

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND  
VERMONT DEPARTMENT OF CORRECTIONS UNDER THE AMERICANS WITH  
DISABILITIES ACT, DJ # 204-78-44**

**I. BACKGROUND & JURISDICTION**

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and the Vermont Department of Corrections (“VDOC”).
2. This Agreement resolves the United States’ investigation of VDOC 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 complaints from inmates at the Southern State Correctional Facility (“SSCF”), alleging that VDOC fails to provide facilities that are accessible to inmates with mobility disabilities. The United States also received complaints from inmates at Chittenden Regional Correctional Facility (“CRCF”) that VDOC fails to provide effective communication for inmates with hearing disabilities and thereby denies them participation in educational, vocational, religious, and other programs on the basis of their disabilities. They further allege that VDOC has a policy that provides inmates with only one hearing aid, when two are prescribed, and fails to timely repair and return hearing aids to inmates, thereby preventing them from participating fully in counseling, educational, recreational, religious, and social programs. Inmates with mobility disabilities allege that SSCF and CRCF facilities are inaccessible, and that they are unable to fully participate in activities of daily living, educational programs, and access to church services because of architectural barriers in correctional facilities. Inmates with mobility disabilities also allege that VDOC fails to make reasonable modifications to its policies, practices, and procedures to assign them to a lower bunk where necessary to provide access. The United States’ investigation included document review and interviews with VDOC inmates, personnel, and administrators at SSCF, CRCF, Marble Valley Correctional Facility (“MVCF”) and the Northern State Correctional Facility (“NSCF”). The United States also conducted architectural surveys of SSCF, CRCF, and MVCF.
4. The United States investigated the programs, services, activities, and facilities of VDOC and concluded that the SSCF, CRCF, and NSCF fail to provide architectural, communication, and program access to persons with disabilities and that qualified individuals with disabilities are, by reason of such disabilities, excluded from participation in or denied the benefits of VDOC’s programs, services, or activities or are subject to discrimination in violation of Title II of the ADA. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.149-35.152, 35.160.
5. The ADA applies to VDOC 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 VDOC'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. This Agreement should not be construed as an admission of liability by VDOC.
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 Compliance Director" means an employee of VDOC who has responsibility and authority to ensure that: VDOC facilities are readily accessible to and usable by inmates with disabilities; VDOC provides inmates 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 inmates' requests for accommodations, complaints, and grievances are addressed and resolved as set forth in this Agreement.
10. "**Alteration**" means a change to a VDOC facility or part of a facility that affects or could affect the usability of the facility. 28 C.F.R. § 35.151(b).
11. "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.
12. "**Communication Plan**" means the individualized list of accommodations, including appropriate auxiliary aids and services that will be provided to each inmate 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.
13. "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 VDOC operates, supervises, controls, manages, or contracts to receive services for inmates who are under VDOC's supervision.

14. "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 inmates 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 Compliance Director or the Facility ADA Coordinator to discuss what auxiliary aids and services to include in the inmate's Communication Plan.
15. "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.
16. "Facility ADA Coordinator" means the designated person at each VDOC Correctional Facility with the responsibility and authority to develop an inmate's Communication Plan to provide inmates with disabilities the auxiliary aids and services necessary to ensure effective communication and access to programs, services, facilities, and activities.
17. "Intake Hearing Screening" means the initial inquiry, conducted when an inmate first enters a Facility, regarding whether an inmate may have a hearing disability. The Intake Screening forms the basis for follow up by VDOC if a hearing disability is identified, and, where a hearing disability is identified, triggers the development of an inmate'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.
18. "**Intake**" means the process from the point in time at which an inmate is taken into the custody of VDOC at a VDOC Correctional Facility, through the point in time the inmate is received at, and assigned to, a unit within a maintaining VDOC 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. "Inmate with Hearing Disabilities" means an inmate 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 "inmates with hearing disabilities" is used to refer to individuals who are deaf or hard of hearing.
20. "**Inmate with Mobility Disabilities**" means an inmate with physical disabilities that substantially limit one or more major life activities, including walking and standing. 42 U.S.C. § 12102(1)(A)-(2)(A).
21. "**New Construction**" means each facility or part of a facility constructed by, on behalf of, or for

the use of, VDOC where construction commenced after January 26, 1992. 28 C.F.R. § 35.151(a).

22. “Personnel” means all VDOC employees, agents, contractors, and volunteers who are responsible for the custody, oversight, and care of inmates in VDOC facilities.
23. “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.
24. “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 purposes of this Agreement, a Certified Deaf Interpreter is also considered a qualified interpreter.
25. “Secondary Hearing Assessment” means a hearing assessment to (1) determine whether an inmate has a hearing disability, (2) obtain additional information on the extent of an inmate’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 inmate who has been incarcerated presents with a suspected hearing disability during incarceration. A Secondary Hearing Screening can be ordered at any time during an inmate’s incarceration.
26. “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.
27. “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.
28. “Videophone” means a telephone with a camera and screen for visual, real-time communication.
29. “**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.
30. “**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

