SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
FRANKFORT REGIONAL MEDICAL CENTER
DJ #202-30-57

I. BACKGROUND

1. The parties to this Settlement Agreement (the Agreement) are the United States of America (United States) and Frankfort Regional Medical Center (collectively, the parties).

2. Frankfort Regional Medical Center (FRMC or the hospital) is a Frankfort, Kentucky-based hospital owned and operated by Frankfort Hospital, Inc.

3. This matter was initiated pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. §§12181–12189, and the Department of Justice's implementing regulation, 28 C.F.R. Part 36. The United States initiated this matter upon receipt of a complaint on behalf of Patient E.M., an individual who is Deaf and uses American Sign Language (ASL) as her primary means of communication. The complaint alleged that E.M. was a Patient at FRMC for the labor and eventual delivery by cesarean section of her second child. The complaint alleges that FRMC failed to provide an ASL interpreter or any Auxiliary Aid or Service during multiple hospital visits during her pregnancy and that, although E.M.'s mother contacted FRMC in advance about her need for an in-person interpreter when she went into labor, FRMC did not arrange in-person Qualified Interpreting services for E.M.'s labor and delivery. The complaint alleges that as a result, E.M. was forced to provide her own interpreter for her cesarean section and to rely on lip reading and the efforts of her mother, A.D. (who is also Deaf, is not a qualified medical interpreter, and was there as E.M.'s support person) before the interpreter's eventual arrival. The complaint also alleges that FRMC failed to provide effective Qualified Interpreting services during the recovery portions of E.M.'s hospital care.

II. INVESTIGATION AND DETERMINATIONS

4. The United States is authorized to investigate alleged violations of Title III of the ADA. 42 U.S.C. § 12188(b)(1)(A); 28 C.F.R. § 36.502. It also has the authority to, where appropriate, negotiate voluntary settlements, and to bring civil actions enforcing Title III of the ADA should the terms of the settlement be breached. 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.

5. Patient E.M. and her Companion A.D. are both Deaf and as such, are individuals with a "disability" within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 36.104.

6. FRMC is a "public accommodation" within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7)(F) and its implementing regulations, 28 C.F.R. § 36.104, as it owns and operates a hospital.

7. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). Discrimination includes failing to take such steps as necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than any other individual because of the absence of Auxiliary Aids and Services. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303. A public accommodation shall not require an individual with a disability to bring another individual to interpret for them. 28 C.F.R. § 36.303(c)(2).

8. Based on its investigation, the United States has determined that FRMC failed to provide Patient E.M. with an interpreter or other appropriate Auxiliary Aids and Services to ensure effective communication during encounters with E.M. on the following dates in 2021: March 1, March 30, June 11–12, June 15, July 8, July 19–20, and July 24–27. The failure to provide appropriate Auxiliary Aids and Services necessary for effective communication with a Patient violates the ADA. 42 U.S.C. § 12182(b)(2)(A)(iii) and 28 C.F.R. § 36.303.

9. Based on its investigation, the United States also determined that FRMC failed to provide E.M. with a Qualified Interpreter or other appropriate Auxiliary Aids and Services to ensure effective communication during an encounter with E.M.'s infant daughter on February 7, 2022, during which E.M. was present as her daughter's Companion. The failure to provide appropriate Auxiliary Aids and Services necessary for effective communication with a Companion violates the ADA. 42 U.S.C. § 12182(b)(2)(A)(iii) and 28 C.F.R. § 36.303.

10. Finally, based on its investigation, the United States determined that FRMC discriminated against E.M.'s Companion, A.D., during E.M.'s July 24 labor by failing to provide A.D. with an interpreter or other appropriate Auxiliary Aids and Services to ensure effective communication, which interfered with A.D.'s ability to support her daughter during labor. The failure to provide appropriate Auxiliary Aids and Services necessary for effective communication with a Companion violates the ADA. 42 U.S.C. § 12182(b)(2)(A)(iii) and 28 C.F.R. § 36.303.

11. This Agreement is neither an admission of liability by FRMC nor a concession by the United States that its claims are not well founded. 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 dispute.

III. DEFINITIONS

12. Active Members of FRMC Medical Staff means all physicians who are credentialed to provide medical services at FRMC, whether or not they are direct employees of FRMC.

13. Auxiliary Aids and Services include Qualified Interpreters provided either on-site or through Video Remote Interpreting (VRI) services; note takers; real-time computer-aided

transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones, videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are Deaf or Hard of Hearing. 28 C.F.R. § 36.303.

14. Companion means a person who is Deaf or Hard of Hearing and is a family member, friend, or associate of an individual seeking access to or participating in the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate. 28 C.F.R. § 36.303(c)(1)(i).

