication Plan.
80. **Informing Appropriate Medical Staff.** WDOC staff will ensure that medical staff is aware that the incarcerated individual has a hearing disability and notify medical staff of the incarcerated individual's preferences as outlined on the Intake Hearing Assessment Form and Communication Plan.

81. **Scheduling Medical Appointments with Interpreters.** WDOC personnel at each WDOC Correctional Facility, or their designees, will be responsible for ensuring that Qualified Interpreters are scheduled for all medical appointments requiring them, and any other appropriate auxiliary aids and services are provided, consistent with the incarcerated individual's Communication Plan.
82. **Emergency Events.** WDOC will use VRI at WDOC Correctional Facilities for medical emergencies, if an in-person Qualified Interpreter would have otherwise been the appropriate auxiliary aid or service for that incarcerated individual in that context. If remote interpreting services are not appropriate in the situation, WDOC personnel will work in conjunction with medical staff to secure an in-person Qualified Interpreter or other auxiliary aids or services as soon as possible. Life-saving and other emergency medical care should never be delayed because qualified interpreter services are not available.
83. **Scheduled Offsite Medical Care.** WDOC or its designee will timely inform all offsite medical providers that an incarcerated individual with a hearing disability will require a Qualified Interpreter or other Auxiliary Aid or Service for medical care offsite. WDOC or its designee will confirm with the offsite medical provider that a qualified interpreter or appropriate other auxiliary aids and services will be provided before transporting the incarcerated individual to the appointment.
84. **Emergency Offsite Medical Care.** In the case of an emergency, WDOC will inform the offsite medical provider that an incarcerated individual with a hearing disability who requires an in-person, Qualified Interpreter or other Auxiliary Aid or Service, is being transported to the offsite care provider. WDOC will notify the offsite medical care provider as soon as possible. Notification will include the estimated time of arrival.

#### **Work Assignments at WDOC Correctional Facilities**

85. WDOC will provide opportunities for institutional work assignments for incarcerated individuals with hearing disabilities at WDOC Correctional Facilities that are equal to opportunities provided to hearing incarcerated individuals. An incarcerated individual with hearing disabilities may not be prohibited from an institutional work assignment based on disability.

#### **Recreational Activities at WDOC Correctional Facilities**

86. WDOC will provide opportunities for recreational activities for incarcerated individuals with hearing disabilities at WDOC Correctional Facilities that are equal to opportunities provided to hearing incarcerated individuals. An incarcerated individual with hearing disabilities may not be prohibited from recreational activities based on disability. WDOC Correctional Facilities will make reasonable modifications to its policies, practices, and procedures for incarcerated individuals with hearing disabilities, such as allowing incarcerated individuals to wear a headband to secure a hearing aid or cochlear processor, when exercising or engaging in sports activities.

### **Extended Supervision**

87. When an incarcerated individual is released to extended supervision, the WDOC Division of Community Corrections, in consultation with the Facility ADA Coordinator, will modify and update the individual's Communication Plan. Consistent with the updated Communication Plan, WDOC will provide auxiliary aids and services for all critical interactions at DOC facilities, including but not limited to, meetings with the individual's agent.

### **Reasonable Modification of Handcuffing Policies**

88. Unless legitimate safety concerns dictate otherwise, WDOC will ensure that, when incarcerated individuals who have hearing disabilities are handcuffed or restrained, they are handcuffed or restrained in a manner that permits effective communication (e.g., cuffing incarcerated individuals in the front so they can sign; having one hand free in order to write).