31. **Nondiscrimination Based on Disability.** VDOC and its officers, employees, agents, successors, and assigns, will ensure that individuals with hearing or mobility disabilities are not discriminated against on the basis of disability in VDOC'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. VDOC's obligations under the ADA include, but are not limited to, the following:
- a. VDOC will not discriminate against or exclude qualified inmates with disabilities from participation in, or deny such inmates the benefits of, VDOC'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 inmate's disability, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a), (b)(1)(i);
  - b. VDOC will not, on the basis of disability, deny qualified inmates with hearing or mobility disabilities the opportunity to participate in or benefit from VDOC's aids, benefits, or services, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(i);
  - c. VDOC will not, on the basis of disability, provide aids, benefits, or services to qualified inmates with hearing or mobility disabilities that are unequal to, or different or separate from, those afforded to inmates who do not have disabilities, unless different or separate services are necessary to provide such inmates 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. VDOC will reasonably modify its policies, practices, and procedures where necessary to avoid discrimination on the basis of disability unless VDOC 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. VDOC will not impose or apply eligibility criteria that screen out or tend to screen out inmates with disabilities from fully and equally enjoying VDOC's services, programs, or activities, unless VDOC 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
  - f. VDOC will ensure that its facilities are accessible to and usable by inmates with disabilities and will not exclude such inmates from participation in, or deny them the benefits of, its services, programs, or activities because its facilities are inaccessible or unusable by inmates with disabilities, 42 U.S.C. § 12132; 28 C.F.R. §§ 35.149, 35.150, 35.152(b)(1). VDOC will ensure that its facilities and portions of its facilities constructed or altered after January 26, 1992 comply with ADA design standards. 28 C.F.R. §§ 35.151, 35.104.

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

32. VDOC will provide appropriate auxiliary aids and services to ensure effective communication and the equal opportunity to participate in and enjoy the benefits of VDOC’s services, programs, and activities. This includes all programs, services, and activities provided by entities under contract with VDOC, such as third-party vendors, contractors, or state funded entities such as community colleges.
33. **Examples of Interactions that Require Auxiliary Aids and Services.** The following non-exhaustive list provides examples of activities, services, programs, or circumstances where VDOC will provide appropriate auxiliary aids and services, including qualified interpreters, to ensure effective communication with VDOC inmates who have hearing disabilities:
- a. Critical Interactions, complex information, lengthy exchanges, or communications involving legal matters or issues;
  - b. Intake, including transfers between facilities;
  - c. Orientation;
  - d. Classification;
  - e. Medical care and health programs and services, including physicals, medical screenings and treatment, dental, visual, and/or mental health examinations or treatment, and drug and alcohol recovery services, including telemedicine;
  - f. Counseling or psychological services;
  - g. Educational and vocational programming, including any programming required for parole or early-release;
  - h. Due process hearings, including disciplinary hearings, and hearings in which the inmate is a witness;
  - i. Classification review interviews;
  - j. Grievance interviews or processes;
  - k. Religious services;
  - l. Investigations conducted by VDOC; and
  - m. Pre-release instructions.
34. All auxiliary aids and services required by this Agreement will be provided promptly and free of charge to inmates with hearing disabilities. In determining what types of auxiliary aids and services are necessary, VDOC will give primary consideration to an inmate’s request for a particular auxiliary aid or service and will honor that request unless VDOC 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.

35. VDOC will provide and maintain written instructions for inmates and VDOC 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**

36. Consistent with its custodial role, VDOC will provide the appropriate type and number of hearing aids and cochlear processor devices, free of charge, to inmates who have been prescribed hearing aid(s) or who have cochlear implants. Standard hearing aids and cochlear processor devices will be provided to inmates requesting them as soon as reasonably possible, but not later than 30 days after an inmate's request is submitted by the inmate or the inmate's treating health care provider. In the event there is a disagreement about the type and number of hearing aids an inmate requires, VDOC will seek 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 inmate receives.
37. VDOC will provide the appropriate type and number of hearing aid and cochlear processor replacement batteries, free of charge, to inmates who have been prescribed hearing aid(s) or who have cochlear implants. Standard replacement batteries will be provided to inmates requesting them as soon as reasonably possible, but not later than 24 hours after a request is submitted by the inmate, and no later than 48 hours on weekends and holidays. Nonstandard replacement batteries will be ordered as soon as reasonably possible, but not later than 24 hours after a request is submitted by the inmate, and no later than 48 hours on weekends and holidays.
38. When an inmate's hearing aid, cochlear processor, or other such device is inoperable or malfunctioning, VDOC will send the device to an appropriate repair company as soon as possible, but not later than 24 hours (or up to 48 hours on weekends and holidays) after an inmate health care request is submitted by the inmate. A temporary hearing aid will be provided to the inmate for use during the time that the original hearing aid is out for repairs. Upon the inmate's request, VDOC will inform the inmate when the device was sent for repair and when it is expected to be returned by the repair company. Upon the inmate's request, VDOC will provide the inmate with any written documentation provided to VDOC by the repair company regarding the vendor used, the date of the repair, and the specific repairs performed.
39. If the inmate'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, VDOC will ensure the inmate retains the original device (if functional), and VDOC will schedule a medical appointment as soon as reasonably possible. VDOC will take additional appropriate steps to ensure effective communication with the inmate during any period in which the inmate is without their hearing aid, cochlear processor, or other such device.

### **Interpreting Service Agencies**

40. Within 30 days of the effective date of this Agreement, VDOC will provide or contract 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. Following the United States' investigation, VDOC represents that it provides VRI services 24 hours a day/7 days a week. Alternatively, VDOC may make other appropriate arrangements such as contracting directly with, or hiring, qualified interpreters on a fee for service basis as necessary. Documentation of interpreter

services will be provided in the compliance reports required in “Monitoring and Reporting Requirements” in this Agreement.

