VOLUNTARY RESOLUTION AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND
BRATTLEBORO MEMORIAL HOSPITAL

USAO # 2023V00418

I. Parties to Agreement

1. The Parties to this Voluntary Resolution Agreement ("Agreement") are:

   a. the United States of America ("United States"), by and through the U.S. Department of Justice and U.S. Attorney's Office for the District of Vermont (together, "DOJ"), pursuant to its jurisdictional authority under Title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36, and

   b. Brattleboro Memorial Hospital ("BMH").

II. Background

2. This matter was initiated by a Complaint filed with the DOJ, alleging, *inter alia*, violations of Title III of the ADA. Specifically, the Complainant, who is deaf and uses American Sign Language ("ASL") as his primary means of communication, alleges that BMH discriminated against him by failing to ensure effective communication through the provision of qualified sign language interpreters and appropriate auxiliary aids and services during visits to BMH's Emergency Department over the course of several years, beginning in July 2019 through July 2023. The Complainant also alleges that on multiple occasions he was required to rely upon his companion (the "Complainant's Companion") to assist him in communicating about his medical concerns.

3. As a result of this Complaint, the DOJ initiated an investigation into Complainant's allegations and BMH's compliance with Title III of the ADA, including a review of BMH's policies and procedures for ensuring effective communication with individuals who are deaf or hard of hearing.

4. During this investigation, the DOJ learned of additional aggrieved parties, whose primary means of communication is ASL, and who, during visits to BMH's Emergency Department from 2018 through 2024, were not provided qualified sign language interpreters or appropriate auxiliary aids and services (the "Additional Aggrieved Parties").

5. As a result of this investigation, the DOJ takes the position that BMH violated Title III of the ADA and its implementing regulations by discriminating against the Complainant and Additional Aggrieved Parties in failing to provide qualified sign language interpreters or appropriate auxiliary aids and services.

6. BMH cooperated fully in the investigation, providing the DOJ access to records, witnesses, and BMH Personnel and facilities. During discussions with the DOJ, BMH has worked to continue to improve policies, training, procedures and its notification to staff, patients and the public about access to qualified sign language interpreters as well as auxiliary aids and services available to Patients and Companions who are deaf or hard of hearing.

III. Jurisdiction

7. The Attorney General of the United States is responsible for administering and enforcing Title III of the ADA, 42 U.S.C. §§ 12101-12213, and the relevant regulations implementing Title III, 28 C.F.R. Part 36.

8. Under Title III of the ADA and its implementing regulations, public accommodations, including hospitals, are prohibited from discriminating on the basis of disability in the full and equal enjoyment of their goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. §§ 12181-12189; 28 C.F.R. Part 36. Specifically, a public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden. 28 C.F.R. § 36.303(a).

9. BMH, a domestic non-profit corporation, is a "public accommodation," as defined by the ADA, 42 U.S.C. § 12181(7)(F) and 28 C.F.R. § 36.104. As a public accommodation, it must comply with the ADA.

10. The Complainant and the Additional Aggrieved Parties are individuals with a disability within the meaning of the ADA, 42 U.S.C. § 12102.

11. Ensuring that hospitals do not discriminate on the basis of disability is an issue of general public importance. The DOJ is authorized to investigate alleged violations of Title III of the ADA, to use alternative means of dispute resolution, where appropriate, including settlement negotiations, to resolve disputes, and to bring a civil action in federal court in any case that the Attorney General concludes raises an issue of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.

IV. Purpose of Agreement

12. The Parties have come to a mutual understanding about the provision of qualified sign language interpreters and appropriate auxiliary aids and services to ensure effective communication with individuals with disabilities, particularly as it relates to Emergency Department visits at BMH. The Parties have determined that this matter can be resolved promptly and without further burden or the expense of additional investigation, enforcement proceedings, or litigation.

13. In consideration of the terms of this Agreement, the United States agrees to refrain from undertaking further investigation or taking steps toward the filing of a civil suit regarding USAO # 2023V00418 against BMH based on the allegations lodged against BMH, except as provided in this Agreement.

14. BMH agrees to the terms stipulated in this Agreement and affirms that it fully intends to comply with all applicable provisions of Title III of the ADA and its implementing regulation.

V. Definitions

For purposes of this Agreement, the terms listed below shall have the following meaning:

15. The term "Auxiliary Aids and Services" includes qualified interpreters 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, 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 or hard of hearing.

16. The term "BMH Personnel" means all employees, agents, and contractors working for or on behalf of BMH who have or are reasonably likely to have direct contact with Patients or Companions, as defined here, including, without limitation, nurses, physicians, social workers, technicians, admitting personnel, receptionists, telephone operators, billing staff, security staff, counselors, therapists, and volunteers. The term also includes all affiliated physicians or other health care professionals who have medical staff privileges that permit them to see and/or treat Patients at BMH.

