

**AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
NORTH CAROLINA DEPARTMENT OF ADULT CORRECTION  
UNDER THE AMERICANS WITH DISABILITIES ACT  
DJ # 204-54-135**

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**I. BACKGROUND & JURISDICTION**

1. The parties (“Parties”) to this Agreement are the United States of America (“United States”) and the North Carolina Department of Adult Correction (“NCDAC”).
2. This Agreement resolves the United States’ investigation of NCDAC for alleged discrimination against individuals with disabilities in violation of 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 multiple complaints from individuals incarcerated at several NCDAC prisons, as well as from Disability Rights North Carolina (DRNC), the federally mandated protection and advocacy organization for the State of North Carolina. These individuals and DRNC allege that NCDAC fails to provide auxiliary aids and services necessary to ensure effective communication to individuals with hearing disabilities, causing barriers to participation in a variety of NCDAC programs, such as education, counseling, recreation, vocational training, and religious services. Among the communication barriers alleged, the complainants identify failures to timely repair, or to provide altogether, appropriate hearing aids, cochlear implants, and other auxiliary devices to individuals who use them. They also allege that NCDAC fails to provide access to sign language interpreters, text telephones, and video telephones for individuals with hearing disabilities and to provide effective alerts for routine activities and emergencies. And they further allege that NCDAC fails to make reasonable changes to policies, practices, and procedures to avoid discrimination on the basis of disability. NCDAC disputes these allegations.
4. The United States’ investigation included review of relevant documents and interviews of more than 147 individuals incarcerated at twenty-two NCDAC prisons as well as many NCDAC personnel and administrators.
5. The ADA applies to NCDAC 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 United States is authorized under the Department of Justice’s Title II implementing regulation, 28 C.F.R. Part 35, Subpart F, to determine NCDAC’s compliance with Title II of

the ADA, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. 28 C.F.R. §§ 35.171-172.

7. 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.
8. In consideration of, and consistent with, the terms of this Agreement, the 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

9. **“ADA Coordinator for Prisons”** means an employee of NCDAC who has responsibility and authority to ensure that: NCDAC facilities are readily accessible to and usable by individuals with disabilities; NCDAC 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.
10. **“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.
11. **“Communication Plan”** means the individualized description of accommodations, including appropriate auxiliary aids and services that will be provided to each 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 a Secondary Hearing Assessment. It is developed in coordination with the ADA Coordinator for Prisons and the Facility ADA Coordinator.
12. **“Correctional Facility”** means any regional office, institution, correctional treatment facility, detention facility, transitional facility, secure program facility, correctional center, community corrections location, or resource center where NCDAC operates, supervises, controls, manages, or contracts to receive services for individuals who are under NCDAC’s supervision.
13. **“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 individuals with hearing disabilities. Examples of Critical

Interactions 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 investigations and disciplinary hearings; educational programs, specific training sessions, and general educational opportunities that include a verbal or aural component; vocational programs that include a verbal or aural component; transfer and classification meetings; and meetings with the ADA Coordinator for Prisons or the Facility ADA Coordinator to discuss what auxiliary aids and services to include in the individual's Communication Plan.

14. **“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.
15. **“Facility ADA Coordinator”** means the designated person at each NCDAC Correctional Facility with the responsibility and authority to develop an individual's Communication Plan and to provide individuals with disabilities the auxiliary aids and services necessary to ensure effective communication and access to programs, services, facilities and activities.
16. **“Individual(s)”** means individual(s) incarcerated at any NCDAC facility.
17. **“Individual with Hearing Disabilities”** means an 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 “individuals with hearing disabilities” is used to refer to individuals who are deaf or hard of hearing.
18. **“Intake”** means the process from the point in time at which an individual is taken into the custody of NCDAC at a NCDAC Correctional Facility, through the point in time the individual is received at, and assigned to, a unit within a maintaining NCDAC 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.
19. **“Intake Hearing Screening”** means the initial inquiry, conducted during Intake, regarding whether an individual may have a hearing disability.
20. **“Personnel”** means all NCDAC employees, agents, contractors, and volunteers who are responsible for the custody, oversight, and care of individuals incarcerated in NCDAC facilities.
21. **“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.

- 22. **“Qualified Interpreter”** means an interpreter, including where necessary, a certified deaf 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.”
- 23. **“Secondary Hearing Assessment”** means a hearing assessment to (1) determine whether an individual has a hearing disability, (2) obtain additional information on the extent of an individual’s hearing disability, and/or (3) help determine what auxiliary aids and services are required to ensure effective communication.
- 24. **“Tablet”** means a device that is similar to common hand-held tablets like the iPad. Tablets offer specialized content and services, via the NCDAC intranet, for individuals to use during their incarceration such as access to a suite of education and entertainment content (e.g., e-books, music, gaming, FM radio, TV audio) plus the ability to place telephone calls, send messages, and receive general on-site support.
- 25. **“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.
- 26. **“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.
- 27. **“Videophone”** means a telephone or device with a camera and screen for visual, real-time communication.
- 28. **“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.
- 29. **“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. REMEDIAL RELIEF – GENERAL**