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

41. VDOC will not use another inmate to interpret for an individual who has a hearing disability unless (1) the individual with a disability specifically requests such assistance from another inmate, the inmate agrees, and reliance on that inmate 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).
42. Except for VDOC personnel hired specifically to serve as qualified sign language interpreters, VDOC will not use its personnel to serve as sign language interpreters except in appropriate circumstances, such as: informal communications, providing basic information to an inmate 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)**

43. To the extent VDOC utilizes VRI to provide effective communication, within 30 days of the effective date of this Agreement, VDOC will provide access to, and have available for, in emergency situations and otherwise as deemed necessary by VDOC, on-demand video remote interpreting that comports with the following standards at all VDOC Correctional Facilities at which inmates 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 inmate, 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.
44. VDOC will implement VRI no later than 30 days of the Effective Date of this Agreement. VDOC will require that the VRI provider(s) use only Qualified Interpreters. VDOC will ensure that at least one of the VRI systems is housed in the medical unit of VDOC Correctional Facilities at which inmates with hearing disabilities are incarcerated. Following the United States’ investigation, VDOC represents that it has implemented VRI with Qualified Interpreters and that VRI is also available in medical units at which inmates with hearing disabilities are incarcerated.
45. 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 inmate is unable to see clearly the video monitor (for example, due to vision difficulties or because the video monitor is out of the inmate'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

46. Within 30 days of the effective date of this Agreement, VDOC will make the following communication technologies available at all of its VDOC Correctional Facilities where inmates with hearing disabilities are incarcerated to facilitate communication between inmates with hearing disabilities and people outside of VDOC Correctional Facilities. This list of equipment is not exhaustive.
- a. **TTY (teletypewriter) and Telephone.** Every VDOC 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 inmates with hearing disabilities. VDOC will ensure that at least one TTY will be available and readily accessible during the same hours as the standard telephone is available for inmates who do not have hearing disabilities. VDOC will keep an additional portable TTY unit for use when the regular TTY is broken or otherwise unavailable.
  - b. **Relay Services.** VDOC will enable all TTYs to access publicly available relay service phone numbers and local 1-800 numbers. Inmates with hearing disabilities at VDOC Correctional Facilities using relay services may not be charged any more than inmates not using relay services and will be charged the per minute rate established by VDOC's contract with its inmate telephone service provider, consistent with applicable law.
  - c. **Videophones.** VDOC will make videophones, either portable or non-portable, available at every VDOC facility where inmates with hearing disabilities are incarcerated. VDOC will provide a videophone at a location easily accessible to inmates with hearing disabilities. Inmates with hearing disabilities will be provided access to these devices in a manner equivalent to the access afforded to inmates who use a standard telephone.
  - d. **Over-the-Ear Headphones.** VDOC will make over-the-ear headphones available to inmates with hearing disabilities who wear hearing aids to the same extent that inmates without hearing disabilities are provided earbuds or on-the-ear headphones for television and radio. Over-the-ear headphones enable the inmate who wears hearing aids to listen to television and radio without removing their hearing aids.
47. VDOC agrees to keep abreast of evolving technology and to consider adding new equipment and technologies to reflect technological advances.
48. VDOC Correctional Facilities housing inmates with hearing disabilities will provide a list of communications equipment available to inmates with hearing disabilities upon their arrival at a VDOC Correctional Facility.
49. VDOC will maintain all auxiliary aids and services for inmates with hearing disabilities at VDOC Correctional Facilities in working condition at all times, or promptly repair them.
50. VDOC staff will attempt to resolve complaints about any malfunctioning equipment (e.g., TTY or videophone) within one week of receiving that complaint and no later than one month after receiving the complaint. VDOC will initiate a work order or other applicable mechanism for resolving the issue within 24 hours of the complaint. VDOC 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 VDOC control. However, any delay beyond one week requires VDOC to identify and implement an interim solution to ensure effective communication until the device is repaired and returned to the inmate with hearing disabilities.

51. **Telecommunication Services.** VDOC will provide inmates with hearing disabilities at VDOC Correctional Facilities with a range of telecommunication devices to ensure communication with people outside of VDOC that is substantially similar to the access to telecommunication services VDOC provides to inmates who do not have hearing disabilities.
52. **Monitoring Communications.** VDOC may monitor communications between inmates with hearing disabilities at VDOC Correctional Facilities and individuals outside of VDOC to the same extent and with the same discretion applied to the monitoring of communications between inmates that do not have hearing disabilities and individuals outside of VDOC.
53. **Additional Time.** Within 30 days of the Effective Date of this Agreement, VDOC will implement a written policy that provides inmates with hearing disabilities at its VDOC Correctional Facilities three times the amount of time to use telecommunication services such as TTYs or VRI, as inmates who do not have hearing disabilities. VDOC will notify inmates with hearing disabilities of such additional time for telecommunications.
54. **Privacy of Communications.** VDOC will ensure that the privacy of telephone calls by inmates using a videophone, TTY, telephone with volume control, or other telecommunication device is equal to that of other inmates' telephone calls.

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

55. **Intake Policies and Procedures.** VDOC will provide inmates with access to Qualified Interpreters or other appropriate auxiliary aids and services, as are necessary to afford the inmates effective communication at Intake. Following the United States' investigation, VDOC represents that it is providing appropriate auxiliary aids and services as necessary to afford inmates effective communication at Intake. Access to Qualified Interpreters or other appropriate auxiliary aids and services will be provided from the point that an inmate with a hearing disability notifies VDOC of their disability, or VDOC suspects an inmate of having a hearing disability. Qualified Interpreters or other auxiliary aids and services will be provided to aid in the explanation of VDOC policies and procedures. Primary consideration will be given to the request of the inmate for a Qualified Interpreter or a specific auxiliary aid or service choice unless VDOC can demonstrate that another equally effective means of communication exists or unless providing the requested auxiliary aid or service would result in an undue financial or administrative burden and VDOC undertakes the process articulated in 28 C.F.R. § 35.164, including that such assertion must be made by the VDOC Commissioner or an individual designated by the Commissioner who has budgetary authority and must be accompanied by a written statement of the reasons for reaching that conclusion. As detailed in the applicable regulations, VDOC's statement would also specify its proposed alternative aid or service that would not result in an undue burden but would nevertheless ensure, to the maximum extent possible, that qualified individuals with disabilities receive the benefits or services provided by VDOC.
  - a. VDOC will provide access to a Qualified Interpreter or other auxiliary aids and services necessary for the inmate with a hearing disability to understand and complete the Intake