15. FRMC Personnel means all FRMC employees, both full and part-time, and independent contractors with contracts to work on a substantially full-time basis for FRMC (or on a part-time basis exclusively for FRMC), including, without limitation, nurses, physicians, social workers, technicians, receptionists, telephone operators, admitting personnel, billing staff, security staff, therapists, counselors and volunteers, who have or are likely to have direct contact with Patients or Companions as defined herein.

16. Deaf refers to persons who are deaf or late-deafened.

17. Hard of Hearing means persons who have a hearing deficit and who may or may not primarily use visual aids for communication and may or may not use auxiliary aids.

18. Non-Scheduled Interpreter Request means a request for an interpreter made by a Patient or Companion who is Deaf or Hard of Hearing less than two (2) hours before the Patient's appearance at FRMC for examination or treatment.

19. Patient shall be broadly construed to include any individual who is seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of FRMC, whether as an inpatient or an outpatient.

20. Qualified Interpreter means an interpreter who, via VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. 28 C.F.R. § 36.104. Qualified Interpreters include, for example, sign language interpreters, tactile interpreters, oral transliterators, and cued-language transliterators. 28 C.F.R. § 36.104.

21. Scheduled Interpreter Request means a request for an interpreter made two (2) or more hours before the services of the interpreter are required.

22. Video Remote Interpreting (VRI) means a Qualified Interpreting service that uses video conference technology over dedicated lines or wireless technology, and provides (1) real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) a sharply delineated image that is large enough to display the Qualified Interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of their body position; (3) a clear, audible transmission of voices; and (4) adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI. 28 C.F.R. §§ 35.104 & 35.160(d).

IV. EQUITABLE RELIEF

A. Prohibition of Discrimination

23. Nondiscrimination. FRMC shall provide appropriate Auxiliary Aids and Services, including Qualified Interpreters, where such aids and services are necessary to ensure effective communication with Patients and Companions who are Deaf or Hard of Hearing. Pursuant to 42 U.S.C. § 12182(a), FRMC shall also provide Patients and Companions who are Deaf or Hard of Hearing with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of FRMC as required by this Agreement and the ADA.

24. Discrimination by Association. FRMC shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of that person with someone who has a disability. 42 U.S.C. § 12182(b)(1)(E).

25. Retaliation and Coercion. FRMC shall not retaliate, interfere with, or coerce any person who made, or is making, a complaint according to the provisions of this Agreement or exercised, or is exercising, their rights under this Agreement or the ADA. 42 U.S.C. § 12203.

B. Effective Communication

26. Appropriate Auxiliary Aids and Services. Consistent with 42 U.S.C. § 12182(b)(2)(A)(iii), FRMC will provide to Patients and Companions who are Deaf or Hard of Hearing any appropriate Auxiliary Aids and Services necessary for effective communication after making the assessment described in Paragraph 27 of this Agreement.

27. General Assessment Criteria. The determination of appropriate Auxiliary Aids and Services and the timing, duration, and frequency with which they will be provided, will be made by FRMC in consultation with the person with a disability. The assessment made by FRMC Personnel will take into account all relevant facts and circumstances, including, for example, the individual's communication skills and knowledge, and the nature and complexity of the communication at issue. To guide this determination, FRMC will provide all Patients or Companions who are Deaf or Hard of Hearing with a notice of services and model

communication assessment form similar to the Model Communication Assessment Form attached to this Agreement as **Exhibit A**. FRMC will draft a document substantially similar to **Exhibit A** to serve this purpose and will provide it to the United States for review within **fifteen (15) days** of the Effective Date of this Agreement for approval. Once the document is approved, FRMC will begin providing the document to all new Patients at intake at either the regular admissions desk, Labor and Delivery, or the Emergency Department within **fifteen (15) days** of the document's approval. Where it is infeasible to provide the Model Communication Form (e.g., the Patient is scheduling the appointment through the Hospital call center), FRMC will elicit substantially similar information to that contained in the Form.

28. Time for Assessment. The determination of which appropriate Auxiliary Aids and Services are necessary, and the timing, duration, and frequency with which they will be provided, must be made (a) at the time an appointment is scheduled for the Patient who is Deaf or Hard of Hearing if the Patient makes the appointment or, (b) on the arrival of the Patient or Companion who is Deaf or Hard of Hearing at the Hospital, whichever is earlier. If someone other than the Patient schedules the appointment then (1) that person must be asked if the Patient is Deaf or Hard of Hearing and if so, then what Auxiliary Aids and Services are necessary when the Patient presents in person and (2) an independent assessment must be performed when the Patient who is Deaf or Hard of Hearing presents for their appointment. FRMC Personnel will perform an assessment informed by the information collected as described in Paragraph 27 as part of each initial inpatient assessment and document the results in the Patient's medical chart. If the initial form of communication is not effective or circumstances change (see Paragraph 33 below), FRMC Personnel will reassess which appropriate Auxiliary Aids and Services are necessary, in consultation with the person with a disability, where possible, and provide such aid or service based on the reassessment.