- 30. **Nondiscrimination Based on Disability.** NCDAC and its officers, employees, agents, contractors, volunteers, successors, and assigns, will ensure that individuals with hearing disabilities are not discriminated against on the basis of disability in NCDAC’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. NCDAC’s obligations under the ADA include, but are not limited to, the following:
  - a. NCDAC will not discriminate against or exclude qualified individuals with disabilities from participation in, or deny such individuals the benefits of, NCDAC’s services, programs, or

activities, including, but not limited to, housing, medical treatment, recreation, commissary, dayrooms, telephones, regular meals, education, postsecondary education, and work and study release, on the basis of an individual's disability, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a), (b)(1)(i);

- b. NCDAC will not, on the basis of disability, deny qualified individuals with hearing disabilities the opportunity to participate in or benefit from NCDAC's aids, benefits, or services, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(i);
- c. NCDAC will not, on the basis of disability, provide aids, benefits, or services to qualified individuals with hearing disabilities that are unequal to, or different or separate from, those afforded to individuals who do not have disabilities, unless different or separate services are necessary to provide such 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. NCDAC will reasonably modify its policies, practices, and procedures where necessary to avoid discrimination on the basis of disability unless NCDAC 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); and
- e. NCDAC will not impose or apply eligibility criteria that screen out or tend to screen out individuals with disabilities from fully and equally enjoying NCDAC's services, programs, or activities, unless NCDAC 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).

#### **IV. REMEDIAL RELIEF – EFFECTIVE COMMUNICATION AND AUXILIARY AIDS AND SERVICES**

- 31. NCDAC will provide appropriate auxiliary aids and services to ensure effective communication and the equal opportunity to participate in and enjoy the benefits of NCDAC's services, programs, and activities. This obligation applies to all programs, services, and activities provided by entities under contract with NCDAC, such as third-party vendors, contractors, or state funded entities such as community colleges.
- 32. 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, NCDAC will give primary consideration to the individual's request for a particular auxiliary aid or service and will honor that request unless NCDAC can demonstrate that another equally effective means of communication exists or that 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 NCDAC that a particular request would fundamentally alter the service, program, or activity, or would result in an undue financial or administrative burden, NCDAC will provide an appropriate alternative auxiliary aid or service to accommodate the individual. NCDAC will document any such denial in the Communication Plan, Attachment B, stating the reasons for the denial with specificity, and identifying 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.

33. NCDAC will provide and maintain written instructions for incarcerated individuals and NCDAC 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**

34. Consistent with its custodial role, NCDAC will provide the appropriate type and number of hearing aids and cochlear processor devices, free of charge, to individuals who have been prescribed hearing aid(s) or who have cochlear implants. Standard hearing aids and cochlear processor devices will be provided to eligible individuals requesting them as soon as reasonably possible, and those devices will be ordered, not later than 5 business days after the individual's treating health care provider requests such a device. In the event there is a disagreement about the type and number of hearing aids an individual requires, NCDAC will provide a Secondary Hearing Assessment, and will consider the results of such assessment in its determination about the number and type of hearing aids and cochlear processor devices an individual receives.
35. NCDAC will provide the appropriate type and number of hearing aid and cochlear processor replacement batteries or battery chargers, free of charge, to individuals who have been prescribed hearing aid(s) or who have cochlear implants. NCDAC will ensure that it has a sufficient supply of batteries to provide to individuals who report that the batteries in their devices are no longer working. If the necessary battery is not readily accessible, NCDAC will ensure that the replacement battery is ordered as soon as reasonably possible, but not later than 48 hours.
36. When an individual's hearing aid, cochlear processor, or other such device is inoperable or malfunctioning, NCDAC will send the device to an appropriate repair company as soon as reasonably possible. NCDAC will make every reasonable effort to send the device to the appropriate repair company within 2 business days after a request is submitted by the incarcerated individual. A temporary hearing aid will be provided to the individual for use during the time that the original hearing aid is out for repairs. Upon the individual's request, NCDAC will inform the individual when the device was sent for repair and when it is expected to be returned by the repair company. NCDAC will research any delay in providing the device and report to the individual.
37. If the individual's hearing loss warrants clinical reassessment to determine if the prescription for the hearing aid or other device needs to be adjusted before any repair or replacement is ordered, NCDAC will ensure the individual retains the original device (if functional). Additionally, within 3 days of the determination that a clinical reassessment is warranted, NCDAC will schedule a medical appointment for that reassessment. NCDAC will take additional appropriate steps to ensure effective communication with the individual during any period in which the individual is without their hearing aid, cochlear processor, or other such device.

### **Interpreting Service Agencies**

38. If not already under a contract, within 30 days of the effective date of this Agreement, NCDAC will contract with one or more interpreter service agencies to ensure that qualified interpreting services for individuals who have hearing disabilities, including VRI, are

available, 24 hours per day and 7 days a week. Alternatively, NCDAC may make other appropriate arrangements such as contracting directly with, or hiring, qualified interpreters for individuals who have hearing disabilities 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**

39. NCDAC 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 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).
40. Except for NCDAC personnel hired specifically to serve as qualified sign language interpreters, NCDAC will not use its personnel to serve as sign language interpreters except in appropriate circumstances, such as: informal communications, providing basic information to an 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)**

41. To the extent NCDAC utilizes VRI to provide effective communication, and to the extent such services are not already being provided, within 30 days of the effective date of this Agreement, NCDAC will provide access to on-demand video remote interpreting that comports with the following standards at all NCDAC Correctional Facilities at which individuals with hearing disabilities are incarcerated:
  - a. High quality, clear, delay-free full-motion video and audio over a high-speed Internet connection;
  - b. Clear, sufficiently large, and sharply delineated picture of the interpreter’s and the deaf or hard of hearing individual’s heads, arms, hands, and fingers, regardless of the body position of the deaf or hard of hearing individual, unless rendered impracticable by an emergency situation;
  - c. Voices being transmitted are clear and easily understood; and
  - d. Operation is uncomplicated and easily accomplished by non-technicians.
42. To the extent NCDAC utilizes VRI to provide effective communication, NCDAC will implement VRI no later than 30 days of the effective date of this Agreement, to the extent such services are not already being provided. NCDAC will require that the VRI provider(s) use only qualified interpreters. NCDAC will ensure that at least one of the VRI systems is housed in the medical unit of NCDAC Correctional Facilities at which individuals with hearing disabilities are incarcerated.