process. In the event VDOC is not aware, prior to Intake, that the inmate will require an interpreter or other auxiliary aid or service to ensure effective communication, VDOC 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. VDOC will provide written notification on Intake and orientation materials for inmates 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.
56. Within 30 days of the Effective Date of this Agreement, VDOC will implement a comprehensive procedure to identify and provide every inmate 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, and (3) the development of a Communication Plan.
  57. **Timeline Screening, Assessment, and Communication Plan.** The Intake Hearing Screening will occur within 72 hours of entry into VDOC. If VDOC determines an inmate needs a Secondary Hearing Assessment a referral will be made to an appropriate licensed professional within 7 days of the Intake Hearing Screening; and upon the availability of the professional, an appointment will be made within 30 days of the referral. If extenuating circumstances prevent an appointment within 30 days of a determination, VDOC will provide an explanation for the delay to the United States within the 30-day period. VDOC will make every possible effort to ensure the Secondary Hearing Assessment appointment occurs promptly thereafter, but no later than 60 days from the date of the referral. The inmate and the ADA Compliance Director or their designee will meet with the inmate to finalize the inmate's Communication Plan as soon as reasonably possible, but no later than 10 days following the Intake Hearing Screening or, if ordered, the Secondary Hearing Assessment. Regardless of whether a Secondary Hearing Assessment is ordered, the Communications Plan shall be finalized within 30 days of the Intake Hearing Screening, which will be modified, if necessary, within 10 days once results from the Secondary Hearing Assessment are received.
  58. **Intake Hearing Screening.** Within 72 hours of entry into VDOC, VDOC will screen every inmate for hearing disabilities as part of the VDOC intake process. VDOC will document the Hearing Screening with the Intake Hearing Screening Assessment Form, Attachment B, of this Agreement. If the inmate has a hearing disability or an apparent hearing disability (e.g., wears hearing aids), VDOC personnel will complete as much of the Communication Plan as possible, Attachment C, within two business days of Intake, which will be considered a temporary Communication Plan until one is finalized as described in paragraph 60.
  59. **Secondary Hearing Assessment.** If VDOC determines a need for, or an inmate requests at any time during incarceration, assessment for a hearing disability, VDOC will refer the inmate to an appropriate licensed professional (e.g., ENT, audiologist, licensed hearing aid dispenser), within 14 days of the determination or request, for a 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 inmate's existing Communication Plan, or to develop a new Communication Plan for inmates 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, VDOC will

provide those devices within 30 days of the date of the Secondary Hearing Assessment.

60. **Communication Plan.** Within 30 days of an Intake Hearing Screening, or Secondary Hearing Assessment, VDOC will finalize a Communication Plan, as set forth in Attachment C to this Agreement, for every inmate with a hearing disability. The Communication Plan will identify the auxiliary aids and services VDOC will provide to the inmate 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 inmate's individual Communication Plan will be governed by the other applicable provisions of this Agreement. VDOC will maintain a copy of the Communication Plan in the inmate's record. The most current version of the Communication Plan supersedes any previous versions and will be updated periodically to reflect changes to the inmate's hearing status.
- a. **Primary Consideration.** VDOC in consultation with the inmate 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, VDOC will give primary consideration to the expressed choice of the inmate and must honor that choice unless VDOC 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 and VDOC undertakes the process articulated in 28 C.F.R. § 35.164.
  - b. The Communication Plan will include a list of the auxiliary aids and services the inmate is entitled to for effective communication for:
    - i. Critical interactions
    - ii. Disciplinary matters, including investigations and proceedings
    - iii. Interviews with Internal Affairs or investigators
    - iv. Interviews or proceedings related to protective custody
    - v. Meetings with VT DOC staff to discuss auxiliary aids and services
    - vi. Pre-release meetings & programs, including pre-release parole meetings
    - vii. Grievance interviews and processes
    - viii. Educational programs and testing that include a verbal component or aural component
    - ix. Vocational programs that include a verbal or aural component
    - x. Religious services
    - xi. 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 xii below)
    - xii. Medical care that is routine and does not involve substantial conversation (e.g., routine blood work or tests, regular allergy shots)
    - xiii. 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.** VDOC will establish and implement a procedure for inmates with hearing disabilities to work with the ADA Compliance Director and the Facility ADA Coordinator to make amendments or modifications to the Communication Plan. An inmate with a hearing disability may change their preferences, including modifying, adding, or waiving services. An inmate 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 inmate had previously declined services.
61. **Transfers within VDOC.** VDOC will ensure that every inmate who transfers between VDOC facilities receives the same auxiliary aids and services at the receiving facility as were provided at the former VDOC facility. The VDOC receiving facility is required to provide auxiliary aids and services, including Qualified Interpreters, to the inmate based on the Communication Plan.
62. VDOC will inform all personnel having contact with an inmate with hearing disabilities of the inmate's disability and the auxiliary aids and services necessary to facilitate effective communication. An inmate'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 VDOC personnel.
63. During the Intake process, the inmate will be offered the opportunity to have an identification ("ID") bracelet in a distinguishing color that clearly identifies the inmate as having a hearing disability. The inmate can decline the distinguishing colored bracelet in favor of a standard issue identification bracelet. The waiver of the distinguishing colored bracelet does not waive the inmate's right and/or access to eligible services. The inmate will not be precluded from changing their preference during the period of incarceration to remove the waiver and may opt to have a distinguishing colored bracelet issued at any time, and VDOC will provide the distinguishing colored bracelet within 10 days.
64. The distinguishing colored bracelet will signify to VDOC personnel that the inmate has a hearing disability and as a result, may require auxiliary aids and services to understand and carry out correctional personnel's commands. The distinguishing colored bracelet will also indicate that additional information about specific auxiliary aids and services for the inmate is available in the inmate's Communication Plan or from the Facility ADA Coordinator.