17. The term "Companion" means a family member, friend, or associate of a Patient who, along with the Patient, is an appropriate person with whom BMH should communicate.

18. The term "Duration of this Agreement" means the period of time this Agreement remains in effect.

19. The term "Effective Date of this Agreement" means the date the Agreement is signed by all Parties.

20. The term "Patient" means any individual who is seeking or receiving health care services (whether inpatient or outpatient, including consultations, treatment, scheduling of appointments, discussion of billing issues, attending health education classes, and other health care services) from BMH.

21. The term "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. Qualified Interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using ASL is not necessarily qualified to interpret orally. Someone who has only a rudimentary familiarity with sign language or finger spelling is not a Qualified Interpreter under this Agreement. Likewise, someone who is fluent in ASL but unable to translate spoken communication into ASL or to translate signed communication into spoken words is not a Qualified Interpreter.

22. The term "Video Remote Interpreting" or "VRI" means an interpreting service that uses video-conference technology over dedicated lines or wireless technology, offering high-speed, wide-bandwidth video connection, that delivers high-quality video images, as provided in 28 C.F.R. § 36.303(f), as set forth in Paragraph 36 of this Agreement.

VI. Actions To Be Taken By BMH

A. Provision of Effective Communication

23. Appropriate Auxiliary Aids and Services. Consistent with the ADA, BMH will furnish appropriate auxiliary aids and services where necessary to ensure that communications with Patients, Companions, and members of the public who are deaf or hard of hearing are as effective as communications with others. In order to be effective, BMH will provide auxiliary aids and services in a timely manner, in accessible formats, and in such a way so as to protect the privacy and independence of the individual with a disability, all consistent with the terms of this Agreement.

24. Policies and Procedures. Within ninety (90) calendar days of the Effective Date of this Agreement, BMH shall review its policies and procedures, and revise as necessary, to ensure it is taking steps to provide effective communication with Patients and Companions who are deaf or hard of hearing, consistent with the requirements of this Agreement.

25. Designation of Program Administrator. Within thirty (30) calendar days of the Effective Date of this Agreement, BMH shall designate at least one Program Administrator who shall be responsible for:

    a. the coordination of BMH's efforts to comply with the ADA and other applicable civil rights laws, rules, and regulations;
    b. the investigation of any grievance communicated to BMH alleging noncompliance with the ADA;
    c. knowing where auxiliary aids are stored and how to operate any auxiliary aid;
    d. the maintenance, repair, replacement, and distribution of any auxiliary aid;
    e. providing a contact person available 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, from BMH Personnel, Patients, and Companions; and

f. BMH's compliance with the terms of this Agreement set forth here, including coordinating and/or conducting trainings, maintaining records, providing compliance reports and logs, and creating and modifying policies and procedures.

The position of Program Administrator is not required to be a full-time position nor are the duties described herein required to be the Program Administrator's sole responsibilities, provided that the requirements of Paragraph 45 are otherwise satisfied.

26. Communication Assessment. BMH Personnel will perform and document a communication assessment as part of each initial Patient assessment, and reassess communication effectiveness regularly throughout the visit, as described here. If there is any indication from an initial assessment, inquiry, request, or BMH's observations that a Patient or Companion is deaf or hard of hearing and auxiliary aids and services are necessary, BMH Personnel who are primarily responsible for coordinating and/or providing patient care services, in consultation with the Patient or Companion whenever possible, and as set forth in Paragraph 28, will determine which appropriate auxiliary aids and services are necessary.

27. Communication Assessment Criteria. The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration, and frequency with which they will be provided, will be made by BMH Personnel who are otherwise primarily responsible for coordinating and/or providing patient care services. This determination will be made in consultation with the Patient or Companion, wherever possible, to determine what type of auxiliary aids or services are needed to ensure effective communication. BMH will develop a form for conducting this determination no later than thirty (30) days following the Effective Date of this Agreement. The determination made by BMH Personnel will take into account all relevant facts and circumstances, including without limitation the following:

a. the method of communication used by the individual;
b. the nature, length, and complexity of the communication at issue;
c. the context in which the communication is taking place; and
d. as applicable to the provision of Qualified Interpreters, the circumstances and criteria described in Paragraphs 32-38.[1]

28. Timing of Communication Assessment. The initial assessment and determination of which appropriate auxiliary aids and services are necessary will be made at the earliest of the following:

a. the time an appointment is scheduled, provided that the Patient or Companion communicates the need for auxiliary aids or services;

[1] The requirements set forth herein by the United States pursuant to its jurisdictional authority under Title III of the ADA and implementing regulations (*see* 42 U.S.C. §§ 12181-12189; 28 C.F.R. Part 36) in no way alters or diminishes BMH's obligation to meet other statutory or regulatory requirements. *See, e.g.*, 45 C.F.R. § 92.202; *see also Vega-Ruiz v. Northwell Health*, 992 F.3d 61, 65 (2d Cir. 2021).

b. the time BMH becomes aware that a Patient or Companion who may require auxiliary aids or service is en route to BMH; or
c. the time the Patient or Companion initially comes in contact with BMH Personnel.