43. When use of a qualified interpreter is necessary to provide effective communication, 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 individual is unable to see clearly the video monitor (for example, due to vision difficulties or because the video monitor is out of the 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**

44. **Telecommunication Services.** NCDAC will provide individuals with hearing disabilities at NCDAC Correctional Facilities with telecommunication devices to ensure communication with people outside of NCDAC that is substantially similar to the access to telecommunication services NCDAC provides to individuals who do not have hearing disabilities.
45. **Additional Time.** Within 30 days of the effective date of this Agreement, NCDAC will implement and enforce a written policy that provides individuals with hearing disabilities at its NCDAC Correctional Facilities three times the amount of time to use telecommunication services such as TTYs or VRI, as individuals who do not have hearing disabilities. NCDAC will notify individuals with hearing disabilities of such additional time for telecommunications.
46. To the extent such services or equipment are not already being provided, within 30 days of the effective date of this Agreement, unless a different timeframe is specified below, NCDAC will make the following communication technologies available at all of its NCDAC Correctional Facilities where individuals with hearing disabilities are incarcerated to facilitate communication between individuals with hearing disabilities and people outside of NCDAC Correctional Facilities. This list of equipment is not exhaustive.
- a. **TTY (teletypewriter) and Telephone.** Every NCDAC Correctional Facility will provide a functional TTY and a telephone that is compatible with hearing aids, and, where necessary, modified to enable volume control, in each unit housing individuals with hearing disabilities. NCDAC will ensure that at least one TTY will be available and readily accessible during the same hours as the standard telephone is available for individuals who do not have hearing disabilities. NCDAC will keep an additional portable TTY unit for use when the regular TTY is broken or otherwise unavailable.
  - b. **Relay Services.** NCDAC will enable all TTYs to access publicly available relay service phone numbers and local 1-800 numbers. Individuals with hearing disabilities at NCDAC 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 NCDACs' contract with its individual telephone service provider, consistent with applicable law.
  - c. **Videophones.** Within 30 days, NCDAC will initiate the competitive bid process to ensure the procurement of videophones, either portable or non-portable, sufficient to be available at every NCDAC facility where individuals with hearing disabilities who require videophones to ensure effective communication are incarcerated. Thereafter, NCDAC will provide a videophone at a location easily accessible to individuals with hearing disabilities who



require videophones to ensure effective communication and that provides privacy for the call. Individuals with hearing disabilities who require videophones to ensure effective communication 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.** NCDAC will make over-the-ear headphones available to 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.
  - e. **Tablets.** NCDAC will ensure that Tablets are available and provided to incarcerated individuals with hearing disabilities on an equal basis as individuals without hearing disabilities. NCDAC will further ensure that Tablets are fully accessible to incarcerated individuals with hearing disabilities. The parties acknowledge that there may be third party video content available on the Tablets that do not have close captioning functionality and that NCDAC is currently working with its current and future tablet vendors to ensure that all video content that is provided on the Tablets has a close captioning functionality.
- 47. NCDAC agrees to keep abreast of evolving technology and to consider adding new equipment and technologies to reflect technological advances.
  - 48. NCDAC Correctional Facilities housing individuals with hearing disabilities will provide a list of communications equipment available to individuals with hearing disabilities upon their arrival at a NCDAC Correctional Facility.
  - 49. NCDAC will maintain all auxiliary aids and services for individuals with hearing disabilities at NCDAC Correctional Facilities in working condition at all times or promptly repair them.
  - 50. NCDAC staff will make all reasonable efforts to resolve complaints about any malfunctioning equipment (e.g., TTY or videophone) within 7 days of receiving that complaint. If NCDAC determines that the issue cannot be resolved, then NCDAC will initiate a work order or take other appropriate steps to resolve the issue within 2 business days of making that determination.
  - 51. **Monitoring Communications.** NCDAC may monitor communications between individuals with hearing disabilities at NCDAC Correctional Facilities and individuals outside of NCDAC to the same extent and with the same discretion applied to the monitoring of communications between individuals that do not have hearing disabilities and individuals outside of NCDAC.
  - 52. **Privacy of Communications.** NCDAC will ensure that the privacy of telephone calls by individuals using a videophone, TTY, telephone with volume control, or other telecommunication device is equal to that of other individuals' telephone calls.

#### **Process for Identification and Accommodation of Individuals with Hearing Disabilities**

- 53. **Intake Policies and Procedures.** NCDAC will provide individuals with access to qualified interpreters or other appropriate auxiliary aids and services, as are necessary to afford the

individuals effective communication at Intake. Access to qualified interpreters or appropriate auxiliary aids and services will be provided from the point that an individual with a hearing disability notifies NCDAC of their disability, or NCDAC suspects an individual of having a hearing disability. Qualified interpreters or auxiliary aids and services will be provided to aid in the explanation of NCDAC policies and procedures. Primary consideration will be given to the request of the individual for a qualified interpreter or a specific auxiliary aid or service.