### **ADA Compliance Director and ADA Facility Coordinators**

89. Within 30 days of the effective date of this Agreement, WDOC will designate an ADA Compliance Director who will oversee the effective communication program and will be responsible to ensure compliance with WDOC policies and compliance with the ADA throughout WDOC.
90. Simultaneously with the designation of the ADA Compliance Director, each WDOC Correctional Facility will designate one or more Facility ADA Coordinators who are responsible for compliance with this Agreement at each respective WDOC Correctional Facility. The Facility ADA Coordinators are responsible for developing the Communication Plan in consultation with the ADA Compliance Director, and for providing prompt access to, and proper use of, appropriate auxiliary aids and services for incarcerated individuals with hearing disabilities.
91. WDOC will circulate broadly and throughout WDOC system the names and contact information, including telephone numbers, email addresses and office locations of each Facility ADA Coordinator and the ADA Compliance Director, including a TTY or videotelephone number for relatives, attorneys, persons holding powers of attorney, and any persons approved on the visitor list of incarcerated individuals with hearing disabilities can contact during normal business hours.
92. WDOC will implement and maintain a log of calls from relatives, attorneys, persons holding powers of attorney, and any persons approved on the visitor list of incarcerated individuals with hearing disabilities to the Facility ADA Coordinators or the ADA Compliance Director and include a copy of these logs to the United States upon request.
93. The ADA Compliance Director or designee will be available during regular business hours to answer questions and to provide assistance to the Facility ADA Coordinators regarding

immediate access to and proper use of auxiliary aids and services required by this Agreement, including providing qualified interpreters within the time frames set forth in this Agreement. Afterhours, WDOC personnel will use WDOC's on-call policy for any effective communication issues that arise.

94. ADA Facility Coordinators will be available at each Correctional Facility during and throughout the regular business hours of the individual facility. The Facility ADA Coordinators, in coordination with the ADA Compliance Director, will know where the auxiliary aids are stored, and how to operate and deploy them, and are responsible for facilitating the maintenance, repair, replacement, and distribution of them.

### **ADA Training**

95. Within 6 months of the effective date of this Agreement, WDOC will submit for pre-approval by the United States a proposed training program on the requirements of Title II of the ADA and this Agreement. The submission will include a description of the training, the agenda, any handouts, and the name, title, and address of the trainer. The United States will review the proposed training program and may provide comments to WDOC. WDOC will incorporate any comments provided by the United States and submit the revised ADA training program to the United States for final review and approval prior to its implementation.
96. Within 9 months of the effective date of this Agreement, and at least once per calendar year throughout the term of this Agreement, WDOC will provide training to all personnel who have contact with incarcerated individuals. The training will be sufficiently detailed to enable WDOC to effectively implement all provisions of this Agreement and all additional policies and procedures developed pursuant to this Agreement, including the Effective Communication Policy, and will also specifically address prohibitions against discrimination, coercion, intimidation, or retaliation with respect to persons who have complained or opposed any practice made unlawful by Title II or this Agreement, or who have made or participated in any complaint or investigation under Title II or this Agreement, or who may have requested, sought, or obtained the enforcement of any right, benefit, aid, or service under or required by Title II or this Agreement.
97. The training will include instruction on interactions with incarcerated individuals who have a hearing disability and on the effective communication measures required under this Agreement. The training will also include information regarding the types of auxiliary aids, such as cochlear implants and hearing aids, on which incarcerated individuals may rely for communication, and the differences between them.
98. WDOC will maintain records of each training and include attendance, dates, and times of training, and provide this information upon request of the United States as set forth in paragraph 103. WDOC will ensure that all relevant current and future personnel implement the terms of this Agreement.

99. WDOC will provide appropriate instruction regarding WDOC's Effective Communications Policy to contractors and volunteers who will have contact with incarcerated individuals with hearing disabilities.
100. Within 9 months of the effective date of this Agreement, WDOC will incorporate ADA training into the curriculum at the Wisconsin Correctional Academy for all new personnel who will have contact with incarcerated individuals.

### **ADA Grievance Procedures**

101. WDOC will use Wisc. Admin. Code DOC 310.10(8) and 310.12(8), to process ADA grievances, in consultation with the ADA Coordinator for each facility. Within 30 days of the effective date of this agreement, WDOC will distribute and publish grievance procedures to all wardens; post copies of the procedures in conspicuous locations at each facility; and include the procedures in all future publications, including online, of the Inmate Handbook. WDOC will amend the Inmate Handbook and similar materials to describe the requirements of the Effective Communication Policies and the ADA Grievance Procedure. Incarcerated individuals with disabilities, including, but not limited to hearing disabilities, shall use the Incarcerated individual Complaint Review System to raise those grievances. WDOC will make reasonable modifications to the grievance process to accommodate individuals with disabilities.
102. **Retaliation.** WDOC agrees that it will not retaliate against any person who seeks to enforce their rights, or the rights of others, under Title II ADA or this Agreement.
103. **Recordkeeping.** For the term of this Agreement, WDOC will preserve all records related to this Agreement. Such documents include, but are not limited to, revised policies, practices, and procedures; complaints or grievances; and training materials and attendance logs created pursuant to this Agreement. WDOC will, upon reasonable notice, provide copies of these records to the United States upon the United States' request.