In any instance in which BMH personnel know or reasonably should know that a Patient or Companion is en route to the Emergency Department and will require auxiliary aids or services, BMH personnel shall make reasonable efforts to arrange and make ready the appropriate auxiliary aids or services in advance of the Patient's or Companion's arrival, and shall ensure that such aids or services are available as soon as practicable upon arrival.

29. Documentation of Communication Assessment Relating to Provision of Auxiliary Aids and Services. Documentation of any assessment and determination as to the provision of auxiliary aids and services will be maintained in the Patient's medical records and, for the Duration of this Agreement, will also be maintained in the Auxiliary Aid and Service Log, as set forth in Paragraph 41. Consistent with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 C.F.R. Parts 160 and 164, BMH shall label or make a notation in the Patient's record to alert BMH Personnel to the fact that the Patient or Companion is deaf or hard of hearing and will take appropriate steps to ensure that all BMH Personnel reasonably likely to have contact with a Patient or a Companion are made aware of the auxiliary aid or service(s) that have been identified as necessary to communicate effectively with the Patient or Companion.

30. Determination Not to Provide Requested Auxiliary Aid or Service. If, after conducting the assessment as described in Paragraphs 26-28 of this Agreement, BMH determines that it will not provide a particular auxiliary aid or service requested by a Patient or Companion who is deaf or hard of hearing based on undue financial or administrative burden or because an equally effective auxiliary aid or service is available, BMH Personnel shall so advise the individual requesting the auxiliary aid or service, provide a copy of its grievance procedure, and secure a means of effective communication in a timely manner. BMH shall document the basis for the determination, including the date of the determination, the name and title of the BMH Personnel who made the determination, and the alternative auxiliary aid or service, if any, that BMH decided to provide, in the Patient's record, as set forth in Paragraph 29, and in the Auxiliary Aid and Service Log, as set forth in Paragraph 41. A copy of this documentation shall be provided to the Patient or Companion upon request.

31. Redetermination and Subsequent Visits. BMH shall reassess its determination of which appropriate auxiliary aids and services are necessary, in consultation with the Patient or Companion, regularly throughout the visit to ensure effective communication, and promptly after a Patient or Companion indicates that communication is not currently or has not been effective. BMH will document in the Patient's medical records and in the Auxiliary Aid and Service Log, as set forth in Paragraph 41, any instance where a Patient or Companion indicates that the auxiliary aids and services provided by BMH have not been effective; any reassessment; and the results of any redeterminations. With respect to any subsequent visits, BMH will consult the Patient's records to review

what, if any, auxiliary aids or services may be necessary without requiring additional assessments or requests for the appropriate auxiliary aids and services by the Patient or Companion, unless the Patient or Companion indicates otherwise.

32. Circumstances Under Which Qualified Interpreters Will Be Provided. BMH shall provide Qualified Interpreters, on-site or through a VRI service, to Patients and Companions as necessary to ensure effective communication. The following are examples of circumstances and types of communication when it is likely necessary to provide a Qualified Interpreter:

a. obtaining a Patient's medical history or description of symptoms and medical condition;
b. discussing or explaining a Patient's diagnosis, current condition, prognosis, treatment options, or recommendation for treatment;
c. discussing or explaining procedures, tests, or treatments;
d. discussing or explaining test results;
e. discussing or explaining prescribed medications, instructions for how and when medication is to be taken, and possible side effects and interactions of medications;
f. obtaining informed consent or permission for procedures, surgery, or other treatment options;
g. communicating during treatment and testing;
h. communicating during labor and delivery;
i. communicating during discharge or post-operative planning and instruction;
j. providing mental health evaluations, group or individual therapy, counseling, or other therapeutic activities, including grief counseling and crisis intervention;
k. providing information about blood or organ donations;
l. explaining living wills or powers of attorney (or their availability);
m. discussing complex financial or insurance matters;
n. providing educational presentations, such as classes concerning birthing, nutrition, CPR, and weight management; and
o. any other circumstance in which a Qualified Interpreter is necessary to ensure a Patient's rights provided by law.