29. Assistive Device Point Person. FRMC will designate an Assistive Device Point Person. This Assistive Device Point Person or their designee(s) will always be on duty and available to FRMC Personnel, Patients, and Companions twenty-four (24) hours a day, seven (7) days a week, to answer questions and provide appropriate assistance regarding immediate access to, and proper use of, the appropriate Auxiliary Aids and Services, including Qualified Interpreters.

a. The Assistive Device Point Person and their designees will know where the appropriate Auxiliary Aids are stored and how to operate them and will be responsible for their replacement and distribution. The Assistive Device Point Person will also be responsible for the maintenance and repair of the auxiliary aids.

b. FRMC will provide FRMC Personnel with a telephone number through which the on-duty Assistive Device Point Person can be contacted twenty-four (24) hours a day seven days a week by FRMC Personnel providing services to individuals who are Deaf or Hard of Hearing.

c. The Assistive Device Point Person and their designees will be designated by FRMC no later than **thirty (30) days** after the Effective Date of this Agreement and notice of such designation will be provided to the United States.

30. Auxiliary Aid and Service Log. FRMC will maintain a log documenting requests for Qualified Interpreters on-site or through Video Remote Interpreting services for persons who are Deaf or Hard of Hearing. The log will indicate:

a. The name of the Patient or Companion who is Deaf or Hard of Hearing;

b. The nature of the Auxiliary Aid or Service requested;

c. The time and date the request was made by the Patient (if applicable);

d. The time and date the request was made by staff after assessing the needs of the Patient (if applicable);

e. The name of the staff member making the request;

f. The time and date the request was made for, *i.e.,* for immediate use (emergent need) or for a scheduled appointment (stating the date and time of the appointment);

g. The time and date the request was fulfilled; and

h. The nature of the Auxiliary Aid or Service provided.

If the requested Auxiliary Aid or Service was not provided, was not provided in the type requested, or was provided outside of the timeliness provisions contained in Paragraph 35 of this Agreement, the log shall contain a statement explaining why. Such logs will be maintained by the Assistive Device Point Person for the entire duration of the Agreement and will be incorporated into the semi-annual Compliance Reports as described in Paragraph 49 of this Agreement. FRMC will implement the Auxiliary Aid and Service Log no later than **thirty (30) days** after the Effective Date of this Agreement.

31. Complaint Resolution. Within **ninety (90) days** of the Effective Date of this Agreement, FRMC will implement a grievance resolution mechanism for the investigation of disputes regarding effective communication with Patients and Companions who are Deaf or Hard of Hearing. In particular:

a. FRMC will maintain records of all grievances regarding effective communication, whether oral or written, made to FRMC and actions taken with respect thereto.

b. At the time FRMC completes its assessment described in Paragraphs 27–28 and advises the Patient and/or Companion of its determination of which appropriate Auxiliary Aids and Services are necessary, FRMC will notify persons who are Deaf or Hard of Hearing of its grievance resolution mechanism, to whom complaints should be made, and of the right to receive a written response to the grievance.

c. A written response to any grievance filed shall be completed within thirty (30) days of receipt of the complaint.

d. Copies of all grievances related to provision of services for Patients and/or Companions who are Deaf or Hard of Hearing and the responses thereto will be maintained by FRMC for the entire duration of this Agreement.

32. Prohibition of Surcharges. All appropriate Auxiliary Aids and Services required by this Agreement will be provided free of charge to the Patient and/or Companion who is Deaf or Hard of Hearing.

C. Qualified Interpreters

33. Circumstances Under Which Interpreters May be Required. Although the determination of whether and what Auxiliary Aid and Service is appropriate to a given situation is generally made by FRMC (as informed by its assessment pursuant to Paragraphs 27–28), some circumstances demand that FRMC provide a Qualified Interpreter to Patients or Companions who rely upon such types of communications. Such circumstances generally arise when the communication is particularly complex or lengthy. For example, such circumstances include, but are not limited to:

a. Discussing a patient's symptoms for diagnostic purposes, and discussing medical conditions, medications, and medical history;

b. Explaining medical conditions, treatment options, tests, medications, surgery, and other procedures;

c. Providing a diagnosis or recommendation for treatment;

d. Communications immediately preceding, during, and immediately after surgery or other procedures and during physician's rounds;

e. Reviewing, explaining, or obtaining informed consent for treatment;

f. Providing instructions for medications, post-treatment activities, and follow-up treatments;

g. Providing mental health services, including group or individual counseling for Patients and family members;

h. Providing information about blood or organ donations;

i. Discussing powers of attorney, living wills; and/or complex billing and insurance matters; or

j. During educational presentations, such as birth or new parent classes, nutrition and weight management programs, and CPR and first-aid training.