### **V. COMPLIANCE, MONITORING, AND REPORTING**

104. Within 6 months of the effective date of this Agreement, WDOC will provide the United States with a written status report, including any supporting documentation, delineating all steps taken during the reporting period to comply with each substantive provision of this Agreement. Thereafter, for the duration of this Agreement, WDOC will send a status report annually by email to counsel for the United States, referencing D.J. No. 204-85-131.
  - a. Each status report will include a summary of all training required by this Agreement that was conducted within the reporting period, a copy of the training agendas, and the names of the employees who attended each training.
  - b. Each status report will include records to document WDOC's compliance with the requirements of this Agreement, including, but not limited to, records of all auxiliary aids or services or reasonable modifications requested by or provided to individuals with hearing disabilities for the duration of this Agreement, and copies

of all new communication plans developed during the term of this Agreement. Such records will include the date of the request; the nature of the request; the determination regarding the request; the date of the determination; and who participated in the decision-making.

- c. Each status report will include copies of WDOC maintenance logs that document routine review, maintenance, and testing of accessibility-related equipment and elements, including routinely testing accessibility aids and routinely auditing the accessibility of its programs and facilities. This provision, however, does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).

## **VI. MONETARY RELIEF**

- 105. WDOC agrees to pay a total of fifteen thousand dollars (\$15,000) to compensate three (3) aggrieved persons identified by the United States during its investigation.
- 106. Within 30 days of the effective date of this Agreement, the United States will send to each allegedly aggrieved person identified by the United States a copy of this signed Agreement, along with a Release of Claims Form, attached as Attachment A.
- 107. Within 7 days of WDOC's receipt of a completed Release of Claims Form, Attachment A, from any of these individuals, WDOC will pay and deliver to such individual a check in an amount agreed to as directed by the United States, consistent with Paragraph 105.

## **VII. IMPLEMENTATION AND ENFORCEMENT**

- 108. **Implementation.** WDOC will implement all reforms necessary to effectuate the terms of this Agreement and will revise any policy, procedure, or practice, as necessary, to effectuate the terms of this Agreement. It is a violation of this Agreement for WDOC to fail to comply in a timely manner with any of the requirements of this Agreement.
- 109. **Notification of Noncompliance and Enforcement.** If the United States believes that this Agreement or any of its requirements has been violated, it will notify WDOC in writing and attempt to resolve the issue or issues in good faith. If the United States and WDOC are unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to WDOC, the United States may commence a civil action in the U.S. District Court for the Eastern District of Wisconsin to enforce the terms of this Agreement or the ADA. The WDOC does not waive any defenses to any civil actions filed by the United States to enforce the terms of this Agreement, or the ADA.
- 110. **Lack of Waiver.** A failure by the United States to enforce any provision or deadline of this Agreement will not be construed as a waiver of its right to enforce any provision or deadline of the Agreement. By signing this Agreement, WDOC does not waive any of its rights or defenses to any further enforcement action by the United States.