33. Timeframe for Providing Qualified Interpreters. BMH shall ensure that it provides Qualified Interpreters in a timely manner, as set forth below.

a. Qualified Interpreter for a non-scheduled incident. For all non-scheduled incidents, such as visits to the Emergency Department, BMH will provide a Qualified Interpreter as soon as practicable after a request or determination that a Qualified Interpreter is necessary, but no later than ninety (90) minutes for an on-site interpreter or fifteen (15) minutes for VRI services. Between the time when a Qualified Interpreter is requested and when a Qualified Interpreter is made available, BMH Personnel will inform the Patient or Companion of the current efforts being made to secure a Qualified Interpreter and continue 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 the most effective means of communication available where

appropriate. Notification of the efforts to secure a Qualified Interpreter does not lessen BMH's obligation to provide a Qualified Interpreter as required by this Agreement. Efforts to communicate with the Patient or Companion in the interim shall not involve the use of accompanying adults or minors to interpret or facilitate communication, except under the limited circumstances specified in Paragraphs 39 and 40.

b. On-site Qualified Interpreter for scheduled appointments. For all appointments scheduled with at least twenty-four (24) hours' notice, BMH shall make all practicable efforts to provide an on-site Qualified Interpreter at the time of the scheduled appointment if such a request or determination is made. Even when there are fewer than twenty-four (24) hours from the request to the scheduled appointment, BMH will make reasonable efforts to provide an on-site Qualified Interpreter for the scheduled appointment. Such efforts shall include contacting the interpreters or agencies with whom BMH has an ongoing contract for qualified interpreter services or other known interpreters prior to the scheduled appointment to request services. If an on-site Qualified Interpreter is necessary, but not available, and it is medically appropriate to do so, BMH may make arrangements, with the Patient's agreement, to reschedule the appointment within forty-eight (48) hours of the request to a time when an interpreter can be appropriately scheduled. If an interpreter fails to arrive for the appointment, BMH shall immediately contact the Program Administrator or another resource to arrange for a Qualified Interpreter within the timeframes specified in Paragraph 33(a).

c. Throughout Hospitalization. BMH will continue to provide Qualified Interpreters to Patients and Companions admitted to BMH, throughout their hospitalization, as may be necessary for effective communication for the circumstances and types of the communication between the Patient and BMH Personnel, as described in Paragraph 32. Patients will not be required to renew requests for Qualified Interpreters for these events.

BMH will monitor the response times for each request for a Qualified Interpreter. Any deviations from the applicable response times will be documented in the Auxiliary Aid and Service Log, as described in Paragraph 41, and, if applicable, addressed with the interpreting service provider.

34. Specific Steps for the provision of on-site Qualified Interpreters for non-scheduled incidents. Within 15 minutes of a request or a determination that an on-site interpreter is necessary for a non-scheduled incident, BMH Personnel will request an interpreter from the interpreters or agencies with whom BMH has an ongoing contract for qualified interpreter services. If no interpreter can be located, BMH Personnel will:

a. make reasonable efforts to contact any free-lance interpreters or other interpreting agencies already known to BMH and request their services;
b. inform a Program Administrator of the efforts made to locate an interpreter and solicit assistance in locating an interpreter;

c. inform the Patient or Companion 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 interpreters, such as contacting an interpreter known to that person;
d. document all of the above efforts in the Auxiliary Aid and Service Log, as described in Paragraph 41.

35. Force Majeure. The foregoing response times are subject to "force majeure" events - i.e., any response time that is delayed because of a force majeure event is excluded from the determination whether the prescribed response criteria have been met. Force majeure events are events outside the reasonable control of BMH, the interpreter service provider, or the interpreter called to respond, such as weather problems and other Acts of God, network connectivity interruptions unrelated to BMH's infrastructure, unanticipated illness or injury of the interpreter while en route to BMH, and unanticipated transportation problems (including, without limitation, mechanical failure of the interpreter's automobile, automobile accidents and roadway obstructions, other than routine traffic or congestion).

36. Other Means of Communication. In situations requiring immediate, emergency care, BMH Personnel may continue to try to communicate with a Patient or Companion between the time an on-site interpreter is requested and when the on-site interpreter arrives. Such means of communication may include, but are not limited to, VRI, written notes or sign language pictographs. This provision in no way lessens BMH's obligation to provide qualified interpreters in a timely manner as required by this Agreement. Once an interpreter arrives, BMH Personnel will ensure that the Patient or Companion has a reasonable understanding of the care already provided and the current treatment plan.

37. Video Remote Interpreting (VRI) Services Assessment Criteria. In determining whether a Qualified Interpreter via VRI service is appropriate to provide effective communication, relevant factors include the following:

a. the Patient or Companion is limited in his or her ability to see the video screen, either due to limited vision or the physical positioning of the Patient (e.g., lying in a prone position);
b. the Patient or Companion has limited ability to move his or her head, hands, or arms;
c. the Patient has cognitive limitations, loss of consciousness, or pain issues;
d. there are multiple people in a room and the information exchanged is highly complex or fast-paced;
e. the Patient or Companion may move repeatedly to areas of BMH that do not have a designated high-speed internet line;
f. the Patient will be treated in a room where there are space restrictions; and
g. the VRI can be provided in accordance with the performance standards described in Paragraph 38.

38. Standards for Providing Video Remote Interpreting (VRI). Whenever a Qualified Interpreter via VRI service is provided or used, BMH shall ensure that it provides the VRI service in accordance with the following standards:

a. Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
b. A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
c. A clear, audible transmission of voices; and
d. Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI service.