In such circumstances, FRMC will presume that a Qualified Interpreter is necessary for effective communication with a Patient or Companion who relies upon such Auxiliary Aids and Services.

34. Chosen Method for Obtaining Interpreters. Within **thirty (30) days** of the Effective Date of this Agreement, FRMC will provide the United States the name(s) of the Qualified Interpreter services currently used by FRMC for securing on-site Qualified Interpreters as well as VRI services. If the names of the Qualified Interpreter services used by FRMC changes during the term of this Agreement, FRMC will notify the United States of the change within **thirty (30) days.**

35. Provision of Interpreters in a Timely Manner.

a. *Non-Scheduled Interpreter Requests*: For Non-Scheduled Interpreter Requests, FRMC Personnel will complete the assessment described in Paragraphs 27–28 above.

A Qualified Interpreter (**via VRI**) will be provided as soon as practicable, but no more than **30 minutes** from the time FRMC completes the assessment (absent exigent circumstances affecting patient care which may extend the time for providing such service).

If an **on-site** Qualified Interpreter is required, a Qualified Interpreter will be provided as soon as practicable, but no more than **two (2) hours** from the time it becomes clear that a live Qualified Interpreter is necessary for effective communication.

As described below in section (c) of this paragraph, FRMC will document the on-site Qualified Interpreter service's response time, including the time of contact and the time of arrival. Deviations from this response time will be addressed with the Qualified Interpreting service provider. An explanation of any deviations will also be provided to the United States in the Compliance Reports required by Paragraph 49. FRMC shall not be held responsible for circumstances beyond its control in obtaining on-site Qualified Interpreter

services, such as delays due to weather or interpreter service response, as long as FRMC makes all the following reasonable efforts to obtain on-site Qualified Interpreter services in a timely manner and documents those efforts. If no on-site Qualified Interpreter can be located, FRMC Personnel will:

i. Exert reasonable efforts (which shall be deemed to require no fewer than five (5) telephone inquiries and/or emails and/or text messages unless exceptional circumstances intervene) to contact any Qualified Interpreters or interpreting agencies already contracted with the Hospital and request their services;

ii. Inform the Assistive Device Point Person of the efforts made to locate a Qualified Interpreter and solicit assistance in locating a Qualified Interpreter;

iii. Inform the Patient or Companion (or a family member or friend, if the Patient or Companion is unavailable) of the efforts taken to secure a Qualified Interpreter and that the efforts have failed, and follow up on reasonable suggestions for alternate sources of Qualified Interpreters, such as contacting a Qualified Interpreter known to that person; and

iv. Document all the above efforts.

b. *Scheduled Interpreter Requests*. For Scheduled Interpreter Requests, FRMC Personnel will complete the assessment described in Paragraphs 27–28 above in advance, and, when a Qualified Interpreter is appropriate, FRMC will make a Qualified Interpreter available at the time of the scheduled appointment. If a Qualified Interpreter fails to arrive for the scheduled appointment, upon notice that the Qualified Interpreter failed to arrive, FRMC will immediately call the Qualified Interpreter service and comply with the timeframes set forth in subsection (a) of this Paragraph.

c. *Data Collection on Interpreter Response Time*. FRMC will monitor and document in the Auxiliary Aid and Service Log, described in Paragraph 30, the response time of each Qualified Interpreter service it uses to provide communication to Patients or Companions who are Deaf or Hard of Hearing through its established process of monitoring outside vendors. FRMC will document and investigate, per the grievance process identified in Paragraph 31, any complaints by the Patients or Companions who are Deaf or Hard of Hearing regarding the quality and/or effectiveness of services provided by the Qualified Interpreter service.

36. Video Remote Interpreting (VRI). When using VRI services, FRMC shall ensure it meets all the specifications outlined in Paragraph 22. VRI shall not be used when it is not effective, for example, due to (1) a patient's limited ability to move their head, hands, or arms; vision or cognitive issues; or significant pain; (2) space limitations in the room; (3) the complexity of the medical issue; or (4) any other time when there are indicators that VRI is not providing effective communication. Whenever, based on the circumstances, VRI does not provide effective communication with a Patient or Companion who is Deaf or Hard of Hearing, VRI shall not be used as a substitute for an on-site Qualified Interpreter, and FRMC shall request and provide an on-site Qualified Interpreter in a timely manner as required by Paragraph 35 of this Agreement, two hours from when it becomes clear that VRI cannot provide effective communication.