111. **Headings.** The paragraph headings in this Agreement are for convenience only and will not be deemed to affect in any way the language of the provisions to which they refer.
112. **Entire Agreement.** This Settlement Agreement, including Attachments A-D constitutes the entire agreement between the Parties relating to settlement of Department of Justice Complaint No. 204-85-131. No other statement, promise, or agreement, either written or oral, made by any party or agents of any party that is not contained in this written Settlement Agreement, will be enforceable.
113. **Consideration.** In consideration of the terms of this Agreement, the United States agrees to refrain from filing a civil suit related to the allegations in paragraph 3, except as provided in Paragraph 109.
114. **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.
115. **Effective Date.** The effective date of this Agreement is the date of the last signature below.
116. **Limitation.** This Agreement does not purport to remedy any other potential violations related to incarcerated individuals with hearing disabilities. This Agreement does not affect WDOC's continuing responsibility to comply with all aspects of the ADA.
117. **Extension.** The Parties may agree in writing to extend any applicable deadlines specified in this Agreement. The United States will not unreasonably deny requested extensions, if made in advance of any deadline, and following WDOC's due diligence to meet such a requirement.
118. **Successors, Assignees, Employees, and Agents.** This Agreement is binding on all successors, assignees, employees, agents (including contractors) and all those working for or on behalf of WDOC.
119. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, and the counterparts shall together constitute one and the same Agreement, notwithstanding that each Party is not a signatory to the original or the same counterpart.
120. **Signatories Bind Parties.** The person signing for WDOC represents that they are authorized to bind WDOC to this Agreement.
121. **Term of Agreement.** The effective date of this Agreement is the date of the last signature below. This Agreement will remain in effect for three years from the effective date.
122. **Posting Policies and Procedures.** Within 14 days of the effective date of this Agreement, WDOC will provide notice to incarcerated individuals announcing adoption and implementation of the Effective Communication Policies and the ADA Grievance Procedure and describing their requirements.

123. **Public Document.** This Agreement is a public document. A copy of this document may be made available to any person upon request.



**AGREED AND CONSENTED TO:**

**For Wisconsin Department of Corrections:**

/s/Jared M. Hoy  
JARED M. HOY  
Secretary  
Wisconsin Department of Corrections

9/25/24  
Date

**For the United States of America:**

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division

REBECCA B. BOND  
Chief  
AMANDA MAISELS  
Deputy Chief  
MELLIE H. NELSON  
Supervisory Trial Attorney

/s/Beth A. Esposito  
BETH A. ESPOSITO  
Trial Attorney  
Disability Rights Section  
Civil Rights Division  
United States Department of Justice  
Washington, D.C.

9/30/2024  
Date

GREGORY J. HAANSTAD  
United States Attorney  
Eastern District of Wisconsin

/s/Michael A. Carter  
MICHAEL A. CARTER  
Assistant United States Attorney  
Deputy Chief, Civil Division  
United States Attorney's Office  
517 E. Wisconsin Ave., Suite 530  
Milwaukee, Wisconsin 53202

9/27/2024  
Date

**ATTACHMENT A**

INTENTIONALLY BLANK

**ATTACHMENT B  
INTAKE HEARING SCREENING ASSESSMENT FORM**

**WISCONSIN DEPARTMENT OF CORRECTIONS  
INTAKE SCREENING  
AUXILIARY AIDS AND SERVICES ASSESSMENT FOR DEAF OR HARD OF HEARING  
INCARCERATED INDIVIDUALS**

Incarcerated individual Name: \_\_\_\_\_ ID#: \_\_\_\_\_

Facility: \_\_\_\_\_

Date Completed: \_\_\_\_\_ Disability (check one):  Deaf  Hard of Hearing  Speech

**1. Assessment of Sign Language Ability**

a. Incarcerated individual uses sign language? (check one):  Yes  No

b. If yes to 1.a., is sign language the incarcerated individual's *primary* language:  Yes  No

c. Incarcerated individual's proficiency with sign language:  Beginner  Conversational  Fluent

d. Type of interpreter needed (check one):

ASL (American Sign Language)

Signed English

ASL with Certified Deaf Interpreter

Sign Language from another country

Other (specify)

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**2. Assessment of Reading / Writing Ability**

(For example: Is the person able to read and write in any language understood by DOC personnel? Does the person have the ability to engage in basic communications through reading / writing? If so, are there conditions required, such as no time constraints? List required conditions)

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**3. Assessment of Speaking Ability**

(For example: Can the person speak sufficiently clearly for the average person to understand

them? If so, are there conditions required, such as a quiet setting? List required conditions)

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**4. Auxiliary Aids and Services and Devices Currently Used**

- a. Uses:         Hearing Aid(s)                       Cochlear Implant / Implantable Device  
                   ASL Interpreter                       other \_\_\_\_\_ (specify)
- b. Device:       Requires Batteries                       Is Rechargeable

NOTE: unless otherwise indicated, please CUFF IN FRONT.