Once the system is operating, BMH Personnel shall ask the Patient or Companion whether the VRI service is meeting his or her communication needs and make a record of his or her response, in accordance with Paragraphs 29 and 41. BMH Personnel shall ensure that the device transmitting the VRI service is in a physical position easily viewed by the Patient or Companion and that the Patient or Companion is not required to hold such device. In the event that the Patient or Companion cannot communicate effectively using any VRI service BMH elects to acquire and offer, BMH shall make all reasonable efforts to locate an on-site Qualified Interpreter or other auxiliary aid or service that will provide effective communication; periodically inform the Patient or Companion of the status of those efforts; and document the concern and the steps taken to locate a Qualified Interpreter.

BMH shall provide Qualified Interpreters either on-site or via VRI, ensuring that both options are considered equally acceptable when they meet the standards for effective communication under the ADA. VRI may be used when it is appropriate and effective, consistent with the ADA and the performance standards set forth in this Agreement

39. Restricted Use of Adults Accompanying a Patient or Companion to Interpret or Facilitate Communication. BMH shall never require or coerce a Patient or Companion who is deaf or hard of hearing to bring another individual to interpret or facilitate communications between BMH Personnel and such Patient or Companion. BMH shall not rely on an adult accompanying a Patient or Companion to interpret or facilitate communication except in either of the following circumstances:

a. In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available. This provision applies to exigent circumstances where any delay in providing immediate services to the individual could have life-altering or life-ending consequences and is not intended to obviate the obligation to provide a Qualified Interpreter or other auxiliary aids and services in typical and foreseeable emergencies that are part of the normal operations of a hospital.

b. If a Patient or Companion who is deaf or hard of hearing specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that person for such assistance is appropriate under the circumstances. In such circumstances, BMH shall advise the Patient or Companion that the full range of

auxiliary aids and services is available without charge and shall give appropriate consideration to any relevant issues and concerns that may arise, such as privacy and confidentiality. BMH will document such a request, in accordance with this Agreement. This provision in no way lessens BMH's obligation to provide appropriate auxiliary aids and services as required by this Agreement.

40. Restricted Use of Minors to Interpret or Facilitate Communication. BMH shall not rely on a minor accompanying a Patient or Companion to interpret or facilitate communications between BMH Personnel and a Patient or Companion except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

41. Auxiliary Aid and Service Log(s). Within forty-five (45) calendar days of the Effective Date of this Agreement, BMH shall create and maintain a log, or logs, of: (a) each request for an auxiliary aid and service; (b) the type of auxiliary aid or service requested; (c) the time and date the request is made; (d) the name of the individual who made the request; (e) the name of the individual for whom the auxiliary aid or service is being requested (if different from the requestor); (f) the time and date of the scheduled appointment (if a scheduled appointment was made); (g) the name of the BMH Personnel who performed any communication determination or redetermination; (h) the name of any BMH Personnel responsible for determining whether or not to provide the requested auxiliary aid or service; (i) the nature of the auxiliary aid or service provided; (j) the time and date the auxiliary aid or service was provided, or a statement that the auxiliary aid or service was not provided and the reason why the aid or service was not provided. Such logs will be maintained for the Duration of this Agreement.

42. Data Collection on Interpreter Response Time and Effectiveness; Feedback Forms. BMH will monitor the performance of each qualified sign language interpreter it uses to provide communication to Patients or Companions. As part of the Auxiliary Aid and Service Log, described in Paragraph 41, BMH shall collect information regarding response times for each request for an interpreter. BMH shall also prepare a form requesting feedback concerning the timeliness and effectiveness of interpreter services. This feedback form shall be provided to each Patient or Companion who requests an interpreter or receives the services of an interpreter, whether on-site or through a VRI service. BMH shall use the feedback forms for monitoring and evaluating the performance of each interpreter it provides to Patients and Companions. The Program Administrator(s) shall maintain the completed feedback forms for the Duration of this Agreement.

43. Notice of Nondiscrimination and Availability of Auxiliary Aids and Services. BMH shall take appropriate and continuing steps to notify Patients, Companions, BMH Personnel, and the public, including individuals who are deaf or hard of hearing, of the rights and protections afforded by the ADA and the following:

a. that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities (Nondiscrimination Statement);
b. that it provides to individuals with disabilities appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and

information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate;
c. a description of how to obtain auxiliary aids and services and language assistance services;
d. the identity of, and contact information for, the Program Administrator(s); and,
e. the availability of the grievance procedure and how to file a grievance.