- a. NCDAC will provide access to a qualified interpreter or other auxiliary aids and services necessary for the individual with a hearing disability to understand and complete the Intake process. In the event NCDAC is not aware, prior to Intake, that the individual will require an interpreter or other auxiliary aid or service to ensure effective communication, NCDAC will immediately notify the ADA Coordinator for Prisons 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. NCDAC will provide written notification on Intake and orientation materials for 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.
54. Within 45 days of the effective date of this Agreement, NCDAC will implement a comprehensive procedure to identify and provide every individual with hearing disabilities with appropriate auxiliary aids and services. The procedure for individuals admitted to NCDAC after the entry of this agreement will include (1) an Intake Hearing Screening; (2) a Secondary Hearing Assessment, if needed, and (3) the development of a Communications Plan. However, NCDAC shall develop a Communication Plan for any individual with hearing disabilities in its custody, regardless of admission date.
55. **Timeline Screening, Assessment, and Communication Plan.** The Intake Hearing Screening will occur within 3 days of an individual's entry into NCDAC. A screening for a Secondary Hearing Assessment, if needed, will be completed within 7 days of the Intake Hearing Screening. The individual and the ADA Coordinator for Prisons or their designee will meet to develop the Communication Plan as soon as reasonably possible, but no later than 14 days following the Intake Hearing Screening.
56. **Intake Hearing Screening.** Within 3 days of entry into NCDAC, every incarcerated individual will be screened for hearing disabilities as part of the intake process. NCDAC will document the Hearing Screening with the Intake Hearing Screening Assessment Form, Attachment A, of this Agreement. If the individual has a hearing disability or an apparent hearing disability (e.g., wears hearing aids), NCDAC personnel will complete as much of the Communication Plan, Attachment B, as possible at Intake.
57. **Secondary Hearing Assessment.** If NCDAC determines a need for, or an individual requests at any time during incarceration, assessment for a hearing disability, NCDAC will screen the individual within 7 days of the determination or request for potential referral to an appropriate licensed professional (e.g., ENT, audiologist, licensed hearing aid dispenser) 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 individual's existing

Communication Plan, or to develop a new Communication Plan for 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, NCDAC will provide them in accordance with timeframes set forth in paragraph 34.

58. **Communication Plan.** Within 21 days of an Intake Hearing Screening, or Secondary Hearing Assessment, NCDAC will finalize a Communication Plan, as set forth in Attachment B to this Agreement, for every individual with a hearing disability. While the Communication Plan is being finalized, NCDAC will provide a means for effective communication with individuals in the interim. The Communication Plan will identify the auxiliary aids and services NCDAC will provide to the individual to ensure effective communication. All such auxiliary aids and services will be provided in a timely manner, without delay, so that they are provided for the entire duration of the programs, services and activities addressed in the Communication Plan. Any interactions not covered by an individual's Communications Plan will be governed by the other applicable provisions of this Agreement. NCDAC will maintain a copy of the Communication Plan in the individual's record. The most current version of the Communication Plan supersedes any previous versions and will be updated periodically to reflect changes to the individual's hearing status. Primary consideration will be given to the request of the individual for a qualified interpreter or a specific auxiliary aid or service.
- a. **Primary Consideration.** NCDAC in consultation with the 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, NCDAC will give primary consideration to the expressed choice of the individual and must honor that choice unless NCDAC can demonstrate that another equally effective means of communication exists. 28 C.F.R. § 35.160(b)(2).
  - b. The Communication Plan will include a list of the auxiliary aids and services the individual is entitled to for effective communication for critical interactions such as:
    - i. Disciplinary matters, including investigations and proceedings
    - ii. Interviews with Internal Affairs or investigators
    - iii. Interviews or proceedings regarding protective custody
    - iv. Meetings with NCDAC staff to discuss auxiliary aids and services
    - v. Pre-release meetings and programs, including pre-release parole meetings
    - vi. Grievance hearings
    - vii. Educational Programs and testing that include a verbal component or aural component
    - viii. Vocational programs that include a verbal or aural component
    - ix. Religious services
    - x. 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 xi below)

- xi. Medical care that is routine and does not involve substantial conversation (e.g., routine blood work or tests, regular allergy shots)
  - xii. Daily environments such as recreation, meals, the library, prison job responsibilities, and basic communications, including conversations with counselors and correctional officers.
- c. **Amending the Communication Plan.** NCDAC will establish and implement a procedure for individuals with hearing disabilities to work with the ADA Coordinator for Prisons and the Facility ADA Coordinator to make amendments or modifications to the Communication Plan. An individual with a hearing disability may change their preferences, including modifying, adding, or waiving services. An individual with a hearing disability may supplement or modify the information contained on their Communications Plan, upon request, at any time during their incarceration even if the individual had previously declined services.
59. **Transfers within NCDAC.** NCDAC will ensure that every individual who transfers between NCDAC facilities receives the same auxiliary aids and services at the receiving facility as were provided at the former NCDAC facility. The NCDAC receiving facility is required to provide auxiliary aids and services, including qualified interpreters, to the individual based on the Communication Plan.
60. NCDAC will inform all personnel having contact with an individual with hearing disabilities of the individual's disability and the auxiliary aids and services necessary to facilitate effective communication. An individual's identity as someone with a hearing disability needing appropriate auxiliary aids and services for effective communication will not be treated as confidential medical information with respect to NCDAC personnel.