**5. If this is a Re-Assessment, Changes Since Prior Assessment**

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**6. Additional Communication Assessment**

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Is referral to an audiologist recommended? No \_\_\_\_\_ Yes \_\_\_\_\_ Date of Referral  
\_\_\_\_\_

Form completed by (DOC staff):

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Printed Name

Signature

Date

Incarcerated individual:

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\_\_\_\_\_  
Printed Name

Signature

Date

**ATTACHMENT C**  
**WISCONSIN DEPARTMENT OF CORRECTIONS**  
**COMMUNICATION PLAN**  
**FOR DEAF OR HARD OF HEARING INCARCERATED INDIVIDUALS**

**A. Accommodations that must be provided for the following programs and activities:**

*Document whether Incarcerated individual requires an interpreter. If Incarcerated individual's primary language is sign language per initial assessment, presume an interpreter is needed for items 1-10.*

*For Other Accommodations: Document whether Incarcerated individual requires other Accommodations or Auxiliary Aids/Services, such as one-on-one meetings in quiet room, exchange of written notes, visual aids, etc.*

<b>Program, Service, or Activity</b>	<b>Interpreter Needed? (yes/no)</b>	<b>Other Accommodation Needed? (List what is needed)</b>
1. Disciplinary matters, including investigations and proceedings		
2. Interviews with Internal Affairs or investigators		
3. Interviews or proceedings re: protective custody		
4. Meetings with VT DOC staff to discuss Auxiliary Aids and Services		
5. Pre-release meetings & programs, including pre-release parole meetings		
6. Grievance hearings		
7. Educational Programs and testing that include a verbal component or aural component		
8. Vocational programs that include a verbal or aural component		
9. Religious Services		
10. Medical and mental health care services, including dental, vision, audiological, individual and group therapy (Unless medical care and appointment is routine and does not involve substantial conversation – see 11 below)		

11. Medical care that is routine and does not involve substantial conversation (e.g., Routine blood work or tests, regular allergy shots)		
12. Daily environments and basic communications, including conversations with counselors, gym, meals, library		

**B. Hearing Aids and Other Devices**

Incarcerated individual will be provided with (mark all that apply):

- Hearing aid for right ear                     
 Hearing aid for left ear                     
 No hearing aid  
 Cochlear Implant

Battery requirements (include if incarcerated individual already possessed hearing aid):

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**C. Identification Card**

Identification Card will be marked, or not, as follows (select one):

- Deaf                     
 Hard of Hearing                     
 Incarcerated individual declines identification card marker

**D. Cell or Bunk Placard**

Identification placard will be marked as follows or not be placed (select one):

- Deaf                                     
 Hard of Hearing                                     
 Incarcerated individual declines identification placard

**E. Other Technologies**

Incarcerated individual shall be entitled to the following (mark all that apply):

- TTY                                     
 Video Phone                                     
 Amplified Phone                                     
 Traditional Phone  
 Vibrating Watch   
 Pager                     
 Tactile Notification System   
 Over-the-ear headphones

**F. Other Auxiliary Aids and Services or Accommodations Needed**

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Form completed by (DOC staff):

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Printed Name

Signature

Date

Incarcerated individual:

---

Printed Name


Signature

Date

**ATTACHMENT D**

**WISCONSIN DEPARTMENT OF CORRECTIONS**

Hearing Disabilities: Identification, Documentation, and Provision of Accommodations

 <p align="center"><b>DIVISION OF ADULT INSTITUTIONS</b></p> <p align="center"><b>POLICY AND PROCEDURES</b></p>	<b>DAI Policy #:</b> 000.00.00	<b>Page</b> of
	<b>Original Effective Date:</b> 00/00/00	<b>New Effective Date:</b> 00/00/00
	<b>Supersedes:</b>	<b>Dated:</b> 00/00/00
	<b>Administrator's Approval:</b>	
	<b>Required Posting or Restricted:</b>  <p align="center"><b>Incarcerated individual      All Staff</b></p> <p align="center"><b>Restricted</b></p>	
<b>Chapter:</b>		
<b>Subject:</b> Hearing Disabilities: Identification, Documentation, and Provision of Accommodations		

**POLICY**

All DAI facilities shall ensure persons in our care who are deaf and/or hard of hearing are identified, documented, and provided access to a qualified interpreter or other appropriate auxiliary aids and services to ensure effective communication and the equal opportunity to participate in services, programs, and activities.