### **Unanticipated Interactions**

65. **Interactions not Addressed in Communication Plan.** VDOC 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 inmate with hearing disabilities. In the event an unanticipated interaction or condition arises that is not addressed in the Communication Plan, VDOC 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.
66. **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 inmate does not yet have a Communications Plan in place, VDOC will provide qualified interpreters accordingly:

- a. VDOC 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 inmate 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 inmate 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. The inmate 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 24 hours from the scheduled event, absent exigent circumstances.
- c. VDOC will use the most effective, readily available means of communicating with the inmate until such time as a qualified interpreter is present. VDOC will inform the inmate of the current status of efforts being taken to secure a qualified interpreter on the inmate's behalf within 30 minutes of VDOC making the request for the interpreter service. VDOC will provide additional updates to the inmate, as necessary, until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not obviate VDOC's obligation to provide qualified interpreters in a timely manner.

### **Documentation and Records**

67. VDOC 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 VDOC personnel, the employee receiving the request will provide the inmate 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 inmate 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.
68. **Individual Inmates' Records.** VDOC will maintain copies of the Intake Hearing Screening, Secondary Hearing Assessment, and Communication Plan in each inmate's records.

### **Policies and Procedures**

69. **Review of Effective Communication Policy.** Within 30 days after the effective date of this Agreement, VDOC will submit to the United States for review and approval a draft Effective Communication Policy, which may be in the form of an amendment to VDOC's existing ADA policy, that incorporates the requirements of this Agreement. The United States will review the draft policy and provide its comments to VDOC. VDOC will incorporate the United States' comments and submit the revised policy to the United States for review and approval within 10 days of receipt of the United States' comments. Within 10 days of the United States' approval, VDOC will adopt and implement the Effective Communication Policy.

70. If any inmate who has a hearing disability requires a different auxiliary aid or service than originally provided, VDOC 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.
71. **Adoption of a Policy and Procedure to Identify and Accommodate Inmates with Hearing Disabilities.** Within 60 days from the Effective Date of this Agreement, VDOC will submit to the United States for review and approval a draft Policy and Procedure that incorporates the requirements relating to the process for identifying inmates 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 VDOC. VDOC will incorporate the United States' comments and submit the revised policy to the United States for review and approval within 10 days of receipt of the United States' comments. Within 10 days of the United States' approval, VDOC will adopt and implement the Policy and Procedures governing the process to identify inmates with hearing disabilities, and to provide them with access to programs, services, facilities and activities, and with appropriate auxiliary aids and services. The policy will include, at a minimum, the following terms:
- a. An initial hearing screening at Intake to identify and document whether an inmate has or may have a hearing disability, or whether VDOC staff suspect the inmate has a hearing disability that may require additional testing;
  - b. The parameters that trigger a Secondary Hearing Assessment, including audiologic testing if necessary, of inmates who demonstrate difficulty hearing in the initial hearing screen, or who notify VDOC 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 inmate with hearing disabilities;
  - d. Documentation of how to conduct each phase of the process to ensure that VDOC 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 inmates with a hearing disability; and
  - e. Assurance that VDOC will provide the type of auxiliary aids or services that are identified on the inmate's Intake Hearing Screening, Secondary Hearing Assessment, if provided, and Communication Plan.

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

72. Within 90 days of the Effective Date, VDOC will modify its existing database, or create a new database, that provides a centralized location for information that identifies each inmate with a hearing disability and the inmate's requirements for auxiliary aids and services. This centralized database will include at a minimum the following information:
- a. The name of the inmate;
  - b. The facility at which the inmate is housed;
  - c. Whether the inmate has an identification card or placard with the designation, "Hearing Disability";
  - d. Copies of the inmate's Intake Hearing Screening, Secondary Hearing Assessment, if

applicable, and the Communication Plan;

- e. An inventory of specific auxiliary aids and services VDOC provides to the inmate, as described in the inmate's Communication Plan; and
  - f. Copies of authorizations and maintenance records for the inmate's auxiliary aids and services.
73. VDOC will promptly and regularly update the centralized database to account for information relating to all inmates identified with a hearing disability and any changes to the Communication Plan.
74. The centralized database will be available to all VDOC custody and program staff.

### **Interpretation of Written Materials**

75. VDOC will provide an inmate with a hearing disability the written materials it provides to all inmates, and upon request, provide a Qualified Interpreter to ensure the inmate with a hearing disability understands the contents of the written materials.
76. VDOC will effectively communicate the contents of the Inmate Handbook and other written materials, and if provided, the Inmate Orientation Video, and similar policies and publications to all inmates who have a hearing disability, including those for whom written language is not an effective means of communication. VDOC may choose to meet this obligation by providing a video of a qualified interpreter signing the contents of the 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 inmate who has a hearing disability.
77. During the term of this Agreement, VDOC 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 inmates who have a hearing disability, the Vermont 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 Vermont Department of Corrections' programs.”

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

78. Inmates with hearing disabilities incarcerated at VDOC Correctional Facilities shall not miss announcements, alarms, or any other auditory information from VDOC staff to the general inmate population solely because of their disability. Within 6 months of the effective date of this Agreement, VDOC will provide an effective visual or other notifications system or protocol that will advise inmates with hearing disabilities of routine and customary announcements, alarms, or other auditory information provided to inmates who do not have hearing disabilities, including normal and customary notification of emergencies, evacuations, education, work assignments, and daily prison activities, such as wake-up calls, meal times, recreational time, and other normal



and customary announcements. VDOC represents that it provides inmates with hearing disabilities with access to effective routine and customary announcements and notifications.