### **Unanticipated Interactions**

61. **Interactions not Addressed in Communication Plan.** In the event an unanticipated interaction or condition arises that is not addressed in the Communication Plan, NCDAC 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.
62. **Time for Interpreter Response.** To the extent an interaction, meeting, or other event is not anticipated by the Communication Plan, or to the extent an individual does not yet have a Communication Plan in place, NCDAC will provide qualified interpreters accordingly:
- a. NCDAC will provide a qualified interpreter within 6 hours, except in circumstances involving an emergency, when a qualified interpreter is necessary to ensure effective communication. The activity, service, or program will be delayed until the interpreter is made available. In limited circumstances, NCDAC may opt to schedule a make-up session of the activity, service, or program, if the make-up session can be scheduled within a reasonable timeframe that does not disadvantage the individual. In an emergency, NCDAC will provide a qualified interpreter as soon as possible. In the interim, NCDAC will use the

most appropriate auxiliary aid or service available to provide effective communication without delay, e.g., VRI.

- 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 6 hours from the time an individual with hearing disabilities requests an interpreter, taking into consideration, without limitation, the time of day, day of the week, distance to be traveled, and the circumstances and location at which the service is to be provided.
- c. NCDAC will use the most effective, readily available means of communicating with the individual until such time as a qualified interpreter is present. NCDAC will inform the individual of the current status of efforts being taken to secure a qualified interpreter on the individual's behalf within 30 minutes of NCDAC making the request for the interpreter service. NCDAC will provide additional updates to the individual, as necessary, until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not obviate NCDAC's obligation to provide qualified interpreters in a timely manner.

### **Documentation and Records**

- 63. NCDAC 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 NCDAC personnel, the employee receiving the request will provide the individual with an interpreter request form as soon as practical, but no later than one (1) hour from the time of the request, absent exigent circumstances, and the employee will help the individual in completing the form where necessary. 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.
- 64. **Individuals' Records.** NCDAC will maintain copies of the Intake Hearing Screening, Secondary Hearing Assessment, and Communication Plan in each individual's records.

### **Policies and Procedures**

- 65. **Review of Effective Communication Policy.** Within 60 days after the effective date of this Agreement, NCDAC will submit to the United States for review a draft Effective Communication Policy that incorporates the requirements of this Agreement. The United States will review the draft policy and provide its comments to NCDAC. NCDAC will make all reasonable efforts to incorporate the United States' comments and submit the revised policy to the United States for review and further comments within 14 business days of receipt of the United States' comments. NCDAC will make all reasonable efforts to incorporate any additional comments by the United States' and NCDAC will adopt and implement the Effective Communication Policy within 21 business days of receipt of the United States' additional comments.
- 66. If any individual who has a hearing disability requires a different auxiliary aid or service than originally provided, NCDAC 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.

67. **Adoption of a Policy and Procedure to Identify and Accommodate Individuals with Hearing Disabilities.** Within 60 days from the effective date of this Agreement, NCDAC will submit to the United States for review a draft Policy and Procedure that incorporates the requirements relating to the process for identifying individuals with hearing disabilities and providing them with auxiliary aids and services to ensure effective communication. The United States will review the draft policy and provide its comments to NCDAC. NCDAC will make all reasonable efforts to incorporate the United States' comments and submit the revised policy to the United States for review and further comments within 14 business days of receipt of the United States' comments. NCDAC will make all reasonable efforts to incorporate any additional comments by the United States' and NCDAC will adopt and implement the Policy and Procedures governing the process to identify individuals with hearing disabilities, and to provide them with access to programs, services, facilities and activities, and with appropriate auxiliary aids and services within 21 business days of receipt of the United States' additional comments. The policy will include, at a minimum, the following terms:
- a. An initial hearing screening at Intake to identify and document whether an individual has or may have a hearing disability, or whether NCDAC staff suspect the individual has a hearing disability that may require additional testing;
  - b. The parameters that trigger a Secondary Hearing Assessment, including audiologic testing if necessary, of individuals who demonstrate difficulty hearing in the initial hearing screen, or who notify NCDAC personnel of difficulty in hearing at any point during their incarceration;
  - c. A description of the process used to develop and update the Communication Plan for each individual with hearing disabilities;
  - d. Documentation of how to conduct each phase of the process to ensure that NCDAC personnel have a record of the process and access to information regarding the types of the auxiliary aids and services required to provide effective communication for individuals with a hearing disability; and
  - e. Assurance that NCDAC will provide the type of auxiliary aids or services that are identified on the individual's Intake Hearing Screening, Secondary Hearing Assessment (if provided), and Communication Plan.