**REFERENCES**

- DAI 300.00.35 Americans with Disabilities Act
- DAI 303.72.01 Establishing Restitution for Disciplinary Dispositions
- DAI 500.30.49 Initial Health Assessment

**DEFINITIONS, ACRONYMS, AND FORMS**

ACP - Advanced Care Provider

ASL- American Sign Language

Audiogram - A test recorded on a graph showing how loud sounds need to be to hear at



different frequencies.

Auxiliary Aids and Service - Aids and services that include but are not limited to qualified interpreters or means to make aurally materials available to PIOC with hearing impairments such as hearing aids, assistive listening systems, closed caption decoders, open and closed captioning TDDs, or TTYs, written materials, as well as videophones, access to telephone relay services and visual alert or alarm systems.

BHS – Bureau of Health Services

CDI – A Certified Deaf Interpreter (CDI) is an individual who is deaf or hard of hearing and has demonstrated knowledge and understanding of interpreting, deafness, the Deaf community, and Deaf culture. CDI's work alongside hearing ASL interpreters to ensure accurate communication for deaf individuals whose native language is visual.

Communication Plan – A DAI record of the preferred method of communication for an individual with a communication disability, developed in coordination with the ADA Coordinator, which includes information about approved auxiliary aids and services necessary to ensure effective communication.

Critical Interactions - Those interactions in which the risk of miscommunication or misunderstanding are high and the consequences may have serious repercussions for PIOC with hearing disabilities. Examples include, but are not limited to: medical and psychological care and appointments; disciplinary investigations and hearings; interviews or proceedings regarding protective custody, educational programs; transfer and classification meetings; release planning; religious services; prison job responsibilities; and meetings with the ADA Coordinator to discuss auxiliary aids and services involving the Communication Plan.

DAI – Division of Adult Institutions

DOC - Department of Corrections

DOC-3035 – Health Service Request and Copayment Disbursement Authorization

Effective Communication - A way of communicating with PIOC who are deaf and/or hard of hearing that is as effective as communicating with those PIOC who are not deaf and/or hard of hearing and shall, when necessary, include appropriate auxiliary aids and services.

EMR – Electronic Medical Record is the software system used by DOC which contains PIOC health care records.

FCC – Federal Communications Commission

HCR – Health Care Record

Hearing Screening - An inquiry to determine whether a PIOC needs to be examined to determine if they have a hearing disability or is suspected to have a hearing disability and requires further evaluation.

HSU – Health Service Unit

Individual with a Hearing Disability – a person who, if unaided by hearing aids or any medical device, is unable to hear in either one or both ears to a sufficient degree to be able to understand spoken word. May be used to refer to PIOC who are deaf and hard of hearing.

PIOC - Person in our Care

Primary Method of Communication – The preferred method of communication a PIOC with hearing disabilities uses to give, receive, and understand information. Examples include, but are not limited to, American Sign Language, signed English, written communication, or verbal communication with or without hearing aids.

Qualified Interpreter – A person who interprets effectively, accurately, and impartially, both receptively and expressively with an individual who is deaf or hard of hearing; must hold the necessary certification from the National Registry of Interpreters for the Deaf or National Association of the Deaf. A DOC PIOC is not a qualified interpreter.

Secondary Method of Communication – A method of effective communication that may be used only in limited situations if the PIOC primary method of communication is not available.

TRS - Telecommunications Relay Services are available to persons with hearing or speech disabilities through the FCC and include a variety of services to place and receive calls, which may include a trained consumer advocate/interpreter. Services include captioned telephones and video relay services (VRS). More specific information is available on the [fcc.gov/consumers/guides](http://fcc.gov/consumers/guides) website or via the current DAI contracted provider.

Videophone – A telephone with a camera system for visual and real-time

communications.