37. Notice to Patients and Companions Who are Deaf or Hard of Hearing. As soon as FRMC Personnel has determined that a Qualified Interpreter is necessary for effective communication with a Patient or Companion who is Deaf or Hard of Hearing, FRMC will inform the Patient or Companion (or a family member or friend, if the Patient or Companion is not available) of the status of efforts being taken to secure a Qualified Interpreter on their behalf. FRMC will provide additional updates to the Patient or Companion as necessary until an interpreter is secured. Notification of efforts to secure a Qualified Interpreter does not lessen FRMC's obligation to provide Qualified Interpreters in a timely manner as required by Paragraph 35 of this Agreement.

38. Other Means of Communication. FRMC agrees that between the time an interpreter is requested and the Qualified Interpreter is provided, FRMC Personnel will continue to try to communicate with the Patient or Companion who is Deaf or Hard of Hearing for such purposes and to the same extent as they would have communicated with the person but for the disability, using all available methods of communication, for example, using sign language pictographs. This provision in no way lessens FRMC's obligation to provide Qualified Interpreters in a timely manner as required by Paragraph 35 of this Agreement.

39. Restricted Use of Certain Persons to Facilitate Communication. FRMC will not rely on an adult friend or family member of the Patient or Companion who is Deaf or Hard of Hearing to interpret except:

a. In an emergency involving an imminent threat to the safety of an individual or the public where there is no Qualified Interpreter available; or

b. Where the Patient or Companion who is Deaf or Hard of Hearing specifically requests that the adult friend or family member interpret, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

FRMC will not rely on a minor child or Patient to interpret except in the limited circumstances described in Subparagraph (a) above.

D. Notice to the Public

40. Public Policy Notice. Within **ninety (90) days** of the Effective Date of this Agreement, FRMC shall post and maintain signs of conspicuous size and print at all FRMC admitting stations and wherever a Patient's Bill of Rights is required by law to be posted, with substantially similar language to that provided in the Sample Posting attached as **Exhibit B** notifying the public of the availability of Auxiliary Aids and Services and their related rights (Public Policy Notice). These signs will include the international symbol for "interpreter."

41. Website. Within **ninety (90) days** of the Effective Date of this Agreement, FRMC will include on its website the same or a substantially similar policy statement to the Public Policy Notice posted pursuant to Paragraph 40. All new and redesigned web pages, web applications, and web content (Web Pages) published by FRMC must act in accordance with the Web Content Accessibility Guidelines 2.0 principles of Perceivable, Operable, Understandable and Robust.

42. Patient Handbook. FRMC will include in all future printings of its Patient Handbook (or equivalent) and all similar publications a statement to the following effect:

> To ensure effective communication with Patients and their Companions who are Deaf or Hard of Hearing, we provide appropriate auxiliary aids and services free of charge to the Patient or Companion, such as: sign language and oral interpreters, Video Remote Interpreting services, TTYs, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with caption capability or closed caption decoders, and open and closed captioning of most Hospital programs.
>
> Please ask your nurse or other FRMC Personnel for assistance or contact the Information Office at _____ (voice or TTY), room _____.

FRMC will also include in its Patient Handbook a description of its complaint resolution mechanism.

E. Notice to FRMC Personnel and Physicians

43. Internal Policy Notice. Within **ninety (90) days** of the Effective Date of this Agreement, FRMC shall publish, in an appropriate form, a policy statement regarding FRMC's policy for effective communication with Patients or Companions who are Deaf or Hard of Hearing (Internal Policy Notice). This policy statement shall include, but is not limited to, language to the following effect:

If you recognize or have any reason to believe that a Patient or a relative, close friend, or Companion of a Patient is Deaf or Hard of Hearing, you must advise the person that appropriate auxiliary aids and services, such as sign language and oral interpreters, Video Remote Interpreting services, TTYs, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with captioning or closed caption decoders, and open and closed captioning of most hospital programs, will be provided free of charge to the Patient or Companion when appropriate. If you are the responsible health care provider, you must ensure that such aids and services are provided when appropriate. All other personnel should direct that person to the appropriate Assistive Device Point Person(s) at _____ and reachable at _____.