79. VDOC will provide personal pagers, that include visual as well as vibrating functions, in all VDOC Correctional Facilities that house inmates with hearing disabilities. Pagers will be used as supplemental notification systems to aid in daily notification of routine announcements and protocols, including wake-up calls, meal times, recreational times, and other normal and customary notifications provided to inmates who do not have hearing disabilities. Inmates may opt to forgo the use of personal pagers, in which case this information will be documented in the inmate's file and in the centralized database.
80. VDOC personnel will be properly trained in how to use the personal pagers, and will be responsible for transmitting messages and alerts to the pagers at the same time messages and alerts are broadcast to inmates without hearing disabilities.

### **Audio/Visual Media**

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

### **Medical Care**

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

87. **Emergency Events.** VDOC will use VRI at VDOC Correctional Facilities for medical emergencies, if an in-person Qualified Interpreter would have otherwise been the appropriate auxiliary aid or service for that inmate in that context. If remote interpreting services are not appropriate in the situation, VDOC 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.
88. **Scheduled Offsite Medical Care.** VDOC or its designee will timely inform all offsite medical providers that an inmate with a hearing disability will require a Qualified Interpreter or other Auxiliary Aid or Service for medical care offsite. VDOC 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 inmate to the appointment.
89. **Emergency Offsite Medical Care.** In the case of an emergency, VDOC will inform the offsite medical provider that an inmate 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. VDOC will notify the offsite medical care provider as soon as possible. Notification will include the estimated time of arrival.

#### **Work Assignments at VDOC Correctional Facilities**

90. VDOC will provide opportunities for institutional work assignments for inmates with hearing disabilities at VDOC Correctional Facilities that are equal to opportunities provided to hearing inmates. An inmate with hearing disabilities may not be prohibited from an institutional work assignment based on disability unless VDOC demonstrates that the individual's participation would constitute a direct threat. *See* 28 C.F.R. § 35.104. In determining whether an individual poses a direct threat to the health or safety of others, VDOC must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. *See* 28 C.F.R. § 35.139.

#### **Post-Release Supervision**

91. VDOC Department of Parole and Probation will develop an updated Communication Plan to reflect the post-release supervision environment in consultation with the former inmate and VDOC ADA coordinator. VDOC will provide a Qualified Interpreter or other auxiliary aids and services for all meetings, including telephonic and video communications, involving significant or critical interactions, after an initial request for a Qualified Interpreter or other auxiliary aids and services is made by either the former inmate or by VDOC Department of Parole and Probation staff. VDOC will give primary consideration to the request by the former inmate for the auxiliary aids and services they require.

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

92. VDOC will ensure that, when inmates who have hearing disabilities are cuffed or restrained, they are cuffed or restrained in a manner that permits effective communication (e.g., cuffing inmates in the

front so they can sign; having one hand free in order to write) unless legitimate safety concerns dictate otherwise.

**V. REMEDIAL RELIEF – ARCHITECTURAL**

93. Within 33 months and in accordance with the timeline set forth in Attachment A, VDOC will complete all the modifications to SSCF, CRCF, and NSCF specified in Attachment A, using the 2010 ADA Standards as required by the applicable architectural standards, subject to paragraph 94 below. *See* 28 C.F.R. § 35.151(c) and the Appendix thereto, copied below.

| <b>Date of Construction or Alteration</b>                 | <b>Applicable Standards</b>                     |
|---|---|
| Before September 15, 2010                                 | 1991 ADA Standards or UFAS                      |
| On or after September 15, 2010, and before March 15, 2012 | 1991 ADA Standards, UFAS, or 2010 ADA Standards |
| On or after March 15, 2012                                | 2010 ADA Standards                              |

94. VDOC will seek Capital Bill funding from the Vermont General Assembly for the modifications described in paragraph 93 above. If the Legislature fails to timely appropriate adequate funding after VDOC’s good faith attempts to obtain such funding, VDOC will promptly notify the United States of such failure on the part of the Legislature. The parties will then negotiate a single reasonable extension of the deadline listed in paragraph 93, above, and the timelines set forth in Attachment A for the impacted projects, taking into account the requirements of the legislative process in Vermont and the reasonable construction timelines required for each project. The United States will not consider VDOC to be in violation of this agreement for failure to meet the timelines set forth in Attachment A unless the State of Vermont fails to meet the deadline and timelines extended under this paragraph 94, subject to any additional extensions granted by the United States under paragraph 127, below.

95. As described in Attachment A, VDOC will ensure additional cells with lower bunks, showers, toilet rooms, and tables as necessary, in accordance with the 2010 Standards, to ensure that each inmate with a disability has the same access as non-disabled inmates to the elements necessary to afford the inmate safe, appropriate housing. This includes, but is not limited to, an adequate number of accessible toilets, lavatories, showers, and tables to meet the needs of the population of inmates with disabilities. 28 C.F.R. § 35.152.

96. In the event that VDOC has already undertaken an alteration, addition, or other modification to any element identified in Attachment A or otherwise after January 26, 1992, and prior to the Effective Date of this Agreement, VDOC will submit, within 6 months, a written report to the Independent Licensed Architect (“ILA”) and the United States pursuant to paragraph 114 below summarizing the actions taken and providing evidence establishing each individual element’s compliance with the applicable architectural standards.