44. Training of BMH Personnel. To ensure compliance with this Agreement and the law as it relates to the provision of auxiliary aids and services, BMH agrees to conduct the following trainings within the timeframes specified in Paragraph 45. BMH shall maintain copies of the training materials and attendance records for each training. Each training will be of sufficient duration and content to train BMH Personnel in the following areas relative to their responsibilities for coordinating or providing patient care:

a. the requirement to ensure effective communication with Patients and Companions who are deaf or hard of hearing;
b. information regarding the types of communication disabilities, the different languages and methods of communication used by individuals who are deaf or hard of hearing, and the types of auxiliary aids and services available to ensure effective communication;
c. procedures to promptly identify communication needs of individuals who are deaf and hard of hearing, including determining what types of auxiliary aids and services are necessary and assessing when certain auxiliary aids and services are effective in different circumstances;
d. procedures to promptly obtain auxiliary aids and services, including how to quickly and efficiently set up and operate VRI, and the appropriate steps to take when efforts to obtain auxiliary aids and services are unsuccessful or communication is not effective;
e. procedures for documenting communication assessments and requests for auxiliary aids and services in the Patient's record and the Auxiliary Aid and Service Log, where appropriate;
f. BMH's grievance procedure; and
g. any other applicable requirements of this Agreement.

45. Timeframe for the Provision of Training

a. BMH Personnel. Within one hundred-twenty (120) calendar days of the Effective Date of this Agreement, and on an annual basis thereafter for the Duration of this Agreement, BMH will provide mandatory training for all BMH Personnel, including: the Program Administrator(s), charge nurses, and all additional medical staff including physicians, nurses, and others responsible for coordinating and/or providing patient care services.

b. Training of New BMH Personnel or other Hospital Personnel. Within sixty (60) calendar days of their start date at BMH, all new BMH Personnel will receive training regarding the availability and use of auxiliary aids and services for Patients and Companions, and regarding the process for

assessing the need for such services and the process for obtaining the same.

46. Prohibition of Surcharges. All appropriate auxiliary aids and services required by this Agreement will be provided free of charge to Patients and Companions who are deaf or hard of hearing.

47. Retaliation and Coercion. BMH shall not retaliate against or coerce in any way any person who has made or is making a complaint or has exercised or is exercising his or her rights under the ADA or any other applicable civil rights law, rule, and regulation, or who has assisted or participated in the investigation of any matter covered by this Agreement.

48. Commitment to Continued Improvement of Process for Providing Appropriate Auxiliary Aids and Services. Within one (1) year of the Effective Date of this Agreement, and continuing for the Duration of this Agreement, BMH will undertake the following efforts towards continuous improvement:

a. An annual review of BMH's policies relating to the provision of auxiliary aids and services to individuals who are deaf and hard of hearing,
b. An annual review of specific processes put in place to implement the terms of this Agreement,
c. An annual review of available auxiliary aids and services,
d. An annual review of options for providing on-site Qualified Interpreters,
e. An annual review of specific procedures to publicize within the BMH community the availability of auxiliary aids and services at no cost to Patients and Companions, and
f. Scheduling, announcing, and promoting training described herein.

BMH will report a summary of the status and results of its Continuous Improvement Process in the twelve-month Compliance Report, as described in Paragraph 55.

VII. Release and Remuneration for Complainants

49. Release by Complainant and Complainant's Companion. Within fourteen (14) calendar days of the Effective Date of this Agreement, the DOJ shall deliver to counsel for BMH releases signed by the Complainant and Complainant's Companion.

50. Compensatory Relief for Complainant. Within fifteen (15) calendar days of receiving the Complainant's signed release, BMH shall compensate the Complainant pursuant to 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2) in the amount of twenty-five thousand dollars ($25,000). This compensation is relief that the DOJ is authorized to obtain for the Complainant under Title III of the ADA and is for the effects of the alleged discrimination suffered as described in Paragraph 2. BMH will not withhold taxes from the monetary award, and the Complainant, through the signed release, will accept full responsibility for taxes due and owing, if any, on such funds. BMH will issue to the Complainant an IRS Form 1099 reflecting the amount paid. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the DOJ concerning the characterization of the Compensatory Relief for purposes of the Internal Revenue laws, Title 26 of the United States Code.

51. Settlement Fund for Confirmed Aggrieved Parties. Within thirty (30) calendar days of the Effective Date of this Agreement, BMH shall deposit in a separate account the sum of forty thousand dollars ($40,000) to establish a Settlement Fund (the "Settlement Fund") for the purpose of compensating deaf and hard of hearing individuals determined by the DOJ to have been aggrieved by BMH's failure to provide qualified sign language interpreters or appropriate auxiliary aids and services from 2018 to the Effective Date of this Agreement ("Confirmed Aggrieved Parties," or, in the singular, "Confirmed Aggrieved Party"). BMH shall have no obligation to replenish the Settlement Fund once exhausted.