FRMC will distribute this Internal Policy Notice, via e-mail, hard copy, or the Intranet, to all FRMC Personnel and Active Members of FRMC Medical Staff. FRMC will distribute the Internal Policy Notice to all FRMC Personnel within thirty (30) days of employment or affiliation. In addition, FRMC will distribute the Internal Policy Notice to all FRMC Personnel on an annual basis.

44. Acknowledgement of Receipt. When distributing the Internal Policy Notice pursuant to Paragraph 43, FRMC shall also provide a form acknowledgement of receipt, which all recipients shall return to the attention of the Assistive Device Point Person within thirty (30) days of receipt. The Assistive Device Point Person shall retain at least one signed acknowledgment, in hard copy or electronic form, from all FRMC Personnel and Active Members of FRMC Medical Staff.

F. Training

45. Training of the Assistive Device Point Person and Their Designees. FRMC will provide mandatory training for the Assistive Device Point Person and their designees as set forth in Paragraph 29 of this Agreement. Such training must be provided to the United States within **thirty (30) days** of the Effective Date of this Agreement for review. Once approved by the United States, the training will occur within **thirty (30) days** and annually thereafter**.** Such training will be sufficient in duration and content to train the Assistive Device Point Person and their designees in the following areas:

a. to promptly identify communication needs of Patients and Companions who are Deaf or Hard of Hearing, including when an in-person Qualified Interpreter is necessary;

b. to secure Qualified Interpreter services or VRI services as quickly as possible when necessary;

c. to use, when appropriate, flash cards, and/or pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication);

d. how and when to use VRI services, including how to operate and connect the system quickly and efficiently and the criteria discussed in Paragraph 36;

e. to encourage FRMC Personnel and Active Members of FRMC's Medical Staff to notify the Assistive Device Point Person or their designee of Patients and Companions who are Deaf or Hard of Hearing as soon as Patients schedule admissions or other health care services at FRMC;

f. FRMC's complaint resolution procedure described in Paragraph 31 of this Agreement; and

g. Any other applicable requirements of this Agreement.

46. Training of FRMC Personnel. Except for Active Members of FRMC Medical Staff, who are governed by Paragraph 48 of this Agreement, FRMC will provide mandatory in-service training to all FRMC Personnel who have contact with Patients within **ninety (90) days** of the Effective Date of this Agreement and annually thereafter. New employees must be trained in the same manner within thirty (30) days of their hire. The training will address the needs of Patients and Companions who are Deaf or Hard of Hearing and will include the following objectives:

a. to promptly identify communication needs of Patients and Companions who are Deaf or Hard of Hearing, including when an in-person Qualified Interpreter is necessary;

b. to conduct the assessment described in Paragraphs 27–28 of this Agreement;

c. to meet all the documentation obligations set forth in this Agreement;

d. to secure Qualified Interpreter services or VRI services as quickly as possible when necessary;

e. to use, when appropriate, flash cards and/or pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication); and

f. how and when to use VRI services, including how to operate the system quickly and efficiently and the criteria discussed in Paragraph 36.

47. Training Attendance Records. FRMC will maintain for the duration of this Agreement confirmation of training conducted pursuant to Paragraphs 45–46 of this Agreement, which will include the names and respective job titles of the attendees, as well as the date and time of the training session.

48. Training of Active Members of FRMC Medical Staff. Within **ninety (90) days** of the Effective Date of this Agreement, FRMC will ensure that all Active Members of FRMC Medical Staff who do not receive the training discussed in Paragraph 46 are provided with information that covers the following topics:

a. prompt identification of the communication needs and preferences of Patients and Companions who are Deaf or Hard of Hearing;

b. how to secure Auxiliary Aids or Services as quickly as possible when necessary; and

c. the need to notify the hospital and the Assistive Device Point Person about Patients or Companions who are Deaf or Hard of Hearing as soon as possible after scheduling admissions, tests, surgeries, or other health care services at FRMC.

FRMC will maintain for the duration of this Agreement confirmation that the information required by this Paragraph was provided to Active Members of FRMC Medical Staff, including the names of the individuals, the date the information was provided, and the method by which FRMC provided the information.

G. Reporting, Monitoring, and Violations

49. Compliance Reports. Beginning **six (6) months** after the Effective Date of this Agreement and **every six (6) months** thereafter for the entire duration of the Agreement, FRMC will provide a written report (Compliance Report) to the United States regarding the status of its compliance with this Agreement. The Compliance Report will include data relevant to the Agreement, including but not limited to:

a. information required in the Auxiliary Aid and Service Log as described in Paragraphs 30 and 35(c), including an explanation of the reasons for the delays in obtaining Qualified Interpreters in those cases where the response times failed to comply with the time frames described in Paragraph 35 of this Agreement; and

b. the information maintained in the complaint records described in Paragraphs 31 and 35(c), including the number of complaints received by FRMC from Patients and Companions who are Deaf or Hard of Hearing regarding

Auxiliary Aids and Services and/or effective communication, and the resolution of such complaints including any supporting documents;

c. documentation of compliance with all the training provisions in Section F of this Agreement; and

d. relevant data or summaries from all other documents referenced for retention in this Agreement.