Video Remote Interpreting (VRI) – A video telecommunication interpreting service that uses qualified interpreters for American Sign Language (ASL) and or Oral Transliteration (OTC)

## **PROCEDURE**

### **I. General Guidelines**

- A. HSU staff shall identify individuals with a hearing disability upon intake.
- B. HSU staff shall provide any medical devices necessary to accommodate PIOC needs.
  1. Hearing devices shall be free of charge through BHS.
  2. Hearing aids shall be provided in the appropriate number (1 or 2) as recommended by offsite specialists.
  3. Standard hearing aids and cochlear processor devices will be provided to PIOC's requesting them as soon as reasonably possible after a request is received from the PIOC or the PIOC's treating health care provider. An order will be placed through the Health Services Unit (HSU) for the hearing aids and cochlear processor devices within 2 business days of receipt of the request. A copy of the order will be provided to the Facility ADA Coordinator for tracking purposes. Upon receipt of the hearing aids or cochlear processor devices at the Correctional Facility, the item will be provided to the PIOC within 3 business days. If more than 14 days elapses between ordering and providing the hearing aids or cochlear processor devices, the ADA Facility Coordinator or designee will supply the PIOC with a temporary means of effective communication, investigate the delay, and provide the PIOC with an update on the status of the order.
  4. In the event of a disagreement about the type and number of hearing aids/cochlear implants, HSU shall seek a secondary hearing assessment and will use the results of such assessment in its determination of the number and type of devices provided to the PIOC. Any determination that contravenes the secondary hearing assessment recommendation must be fully documented and explain the rationale. Any deviation may be reviewed by the ADA Compliance Director in consultation with the ADA Facility Coordinator.
- C. DAI shall give primary consideration to the expressed choice of the PIOC for auxiliary aids and services necessary to ensure effective communication.
- D. The Facility ADA Coordinator shall ensure appropriate auxiliary aids and services are provided to ensure effective communication for PIOC who are deaf and/or hard of hearing.

- E. All staff shall communicate with PIOC who are deaf and/or hard of hearing to the same extent as they would communicate with non-deaf and/or hard of hearing PIOC.
- F. PIOC who are Deaf and/or hard of hearing who use ASL or writing as their primary form of communication shall be restrained in a manner that allows them to continue to use their hands for effective communication, unless there is a documented safety and security concern or immediate security threat.
- G. PIOC who are Deaf and/or hard of hearing who use hearing aids and cochlear implants shall not be required to remove them unless there is a documented extreme safety and security concern.
- H. Facilities shall have an assorted supply of batteries available in a designated location when HSU is not onsite and there is a need for replacement.
- I. HSU shall prioritize requests for replacement of batteries and facilitate the replacement free of charge and as soon as reasonably possible. Orders for replacement batteries will be placed within 2 business days of receipt of the request. A copy of the order will be provided to the Facility ADA Coordinator for tracking purposes. Upon receipt of the replacement batteries at the Correctional Facility, WDOC will provide the replacement item to the PIOC within 3 business days. If more than 14 days elapses between ordering and providing the replacement batteries, battery chargers, or cochlear processor devices, the ADA Facility Coordinator or designee will supply the PIOC with a temporary means of effective communication, investigate the delay, and provide the PIOC with an update on the status of the order.
- J. The PIOC is responsible to notify HSU via DOC-3035 regarding the need for replacement/repair.

## **II. Intake Process**

- A. Intake facilities shall ensure PIOC are advised during initial screening of their rights to reasonable accommodations, including auxiliary aids and services, and how to request them.
- B. During the initial intake, a hearing screening shall be completed as part of the intake screening exam completed by HSU.
  - 1. Intake hearing screening shall occur within 3 business days of initial admission into the DOC.
  - 2. The screening shall include any identified hearing disability and devices used for correction and/or communication.
  - 3. The screening shall be documented in the HCR and WICS.