97. **Independent Licensed Architect (“ILA”).** Within 3 months of the effective date of this Agreement, VDOC will retain an ILA, approved by the United States, who is knowledgeable about the architectural accessibility requirements of the ADA. The ILA must act independently to certify whether any alterations, additions, or modifications identified in Attachment A, made by VDOC during the term of this Agreement comply with the applicable standard pursuant to 28 C.F.R. § 35.151(c) and the Attachment to 28 C.F.R. § 35.151(c). The United States will not bear any of the costs and expenses of retaining and utilizing the ILA, including the costs and expenses of any

consultants and staff. The ILA will be compensated without regard to the outcome.

98. **Program Access in Existing Facilities.** VDOC will take any actions necessary to make each of VDOC's programs, services, and activities operating at a facility that is the subject of this Agreement, when viewed in its entirety, readily accessible to and usable by people with disabilities consistent with 28 C.F.R. §§ 35.150(b)(1) and 35.151.

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

99. Within 30 days of the effective date of this Agreement, VDOC will designate an ADA Compliance Director who will oversee the effective communication program and will be responsible to ensure compliance with VDOC policies and compliance with the ADA throughout VDOC. VDOC represents that it has already designated an ADA Compliance Director to oversee the effective communication program and be responsible for ensuring compliance with the ADA.
100. Simultaneously with the designation of the ADA Compliance Director, each VDOC Correctional Facility will designate one or more Facility ADA Coordinators who are responsible for compliance with this Agreement at each respective VDOC Correctional Facility. The Facility ADA Coordinators are responsible for developing the Communication Plan in consultation with the ADA Compliance Director, and for providing immediate access to, and proper use of, appropriate auxiliary aids and services for inmates with hearing disabilities. VDOC represents it has designated Facility ADA Coordinators at each correctional facility.
101. VDOC will circulate broadly and throughout VDOC system and publish on VDOC's website the names and contact information, including telephone numbers, email addresses and office locations of each Facility ADA Coordinator and the ADA Compliance Directors that relatives, registered friends, and associates can contact during normal business hours.
102. VDOC will implement and maintain a log of calls from relatives, registered friends, and associates of inmates with disabilities to the Facility ADA Coordinators or the ADA Compliance Director, and include a copy of these logs to the United States upon request.
103. The ADA Compliance Director or designee will be available 24 hours per day, 7 days a week 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.
104. 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 or designees, in coordination with the ADA Compliance Director, will know where the auxiliary aids are stored, and how to operate and deploy them, and will ensure that they are properly maintained, repaired, replaced, and distributed in accordance with the provisions of this agreement.

### **ADA Training**

105. Within 6 months of the effective date of this Agreement, VDOC 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 VDOC. VDOC 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.

106. Within 9 months of the effective date of this Agreement, and at least once per calendar year throughout the term of this Agreement, VDOC will provide live training to all personnel who have contact with inmates. The training will be sufficiently detailed to enable VDOC 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.
107. The training will include instruction on interactions with inmates who have a hearing disability and on the effective communication measures required under this Agreement. To the extent that supplemental instruction is necessary after the Effective Communication Policy has been finalized, VDOC will provide a written supplement to those personnel who attended the live training prior to the implementation of the Policy.
108. VDOC 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 114. VDOC will ensure that all relevant current and future personnel understand and implement the terms of this Agreement.
109. VDOC will provide appropriate instruction regarding VDOC's Effective Communications Policy to contractors and volunteers who will have contact with inmates with hearing disabilities.
110. Within nine months of the effective date of this Agreement, VDOC will incorporate ADA training revised and approved by the United States as set out in this Agreement into the curriculum at the Vermont Correctional Academy for all new personnel who will have contact with inmates.

#### **ADA Grievance Procedures**

111. Within 60 days after the effective date of this Agreement, VDOC will submit to the United States for review and approval its current ADA Grievance Procedure, for resolving inmate ADA complaints. 28 C.F.R. § 35.107(b). The United States will review the ADA Grievance Procedure and may provide comments to VDOC. VDOC will incorporate any comments provided by the United States and submit the revised ADA Grievance Procedure to the United States for review and approval. Within 20 days of the United States' approval, VDOC will adopt and implement the approved ADA Grievance Procedure. VDOC 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 the Inmate Handbook.

112. Retaliation. VDOC 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.
113. **Recordkeeping.** For the term of this Agreement, VDOC 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. VDOC will, upon reasonable notice, provide copies of these records to the United States upon the United States' request.

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

114. Within six months of the effective date of this Agreement, VDOC 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, VDOC will send an updated status report every six months, by email to counsel for the United States, referencing D.J. No. 204-78-44. The United States will review each report and provide comment regarding deficiencies or failures to comply, if any. Upon receipt of the United States' comments, VDOC will address all of the United States' concerns in the next regular report.
  - a. Each status report will include a summary of all training required by this Agreement that was conducted within the six-month time-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 VDOC'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 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 photographs showing measurements, architectural plans, and confirmation that VDOC has remediated architectural barriers to access at its facilities. Reports will include certifications from the ILA in the initial report and annually thereafter (i.e., in every other regular report).
  - d. Each status report will include copies of VDOC 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).
  - e. VDOC will submit a final status report 60 days before the conclusion of the term of this agreement.

## **MONETARY RELIEF**

115. VDOC agrees to pay a total of eighty thousand dollars (\$80,000) to compensate five (5) aggrieved persons identified by the United States during its investigation.

116. Within 30 days of the effective date of this Agreement, the United States will send to each aggrieved person identified by the United States a copy of this signed Agreement, along with a Release of Claims Form.
117. Within 30 days of VDOC's receipt of a completed Release of Claims Form from any of these individuals, VDOC will send to such individual, at the address provided by the United States, a check in an amount agreed to as directed by the United States, consistent with Paragraph 115. If an aggrieved person does not sign and return the Release of Claims form within 45 days of the United States sending the Release of Claims form, the aggrieved person will forfeit and waive their entitlement to payment under this Agreement, and VDOC may retain the money designated for that aggrieved person, decreasing the total amount VDOC is required to pay under Paragraph 115.