FRMC will maintain records to document the information contained in the Compliance Reports and will make them available, upon request, to the United States.

50. Complaints. During the term of this Agreement, FRMC will notify the United States if any person files a lawsuit, complaint, or formal charge with a state or federal agency, alleging that FRMC failed to provide Auxiliary Aids and Services to Patients or Companions who are Deaf or Hard of Hearing or otherwise failed to provide effective communication with such Patients or Companions. Such notification must be provided in writing via certified mail within **twenty (20) days** of the date FRMC received notice of the allegation and will include, at a minimum, the nature of the allegation, the name of the person making the allegation, and any documentation of the allegation provided by the complainant. FRMC will reference this provision of the Agreement in the notification to the United States.

V. MONETARY RELIEF

A. Compensatory Damages

51. Within **seven (7) days** of the Effective Date of this Agreement, FRMC will offer Patient E.M. a total monetary award of one hundred thousand dollars ($100,000.00). Within **twenty-one (21) days** after receiving Patient E.M.'s signed release (*See* E.M. Blank Release at **Exhibit C**), FRMC shall send a check in the amount of one hundred thousand dollars ($100,000.00) made out to Patient E.M. FRMC shall provide written notification to counsel for the United States, including a copy of the check, **within seven (7) days** of completing the actions described in this Paragraph. This check is compensation pursuant to 42 U.S.C. § 12188(b)(2)(B), for the effects of the alleged discrimination suffered as described in Paragraphs 8–9.

52. Within **seven (7) days** of the Effective Date of this Agreement, FRMC will offer Patient E.M.'s Companion, A.D., a total monetary award of ten thousand dollars ($10,000.00). Within **twenty-one (21) days** after receiving Complainant's Companion's signed release (*See* A.D. Blank Release at **Exhibit D**), FRMC shall send a check in the amount of ten thousand dollars ($10,000.00) made out to E.M.'s Companion. FRMC shall provide written notification to counsel for the United States, including a copy of the check, **within seven (7) days** of completing the actions described in this Paragraph. This check is compensation pursuant to 42 U.S.C. § 12188(b)(2)(B), for the effects of the alleged discrimination suffered as described in Paragraph 10.

B. Payment of Civil Penalty to the United States

53. Within **fifteen (15) days** of the Effective Date of this Agreement, FRMC will pay civil penalty to the United States in the amount of $62,500, pursuant to 42 U.S.C. § 12188(b)(2)(C), via wire transfer or online using written instructions provided by the United States. FRMC shall provide written notification of counsel for the United States **within seven (7) days** of completing the actions described in this Paragraph.

VI. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

54. Duration of the Agreement. This Agreement will be in effect for **three (3) years** from the Effective Date.

55. Enforcement. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from undertaking further investigation or from filing a civil suit under Title III in this matter, except as provided in Paragraph 56. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against FRMC for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA for violations unrelated to this matter.

56. Compliance Review and Enforcement. The United States may review compliance with this Agreement at any time and can enforce this Agreement if the United States believes that it or any requirement thereof has been violated by instituting a civil action in U.S. District Court. If the United States believes that this Agreement or any portion of it has been violated, it will raise its claim(s) in writing with FRMC, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow FRMC **thirty (30) days** from the date it notifies FRMC of any breach of this Agreement to cure said breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.

57. Entire Agreement. This Agreement and the attachments hereto constitute the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, shall be enforceable. This Agreement is limited to the facts set forth herein and does not purport to remedy any other potential violations of the ADA or any other federal law.

58. Binding. This Agreement is final and binding on the parties, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs, and legal representatives thereof. Each party has a duty to so inform any such successor in interest.

59. Non-Waiver. Failure by any party to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement regarding other instances or provisions.