#### **Centralized Database of Individuals with Hearing Disabilities**

68. Within 90 days of the effective date of this Agreement, NCDAC will modify, to the extent necessary, its existing database, or create a new database, that provides a centralized location for information that identifies each individual with a hearing disability and the individual's requirements for auxiliary aids and services. This centralized database may consist of the individual's file jacket, Healthcare Electronic Record of Offender (HERO), and/or, or Offender Population Unified System (OPUS), and will include at a minimum the following information:
- a. The name of the individual;
  - b. The facility at which the individual is housed;
  - c. Whether the individual has a placard with the designation, "Hearing Disability";

- d. The Communication Plan and the information from the individual's Intake Hearing Screening and Secondary Hearing Assessment, if applicable, including the nature of the individual's communication disability (e.g., deaf, hard-of-hearing, blind), their preferred method of communication (e.g., ASL, signed English, lip reading, written notes, Braille, tape recording), devices the individual uses such as hearing aids or cochlear implant, screen reader;
  - e. An inventory of specific auxiliary aids and services NCDAC provides to the individual, as described in the individual's Communication Plan; and
  - f. Copies of authorizations and maintenance records for the individual's auxiliary aids and services.
69. NCDAC will promptly and regularly update the centralized database to account for information relating to all individuals identified with a hearing disability and any changes to the Communication Plan.
70. The centralized database will be available to all NCDAC custody and program staff. To make the information available to staff, NCDAC may electronically gather and document the information required by Attachments A and B in the incarcerated individual's electronic medical record (HERO) and/or North Carolina Offender Population Unified System (OPUS) profile. If NCDAC opts to use HERO or OPUS to electronically gather and document information required in Attachments A and B, NCDAC will include all of the same substantive information from Attachments A and B, including the auxiliary aids and services. Nothing in this section shall be construed as requiring NCDAC to make the protected health information or other confidential information of individuals available to staff that are not otherwise authorized to access such information.

### **Interpretation of Written Materials**

71. NCDAC will provide an individual with a hearing disability the written materials it provides to all individuals, and upon request, provide a qualified interpreter to ensure the individual with a hearing disability understands the contents of the written materials.
72. NCDAC will effectively communicate the contents of the handbook and other written materials, and if provided, the orientation video, and similar policies and publications to all individuals who have a hearing disability, including those for whom written language is not an effective means of communication. NCDAC may choose to meet this obligation by providing a video of a qualified interpreter signing the contents of the handbook, 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 handbook and similar policies and publications to the individual who has a hearing disability.
73. During the term of this Agreement, NCDAC will include in all future printings of its handbook and all similar publications a statement to the following effect:

“To ensure effective communication with individuals who have a hearing disability, the North Carolina Department of Adult Correction will provide appropriate auxiliary aids and services free of charge, which may include: qualified sign language interpreters and oral transliterators,

text telephones, 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 North Carolina Department of Adult Correction's programs."

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

74. Individuals with hearing disabilities at NCDAC Correctional Facilities shall not miss announcements, alarms, or any other auditory information from NCDAC staff to the general population solely because of their disability. Within 12 months of the effective date of this Agreement, NCDAC will provide an effective visual or other notification system or establish protocols that will advise individuals with hearing disabilities of announcements, alarms, or other auditory information provided to individuals who do not have hearing disabilities. Within 30 days, NCDCA will initiate the procurement process to seek bids or requests for proposals to install additional visual notification systems at 15 correctional facilities in program and housing areas, to announce evacuations, education, work assignments, and daily prison activities, such as wake-up calls, mealtimes, recreational time, and other announcements. The procurement process will be completed as soon as practicable, provided the availability of appropriated funds which can be used for capital improvement projects. Nothing in this paragraph shall be construed to require a deaf or hard-of-hearing individual to be housed at one of the 15 correctional facilities.
75. NCDAC may provide personal watches or pagers, that include visual as well as vibrating functions, in NCDAC Correctional Facilities that house individuals with hearing disabilities. Watches or pagers may 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. Individuals with hearing disabilities may opt to forgo the use of personal watches or pagers, in which case this information will be documented in the individual's file and in the centralized database.
76. NCDAC personnel will be properly trained in how to use the personal watches or pagers and will be responsible for transmitting messages and alerts to the pagers at the same time messages and alerts are broadcast to individuals without hearing disabilities.

### **Audio/Visual Media**

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

### **Medical Care**

79. **Medical Emergencies.** If an 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, NCDAC will not delay in providing whatever medical care, treatment, evaluation, or service would be provided to other persons under similar circumstances. In such event, NCDAC will use the most effective, readily available means of communicating with the individual and will provide a qualified interpreter as soon as possible, but within no more than 2 hours. NCDAC will require the interpreter service agencies with whom it contracts for VRI services to provide a qualified interpreter within 2 hours.

80. **Onsite Medical Care.** NCDAC will provide auxiliary aids and services, including qualified interpreters, for scheduled appointments between individuals with hearing disabilities and medical personnel at NCDAC Correctional Facilities, including, but not limited to, review of medical history, medical appointments, follow-up meetings or appointments, and treatment meetings, consistent with the individual's Communication Plan.
81. **Informing Appropriate Medical Staff.** NCDAC staff will ensure that Medical staff is aware that the individual has a hearing disability and notify Medical staff of the individual's preferences as outlined on the Intake Hearing Assessment Form and Communication Plan.
82. **Scheduling Medical Appointments with Interpreters.** NCDAC personnel at each NCDAC 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 individual's Communication Plan.
83. **Emergency Events.** NCDAC will use VRI at NCDAC Correctional Facilities for medical emergencies, if an on-site qualified interpreter is unavailable and would have otherwise been the appropriate auxiliary aid or service for that individual in that context. If remote interpreting services are not appropriate in the situation, NCDAC 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.
84. **Scheduled Offsite Medical Care.** NCDAC or its designee will timely inform all offsite medical providers that an individual with a hearing disability will require a qualified interpreter or other Auxiliary Aid or Service for medical care offsite. NCDAC 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 individual to the appointment.
85. **Emergency Offsite Medical Care.** In the case of an emergency, NCDAC will alert the offsite medical provider that an 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. NCDAC will notify the offsite medical care provider as soon as possible. Notification will include the estimated time of arrival.