a. Within thirty (30) calendar days of the Effective Date of this Agreement, BMH shall draft, for the United States' review, a Notice describing this Resolution Agreement and providing information on how potentially aggrieved parties can submit a claim for compensation, along with a submission deadline. Thereafter, BMH shall place on its website a link to an electronic version of that Notice in an Adobe Acrobat Portable Document Format ("PDF"). The link should state "Accessibility Notice" and should appear on the upper half of the website, in a conspicuous font style and color, in a font size no smaller than the font size for any of the links titled "About Us," "Careers," "Pay My Bill," "Patient Portal," "Events Calendar," and "News" as they appeared on BMH's website on July 15, 2025. The notice shall remain posted for 180 days and will note that all claims must be submitted within that period.
b. The United States may make its own efforts to locate and provide notice to potential aggrieved persons.
c. BMH shall permit the United States, upon reasonable notice, to review any records that may reasonably facilitate its investigations to locate allegedly aggrieved persons and make determinations regarding their potential claims. BMH has previously provided information regarding individuals potentially affected through its responses to the DOJ's request for information. To the extent that BMH becomes aware of additional persons known to it whose primary means of communication is ASL, and who, during visits to BMH's Emergency Department from 2018 through the Effective Date of this Agreement, allege they were not provided qualified sign language interpreters or appropriate auxiliary aids and services, BMH shall identify such persons to the United States.
d. The United States shall investigate the claims of allegedly aggrieved persons and shall determine which persons are aggrieved (Confirmed Aggrieved Party) and an appropriate amount of damages that should be paid to each such person. The United States will inform BMH in writing of each of its determinations, together with a copy of a sworn declaration from each Confirmed Aggrieved Party setting forth the factual basis of the claim. No Aggrieved Party shall receive greater compensation than the Complainant.
e. The United States will have any Confirmed Aggrieved Party sign a release and will provide such release to BMH. Within fifteen (15) calendar days of receiving a Confirmed Aggrieved Party's signed release, BMH shall deliver to the Confirmed Aggrieved Party a check in the amount identified by the United States, with proof of delivery provided to the United States. The compensation paid to a Confirmed Aggrieved Party shall come from the Settlement Fund.
f. In the event that less than the total amount in the Settlement Fund including accrued interest is distributed to aggrieved persons, then any remainder shall be remitted to

BMH after the claim submission period has expired and the United States confirms that no further claims will be processed, but in no event later than twenty-four (24) months after the Effective Date of this Agreement.

g. No adverse action shall be taken against any person because such person cooperates with the United States in its investigations, makes a claim, or seeks to make a claim under this Agreement.

XI. Reporting and Monitoring

52. Unless otherwise provided, all payments required by this agreement shall be submitted to the DOJ by U.S. Mail at the following address:

U.S. Attorney's Office, District of Vermont
11 Elmwood Ave, # 570
Burlington, VT 05401
Attn: Matthew J. Greer, AUSA

Unless otherwise provided, all notices, reports or other such documents required by this Agreement shall be submitted to the DOJ by email to Matthew.Greer@usdoj.gov.

53. Records. BMH shall maintain appropriate records to document the information required by this Agreement, and shall make them available to the DOJ, upon request, throughout the Duration of this Agreement.

54. Complaints. For the Duration of this Agreement, BMH shall notify the DOJ if any person files a lawsuit, written complaint, or formal charge against BMH with a state or federal agency, alleging that BMH failed to provide auxiliary aids or services to deaf or hard of hearing Patients or Companions or otherwise failed to ensure effective communication with such Patients or Companions. Such notification must be provided in writing via certified mail within thirty (30) calendar days of the date BMH receives notice of the allegation and must include, at a minimum, the nature of the allegation, the name of the person making the allegation, and any documentation possessed by BMH relevant to the allegation. BMH will reference this provision of the Agreement in the notification to the DOJ.

55. Compliance Report. BMH shall provide an initial written report ("Compliance Report") to the DOJ regarding the status of its compliance with this Agreement within six (6) months of the Effective Date of this Agreement; a second Compliance Report within twelve (12) months of the Effective Date of this Agreement (covering the preceding six-month period); a third Compliance Report eighteen (18) months after the Effective Date of this Agreement (covering the preceding six-month period); and a fourth Compliance Report twenty-four (24) months after the Effective Date of this Agreement (covering the preceding six-month period.

56. Required Content for Compliance Reports. Each Compliance Report shall include appropriate documentation of the steps BMH has taken to comply with each term of this Agreement, including:

a. any revised policies and procedures;
b. the distribution of policies and procedures;
c. the training required by this Agreement, including the training materials and attendance records;
d. a list of any grievances and/or complaints filed by Patients or Companions regarding the provision of auxiliary aids or services or allegations of discrimination on the basis of disability, including a description of the allegations, the date filed, the status and/or outcome of each grievance or complaint, and a copy of the grievance itself; and
e. a copy of the Auxiliary Aid and Service Log as well as the Feedback Forms described in Paragraphs 41 and 42.

XII. Enforcement

57. Duration of this Agreement. This Agreement shall terminate three (3) years from its Effective Date. If at that point, the DOJ determines that BMH substantially complied with this Agreement, then the DOJ's review and monitoring of this Agreement shall terminate. DOJ may, in its sole discretion, terminate this Agreement two years from its Effective Date. DOJ will consider in good faith a request by BMH to terminate this Agreement made two years or more after its Effective Date.