60. Effective Date. The Effective Date of the Agreement is the date of the last signature below.

61. Execution. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Electronically transmitted signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES:

Carrie B. Pond
Assistant United States Attorney
United States Attorney's Office
Eastern District of Kentucky
260 W. Vine Street, Suite 300
Lexington, KY 40507-1612
Email: carrie.pond@usdoj.gov

Date: 12/5/2024

FOR FRANKFORT REGIONAL MEDICAL CENTER

John Ballard
CEO
Frankfort Regional Medical Center
299 Kings Daughters Drive
Frankfort, KY 40601

Date: 12/4/2024

EXHIBIT A: COMMUNICATION ASSESSMENT FORM

Patient's Name _____

Name of Person with Disability (if other than patient) _____

Date _____ Time_____

Nature of Disability:

- ❑ Deaf
- ❑ Deafblind
- ❑ Hard of Hearing
- ❑ Speech Disability
- ❑ Other: _____

Relationship to Patient:

- ❑ Self
- ❑ Family Member
- ❑ Friend / Companion
- ❑ Other: _____

Do you want a professional sign language or oral interpreter for your visit (free of charge)?

- ❑ Yes. Choose one:
  - ❑ American Sign Language (ASL) Interpreter
  - ❑ Tactile Interpreter
  - ❑ Signed English Interpreter
  - ❑ Oral Interpreter
  - ❑ Other. Explain: _____
- ❑ No. I do not use sign language.
- ❑ No. I do not feel an interpreter is necessary or do not want one *for this visit.*

If you want a sign language interpreter, would you prefer:

❑ Video Interpreter OR ❑ In-Person Interpreter

Which of these would be helpful for you for effective communication? (Free of charge)

- ❑ Assistive listening device (sound amplifier)
- ❑ Writing back and forth
- ❑ CART: Computer-assisted Real Time Transcription Service
- ❑ TTY/TDD (text telephone)
- ❑ Other. Explain: _____

We ask this information so we can communicate with you effectively. All communication aids and services are provided FREE OF CHARGE. If you need further assistance, please ask a member of our office staff. Please call our office, _____, or visit _____ during normal business hours.

EXHIBIT B

Welcome to Frankfort Regional Medical Center (FRMC).

At FRMC, we want you to get your health information in a way that you understand. We will arrange for an interpreter or other aids to you, your family member, or companion who is deaf, Hard of Hearing, or has speech disabilities. These services are free to you.

Under the Americans with Disabilities Act (ADA), people who are deaf, are hard of hearing, or have speech disabilities have the right to ask for aids and services.

If you need such aids or services, call _____ at _____. If you are told that you do not qualify for the service, you can ask for the review. To request a review:

- Write down why you need this aid or service. If you need help, the office staff will help you write it.
- If you need more help, contact _____.

For more information about the ADA:

- Call: toll-free ADA Information Line at 800-514-0301 or 1-833-610-1264 (TTY)
- Visit online: www.ada.gov

EXHIBIT C: E.M. Blank Release

Release of Claims

I, _____, do hereby agree that, in consideration for the monetary relief offered to me, I do hereby release Frankfort Hospital Inc. from liability for any and all claims, complaints or charges, that I had, or may have had, under the Americans with Disabilities Act, 42 U.S.C. §§ 12181, et seq. ("ADA"), for any alleged discrimination that I incurred at Frankfort Regional Medical Center in Frankfort, Kentucky occurring between March 1, 2021 and February 7, 2022.

I do hereby acknowledge that I am aware of the contents of the Settlement Agreement and the Department of Justice has informed me that I could avail myself of private legal counsel in this matter. I acknowledge that I have chosen voluntarily to release the claims defined above.

I HAVE READ THIS RELEASE AND I UNDERSTAND THE CONTENTS CONTAINED THEREIN. I HEREBY EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Agreed to and signed this _____ day of _____, 202__.

_____

Signature

_____

Name of Signatory

_____

Address of Signatory

Sworn to and subscribed to before me this ___ day of _____, 202__.

EXHIBIT D: A.D. Blank Release

Release of Claims

I, _____, do hereby agree that, in consideration for the monetary relief offered to me, I do hereby release Frankfort Hospital Inc. from liability for any and all claims, complaints or charges, that I had, or may have had, under the Americans with Disabilities Act, 42 U.S.C. §§ 12181, et seq. ("ADA"), for any alleged discrimination that I incurred while providing support to my daughter, _____, during her labor and delivery stay between July 24, 2021 and July 27, 2021 at Frankfort Regional Medical Center in Frankfort, Kentucky.

I do hereby acknowledge that I am aware of the contents of the Settlement Agreement and the Department of Justice has informed me that I could avail myself of private legal counsel in this matter. I acknowledge that I have chosen voluntarily to release the claims defined above.

I HAVE READ THIS RELEASE AND I UNDERSTAND THE CONTENTS CONTAINED THEREIN. I HEREBY EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Agreed to and signed this _____ day of _____, 202__.

_____
Signature

_____
Name of Signatory

_____
Address of Signatory

Sworn to and subscribed to before me this ___ day of _____, 202__.