#### **Work Assignments at NCDAC Correctional Facilities**

86. NCDAC will provide opportunities for institutional work assignments for individuals with

hearing disabilities at NCDAC Correctional Facilities that are equal to opportunities provided to hearing individuals. An individual with hearing disabilities may not be prohibited from an institutional work assignment based on disability.

### **Recreational Activities at NCDAC Correctional Facilities**

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

### **Post-Release Supervision**

88. NCDAC Division of Community Supervision will update the Communication Plan to reflect the post-release supervision environment in consultation with the formerly incarcerated individual and NCDAC ADA coordinator. NCDAC will provide a qualified interpreter or auxiliary aids and services for all meetings involving significant or critical interactions, after an initial request for a qualified interpreter or other auxiliary aids and services is made for post-release activities by either the individual or by NCDAC staff. NCDAC will give primary consideration to the request by the individual for the auxiliary aids and services he or she requires.

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

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

### **ADA Coordinator for Prisons and ADA Facility Coordinators**

90. Within 30 days of the effective date of this Agreement, NCDAC will designate an ADA Coordinator for Prisons who will oversee the effective communication program and will be responsible to ensure compliance with NCDAC policies and compliance with the ADA throughout NCDAC.
91. Simultaneously with the designation of the ADA Coordinator for Prisons, each NCDAC Correctional Facility will designate one or more Facility ADA Coordinators who are responsible for compliance with this Agreement at each respective NCDAC Correctional Facility. The Facility ADA Coordinators are responsible for developing the Communication Plan in consultation with the ADA Coordinator for Prisons, and for providing immediate access to, and proper use of, appropriate auxiliary aids and services for individuals with hearing disabilities.
92. NCDAC will circulate broadly and throughout NCDAC system the names and contact information, including telephone numbers, email addresses and office locations of each Facility ADA Coordinator and the ADA Coordinator for Prisons, including a central TTY or central

videotelephone number that relatives, registered friends and associates can contact during normal business hours.

93. The Facility ADA Coordinators and the ADA Coordinator for Prisons will document and maintain a list of calls concerning the provision of services to individuals with hearing disabilities from relatives, registered friends, and associates of individuals with hearing disabilities noting the duration of each call and any problems with the technology. NCDAC will provide a copy of these lists to the United States within 30 days upon request.
94. The ADA Coordinator for Prisons or designee will be available during regular business hours to answer questions, and to help 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. After hours, NCDAC personnel will utilize the on-call protocols for any effective communication issues that arise.
95. ADA Facility Coordinators or designees will be available at each Correctional Facility during and throughout the operating hours of the individual facility. The Facility ADA Coordinators, in coordination with the ADA Coordinator for Prisons, will know where the auxiliary aids are stored, and how to operate and deploy them, and are responsible to maintain, repair, replace, and distribute them.

### **ADA Training**

96. Within 180 days of the effective date of this Agreement, NCDAC will submit to 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 NCDAC. NCDAC will take reasonable steps to incorporate any comments provided by the United States.
97. Within 270 days of the effective date of this Agreement, NCDAC will make this training available to all personnel who have contact with incarcerated individuals and will include this training as part of annual in-service training. The training will be sufficiently detailed to enable NCDAC to effectively implement all provisions of this Agreement and all additional policies and procedures developed pursuant to this Agreement, including the Effective Communication Policy. The training will include instruction on interactions with individuals who have a hearing disability and on the effective communication measures required under this Agreement. The training 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.
98. Additional instruction will be provided to staff appropriate to their duties. This may include, for example, 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. To the extent that supplemental instruction is necessary after the Effective Communication Policy has been finalized, NCDAC will provide a written supplement to those personnel who attended the training prior to the implementation of the Policy.

99. NCDAC will maintain records of each training and include attendance, dates, and times of training, and provide this information in the semi-annual compliance reports required under paragraph 106. NCDAC will ensure that all relevant current and future personnel understand and implement the terms of this Agreement.
100. NCDAC will provide appropriate instruction regarding NCDAC's Effective Communications Policy to contractors and volunteers who will have contact with individuals with hearing disabilities.

### **ADA Grievance Procedures**

101. NCDAC will use Administrative Remedy Procedures G.0300, and North Carolina General Statute 148-118.1 to process ADA grievances, in consultation with the ADA Coordinator for each facility. NCDAC will make reasonable modifications to the grievance process to accommodate individuals with disabilities.
102. **Retaliation.** NCDAC agrees that it will not retaliate against any person who filed or may file a complaint, provided information or assistance, or participated in any other manner in the investigation or proceeding relating to Title II or this Agreement.
103. **Recordkeeping.** For the term of this Agreement, NCDAC 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. NCDAC will, upon reasonable notice, provide copies of these records to the United States upon the United States' request.

### **Notice**

104. **Notice.** Within 30 days of the United States' approval of the Effective Communication Policies and, NCDAC will send a notice to incarcerated individuals with hearing disabilities, announcing the existence of this Agreement, the adoption and implementation of the Effective Communication Policies and describing their requirements. A copy of this Agreement will be provided to any individual who makes a request.