### **VIII. IMPLEMENTATION AND ENFORCEMENT**

118. **Implementation.** VDOC 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 VDOC to fail to comply in a timely manner with any of the requirements of this Agreement.
119. **Notification of Noncompliance and Enforcement.** If the United States believes that this Agreement or any of its requirements has been violated, it will notify VDOC in writing and attempt to resolve the issue or issues in good faith. If the United States and VDOC are unable to reach a satisfactory resolution of the issue or issues raised within 60 days of the date it provides notice to VDOC, the United States may commence a civil action in the U.S. District Court for the District of Vermont to enforce the terms of this Agreement or the ADA.
120. **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.
121. **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.
122. **Entire Agreement.** This Settlement Agreement, including Attachments A-C, constitutes the entire agreement between the Parties relating to settlement of Department of Justice Complaint No. 204-78-44. 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.
123. **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 except as provided in Paragraph 119.
124. **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.
125. **Effective Date.** The effective date of this Agreement is the date of the last signature below.
126. **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 VDOC's continuing responsibility to comply with all aspects of the ADA.

127. **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 VDOC's due diligence to meet such a requirement.
128. **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 VDOC.
129. **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.
130. **Signatories Bind Parties.** The persons signing for VDOC and the United States each represent that they are authorized to bind VDOC and the United States to this Agreement.
131. **Term of Agreement.** This Agreement will remain in effect for three years from the effective date.
132. **Posting Policies and Procedures.** Within 14 days of the United States' approval of the Effective Communication Policies and ADA Grievance Procedure, VDOC will notify inmates of the adoption, implementation, and requirements of the Effective Communication Policies and the ADA Grievance Procedure, citing this Agreement. The Agreement will be made available to inmates in facility law libraries. VDOC will amend the Inmate Handbook and similar materials to describe the requirements of the Effective Communication Policies and the ADA Grievance Procedure.
133. **No Third-Party Beneficiary.** The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors, assignees and agents, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person.
134. **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 Vermont Department of Corrections:**

/s/

JAMES BAKER  
Interim Commissioner,  
Vermont Department of Corrections

Date: 10/28/21

**For the United States:**

REBECCA B. BOND  
Chief  
ANNE S. RAISH  
Principal Deputy Chief  
MELLIE H. NELSON  
Supervisory Trial Attorney

/s/

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

Date: 10/28/21

JONATHAN A. OPHARDT  
Acting United States Attorney  
District of Vermont

/s/

JULIA TORTI  
Chief, Civil Division  
United States Courthouse  
11 Elmwood Avenue, 3<sup>rd</sup> Floor  
Burlington, VT

Date: 10/28/21

**ATTACHMENT A: REPORT OF ARCHITECTURAL VIOLATIONS**

**ATTACHMENT B: INTAKE HEARING SCREENING ASSESSMENT FORM**

**Vermont Department of Corrections Intake Screening - Auxiliary Aids and Services  
Assessment for Deaf or Hard of Hearing Inmates**

SECTION I.

Inmate Name:            ID#:            Facility:

Date Completed:

Disability (check one):         Deaf     Hard of Hearing     Speech     None of these

If “None of these” is checked, this form is completed and may be signed off by Booking Officer. Otherwise, proceed to Section II, which should be completed and signed off by a QHCP for the VDOC’s medical contractor within 72 hours of Intake.

SECTION II.

**1. Assessment of Sign Language Ability**

- a. Inmate uses sign language? (check one):                     Yes                     No
- b. If yes to 1.a., is sign language the inmate’s *primary* language:             Yes             No
- c. Inmate’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 VT 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 (Booking officer or QHCP):

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|              |           |      |
|--------------|-----------|------|
| Printed Name | Signature | Date |
|--------------|-----------|------|

Inmate:

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|              |           |      |
|--------------|-----------|------|
| Printed Name | Signature | Date |
|--------------|-----------|------|

**ATTACHMENT C: Vermont Department of Corrections Communication plan  
for Deaf or Hard of Hearing Inmates**

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

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

*For Other Accommodations: Document whether Inmate 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 Corrections Investigation Unit or other investigators               |                                     |  |
| 3. Interviews or proceedings related to administrative segregation                     |                                     |  |
| 4. Meetings with VT DOC staff to discuss Auxiliary Aids and Services                   |                                     |  |
| 5. Pre-release meetings & programs, including pre-release parole meetings              |                                     |  |
| 6. Grievance interviews and processes  |                                     |  |
| 7. Educational Programs and testing that include a verbal component or aural component |                                     |  |
| 8. Vocational programs that include a verbal or auditory component                     |                                     |  |
| 9. Risk Intervention Services that include verbal or auditory component                |                                     |  |
| 10. Religious Services   |                                     |  |

|   |  |  |
|---|--|--|
| 11. 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 12 below) |  |  |
| 12. Medical care that is routine and does not involve substantial conversation (e.g., Routine blood work or tests, regular allergy shots)   |  |  |
| 13. Daily environments and basic communications, including conversations with counselors, gym, meals, library   |  |  |

**B. Hearing Aids**

Inmate 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 inmate already possessed hearing aid):

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**C. Identification Bracelet**

Distinguishing colored identification bracelet will be provided (select one):

- Yes     Inmate declines distinguishing colored identification bracelet

**D. Cell or Bunk Marker**

Identification marker will be placed to identify a deaf or hard of hearing inmate (select one):

- Yes     Inmate declines identification marker

**E. Other Technologies**

Inmate 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 (VDOC staff):

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Printed Name

Signature

Date

Inmate:

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Printed Name

Signature

Date