4. HSU shall notify the facility ADA Coordinator/designee of the individual with a verified hearing disability via EMR.
- C. When PIOC do not have their hearing device(s) with them upon intake/transfer, institution staff shall make every reasonable effort to locate and obtain the device(s).
- D. Any PIOC with a perceived or reported (including self-reported) hearing disability who does not currently have their hearing corrected with hearing aids or cochlear implant devices at the time of intake shall have an on-site audiogram completed within 3 business days.
1. The audiogram results shall be reviewed by an ACP.
  2. Upon review of the audiogram results, the ACP shall determine the need for a specialty consult and shall place the appropriate order in the HCR.
  3. If a specialty consult is ordered, the ACP shall notify the facility ADA Coordinator by sending a message via EMR.
  4. Scheduling of the specialty consult shall occur within 10 days of the order being placed.
- E. Recommendations from the specialty consult shall be reviewed by the ACP as soon as possible, but no later than 3 business days after WDOC receives the consult report and recommendations. If hearing aids or other auxiliary devices are recommended, the ACP shall review the recommendations and, if appropriate, order those devices through HSU within 7 business days of receipt of the specialty consult report and recommendations. A copy of the order will be provided to the Facility ADA Coordinator for tracking purposes. Upon receipt of the hearing aids or other auxiliary devices at the Correctional Facility, the item will be provided to the PIOC within 3 business days. If more than 14 days elapses between ordering and providing the hearing aids or other auxiliary devices, the ADA Facility Coordinator or designee will supply the PIOC with a temporary means of effective communication, investigate the delay, and provide the PIOC with an update on the status of the order.
- F. Upon notification, the ADA Coordinator shall meet with the PIOC with a hearing disability to finalize a communication plan as soon as reasonably possible, but no later than 10 days following the intake screening, regardless whether a specialty consult is ordered.
- G. During the intake process, PIOC shall be offered the opportunity to have a modified identification (ID) card that clearly identifies the PIOC as having a hearing disability on the card.
1. PIOC may decline a modified card in favor of a standard issue ID card.
  2. Declining the modified ID card does not waive the PIOC's right and/or access to eligible services.

3. PIOC may change their preference during the period of incarceration to opt to have a modified ID card issued at any time.
  4. Facilities shall provide the modified ID card within 10 days of the receipt of the request from the PIOC.
- H. An assessment for a hearing disability can be initiated by referrals from facility staff or via a PIOC DOC-3035 request at any time during incarceration.

### **III. Communication Plan**

- A. A communication plan shall be developed by the ADA coordinator for all PIOC with a hearing disability.
1. The communication plan shall identify auxiliary aids and services approved for use by PIOC.
  2. All auxiliary aids and services shall be provided in a timely manner, without delay, so they are provided for the entire duration of the programs, services, and activities addressed in the communication plan. Video telephone access should be available at the same times, and with the same frequency as telephone access is available to individuals without hearing disabilities.
  3. The communication plan shall be entered in WICS and a copy routed to HSU for inclusion in the HCR.
  4. The most current version of the communication plan supersedes any previous versions and shall be updated periodically to reflect changes in the PIOC's hearing status.
- B. PIOC with a hearing disability may change their preferences, including modifying, adding or waiving services.

### **IV. Repair and Replacement of Hearing Aids and Cochlear Implants Devices**

- A. PIOC are responsible to let HSU staff know their hearing aid, cochlear processing device or other such device is inoperable or malfunctioning by submitting a DOC-3035.
- B. HSU staff shall send the device to an appropriate repair company as soon as reasonably possible. This shall occur no later than 24 hours upon receipt of the DOC-3035 (48 hours after receipt of the DOC-3035 weekend/holiday).

### **V. Interpreter Services**

- A. The DOC shall contract with service agencies to ensure qualified interpreting services, including VRI are available 24 hours per day 7 days a week.
- B. DAI may make other appropriate arrangements, such as contracting directly with qualified interpreters on a fee-for-service basis.

- C. Staff who receive a PIOC request to use an interpreter must document the request by filling out an incident report for an ADA Related incident, and include the reason for the PIOC's request. If the request is denied, the reason for the denial must be included.

**VI. Interfacility Transfers**

Communication devices required by PIOC including hearing aids, cochlear implants, cochlear implant processing devices and other auxiliary aids necessary for communication shall remain in the possession of the PIOC and not be packed in their property during transfer.

**Administrator's Approval:** \_\_\_\_\_ **Date**  
**Signed:** \_\_\_\_\_

Sarah E. Cooner. Administrator