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

105. Within 6 months of the effective date of this Agreement, NCDAC 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, NCDAC will send a status report semi-annually by email to counsel for the United States, referencing D.J. No. 204-54-135. auxiliary aids and services. This centralized database will include at a minimum the following information:

- a. Each status report will include confirmation that all training required by this Agreement was conducted, and if any employee did not complete the requirement training, the status report will provide a statement of why the training was not completed by each person, and will state when the employee is expected to complete the training.
- b. Each status report will include records to document NCDAC'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 NCDAC maintenance logs that document routine review, maintenance, and testing of accessibility-related equipment (not including hearing aids or cochlear processing devices provided to specific individuals), including routinely testing of such equipment 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).

## **VII. IMPLEMENTATION AND ENFORCEMENT**

- 106. **Implementation.** NCDAC 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 NCDAC to fail to comply in a timely manner with any of the specific requirements of this Agreement.
- 107. **Notification of Noncompliance and Enforcement.** If the United States believes that this Agreement or any of its requirements has been violated, it will notify NCDAC, via email to the agency's general counsel, of the specific concerns of possible noncompliance. Thereafter, the parties will attempt to address concerns raised in good faith. If the United States and NCDAC are unable to reach a satisfactory resolution of the issue or issues raised within 45 days of the date it provides notice to NCDAC, the United States may commence a civil action in the U.S. District Court for the Eastern District of North Carolina to enforce the terms of this Agreement or the ADA.
- 108. **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.
- 109. **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.
- 110. **Entire Agreement.** This Settlement Agreement, including Attachments A-B, constitutes the entire agreement between the Parties relating to settlement of Department of Justice Complaint No. 204-54-135. 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.

111. **Consideration.** In consideration of the terms of this Agreement, the United States agrees to refrain from filing a civil suit under Title II of the ADA with respect to the allegations set forth in paragraphs 3 and 4 of the Agreement, except as provided in Paragraph 108.
112. **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.
113. **Effective Date.** The effective date of this Agreement is the date of the last signature below.
114. **Limitation.** This Agreement does not purport to remedy any other potential violations of the ADA or any other Federal law not specifically referenced herein. This Agreement does not affect NCDAC's continuing responsibility to comply with all aspects of the ADA.
115. **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 NCDAC's due diligence to meet such a requirement.
116. **Successors, Assignees, Employees, and Agents.** This Agreement is binding on all successors, assignees, employees, agents and all those working for or on behalf of NCDAC.
117. **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.
118. **Signatories Bind Parties.** The person signing for NCDAC represents that they are authorized to bind NCDAC to this Agreement.
119. **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.
120. **Public Document.** This Agreement is a public document. A copy of this document may be made available to any person upon request.
121. **No Third-Party Beneficiaries.** This Agreement is enforceable only by the Parties. No person or entity is, or is intended to be, a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. The Parties agree to defend the terms of this Agreement should they be challenged in this or any other forum.

**AGREED AND CONSENTED TO:**

**For North Carolina Department of Adult  
Correction:**

/s/ Orlando L. Rodriguez

Orlando L. Rodriguez

General Counsel

North Carolina Department of Adult Correction

August 28, 2025

**For the United States:**

HARMEET K. DHILLON

Assistant Attorney General

Civil Rights Division

R. JONAS GEISSLER

Deputy Assistant Attorney General

Civil Rights Division

/s/ Roberta S. Kirkendall

ROBERTA S. KIRKENDALL

Special Legal Counsel

JANE E. ANDERSEN

Trial Attorney

Disability Rights Section

Civil Rights Division

United States Department of Justice

Washington, D.C.

August 28, 2025

**ATTACHMENT A  
INTAKE HEARING SCREENING ASSESSMENT FORM**

**NORTH CAROLINA DEPARTMENT OF ADULT CORRECTIONS**

**INTAKE SCREENING**

**AUXILIARY AIDS AND SERVICES ASSESSMENT FOR INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING**

Name: \_\_\_\_\_ ID#: \_\_\_\_\_ Facility: \_\_\_\_\_

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

**1. Assessment of Sign Language Ability**

- a. Individual uses sign language? (check one): ☐ Yes ☐ No
- b. If yes to 1.a., is sign language the individual's *primary* language: ☐ Yes ☐ No
- c. 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) \_\_\_\_\_

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

(For example: Is the person able to read and write in any language understood by NCDAC 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 (NCDAC staff):

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_____		
Printed Name	Signature	Date

Individual:

_____		
Printed Name	Signature	Date

**ATTACHMENT B**  
**NORTH CAROLINA DEPARTMENT OF ADULT CORRECTIONS**  
**COMMUNICATION PLAN**  
**FOR INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING**

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

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

*For Other Accommodations: Document whether 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 NCDAC 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

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 individual already possessed hearing aid):

## C. Cell or Bunk Placard

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

- ☐ Deaf      ☐ Hard of Hearing      ☐ Individual declines identification placard

## D. Other Technologies

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

## E. Other Auxiliary Aids and Services or Accommodations Needed

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**F. Expressed Choice of Individual:** In determining what types of auxiliary aids and services are necessary, NCDAC will give primary consideration to the individual's request for a particular auxiliary aid or service and will honor that request unless NCDAC can demonstrate that another equally effective means of communication exists or that 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 NCDAC that a particular request would fundamentally alter the service, program, or activity, or would result in an undue financial or administrative burden, state the reasons for the denial with specificity,

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface.

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Date

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Printed Name	Signature	Date
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Date