58. Compliance Review and Enforcement. The DOJ may review compliance with this Agreement at any time. If the DOJ believes that BMH has failed to comply with this Agreement, it will notify BMH in writing and the Parties will attempt to resolve the issue(s) in good faith. The DOJ will allow BMH sixty (60) calendar days from the date it notifies BMH to cure said failure to comply. If the DOJ determines it is unable to reach satisfactory resolution of the issue(s), the DOJ may take any action authorized by law to secure compliance with Title III of the ADA, including instituting a civil action in U.S. District Court to enforce the terms of this Agreement.

XIII. Other Provisions

59. In the event that a court of competent jurisdiction determines that any provision of this Agreement is unenforceable, such provision shall be severed from the Agreement and all other provisions shall remain valid and enforceable; provided, however, that if the severance of any such provision materially alters the rights or obligation of the Parties, they shall, through reasonable, good faith negotiations, agree upon such other amendments as may be necessary to restore the Parties as closely as possible to the relative rights and obligation initially intended to them within the Agreement.

60. In consideration of the terms of this Agreement, the United States agrees to refrain from undertaking further investigation or taking steps toward instituting a civil suit or administrative action in USAO # 2023V00418 against BMH based on the allegations lodged against BMH, except as provided in Paragraph 58. Except as related to the above-mentioned complaints, 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 BMH for violations of any statutes, regulations, or rules administered by the DOJ or to prevent or

limit the rights of United States to obtain relief under the ADA.

61. This Agreement does not constitute a finding by the DOJ that BMH is in full compliance with the ADA. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of disability. Nothing in this Agreement relieves BMH of its continuing obligations to comply fully with the requirements of the ADA and all other relevant laws, rules, and regulations.

62. Nothing in this Agreement shall be construed or deemed as an admission by BMH of any liability or fault regarding any of Complainant's or the Confirmed Aggrieved Parties' factual allegations that BMH engaged in any wrongful or illegal activity, that any of the United States allegations are true, or that any person suffered any injury as a result of the events as alleged by the United States, and nothing in this Agreement shall be construed as a waiver by BMH to defend against any allegation claiming that BMH violated any statutes, regulations, or rules administrated by the DOJ or to prevent or limit the right of the DOJ to challenge any claim alleging noncompliance under the ADA. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other tribunal as an admission or concession of liability or wrongdoing of any nature on the part of BMH except in an action challenging BMH's compliance with this Agreement.

63. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the matters raised herein, and no prior or contemporaneous 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, including attachments, is enforceable. This Agreement can only be modified by mutual written agreement of the Parties.

64. Changing Circumstances. During the term of this Agreement, there may be a change in circumstances such as, for example and without limitation, an increased or decreased availability of Qualified Interpreters or developments in technology to assist or improve communications with persons who are deaf or hard of hearing. If BMH determines that such changes create opportunities for communicating with Patients and Companions more efficiently or effectively than is required under this Agreement, or create difficulties not presently contemplated in the provision of auxiliary aids and services, BMH may propose changes to this Agreement by presenting written proposals to the DOJ. Such changes may be made to the Agreement if the DOJ, upon review, grant its approval in writing, which approval will not be unreasonably withheld or delayed.

65. Binding. This Agreement is final and binding on BMH, including all principals, agents, executors, administrators, representatives, employees, successors, and assigns. In the event that BMH seeks to sell, transfer, or assign substantially all of its assets or a controlling membership position in BMH during the term of this Agreement, then, as a condition of such sale, transfer, or assignment, BMH will obtain the written agreement of the successor, buyer, transferee, or assignee to all obligations remaining under this Agreement for the remaining term of this Agreement.

66. Non-Waiver. Failure by the DOJ to seek enforcement of any provision of this Agreement is not a waiver of the agencies' respective right to enforce any provision of this Agreement.

67. Headings. The headings in this Agreement are for convenience only and shall not affect in any way the language of the provision to which they refer.

68. Execution of Agreement. The undersigned represent that they have been fully authorized to enter into and execute this Agreement under the terms and conditions contained within. This Agreement may be executed in counterparts.

69. Publication or Disclosure of Agreement. The DOJ places no restriction on the publication of the Agreement. In addition, the DOJ may be required to disclose material related to this Agreement to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 522, and its implementing regulation, 45 C.F.R. Part 5.

By their signatures below, the Parties consent to the execution of all aspects of this Agreement.

FOR THE UNITED STATES:

DATED: 01/06/2026

MICHAEL P. DRESCHER
First Assistant United States Attorney

By: _____
MATTHEW J. GREER
Assistant United State Attorney
11 Elmwood Ave, Floor 3
Burlington, VT 05402

FOR BRATTLEBORO MEMORIAL HOSPITAL:

DATED: 12/24/25

SIGNED: _____

NAME: Dr. Elizabeth McLarney Acting Co-CEO