

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT FRANKFORT**

OSCAR ADAMS and MICHAEL KNIGHTS)
)
 Plaintiffs)
)
 v.)
)
 COMMONWEALTH OF KENTUCKY, et al.)
)
 Defendants.)
 _____)

Case No. 3:14-cv-00001-GFVT

Third Semi-Annual Report by the Settlement Monitor

May 31, 2017

Margo Schlanger
Settlement Monitor
625 So. State Street
Ann Arbor, MI 48109

I. INTRODUCTION

Pursuant to the Court's order dated June 24, 2015, this is my third semi-annual report to the Court and the parties concerning the status of compliance with this case's Settlement Agreement, which comprehensively governs how the Kentucky Department of Corrections ("Department") deals with inmates who are deaf or hard-of-hearing.

As in my prior reports, I thank the Department's personnel, both at headquarters and at the various affected institutions, for their work on implementing the improvements that are required by the Settlement Agreement, and their professionalism and accommodation of my requests for information. The Department has continued to make progress towards compliance. In particular, since my last report, it has continued to make progress on the very challenging issue of hearing aids, and the computer-based training for staff has now been finalized. Much remains to be done; as usual for implementation of any complex new initiative, the challenges are many; I discuss the challenges and next steps below in this report, and in Appendix IV, my most recent site visit report.

This report has six Appendices.

- I.** Settlement Agreement (with numbered paragraphs, for ease of reference)
- II.** ADA staff computer-based-training (Apr. 20, 2017)
- III.** ADA Coordinator training (Feb. 25, 2017)
Part 1: Settlement Agreement Training
Part 2: CReATE Compliance
- IV.** Site visit report for Dec. 2016 and Feb. 2017 visits, with exhibits (May 4, 2017)
Covered facilities:
Blackburn Correctional Complex (Dec. 12, 2016)
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Northpoint Training Center (Dec. 14, 2016)
Kentucky State Reformatory (Feb. 27, 2017)

Exhibits: A—Staff Interviewed
B—Consolidated Recommendations
C—How to Communicate Effectively with Hard-of-Hearing Inmates
D—Auxiliary Aids/devices currently in place or under test at KYDOC institutions
- V.** Recommended forms:
Inmate Pamphlet
Memo for Staff
Hard-of-Hearing Communications Tips
- VI.** April 2017 quarterly reporting request

II. DEPARTMENT-LEVEL COMPLIANCE WITH THE AGREEMENT

Most of the Settlement Agreement is being implemented at the level of individual institutions. I discuss the relevant issues below, in Part III. But a few of the Agreement's requirements are being implemented at the Department level:

A. Designation of and public notice (via departmental website) of ADA Coordinators.

The Settlement Agreement requires that the "the name and contact information for each ADA Coordinator will be displayed and regularly updated on the KDOC's website." (II.B.2)

Status: Compliant. The Department's webpage, <http://corrections.ky.gov/depts/AI/Pages/ADA.aspx>, is now up-to-date. I have included in my quarterly reporting request a reminder to each ADA Coordinator to check the website and update it if necessary. This method appears to be working.

B. Training of KDOC employees.

The Agreement includes very substantial provisions governing training, which was supposed to be provided by the end of September 2015 on numerous specified topics to "KDOC employees who interact with the Inmate population." (XIII.A.1) In addition, the Agreement requires that ADA Coordinators be "trained on the requirements of federal and state law regarding the contents of this Agreement and the KDOC's obligations to provide full and equal access to, and enjoyment of, its services, privileges, facilities, advantages, and accommodations to Deaf Inmates." (II.B.1) There are procedural requirements, as well: the Agreement instructs the Department to receive input from the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) and from me. (XIII.A.1)

The Department is now providing computer-based training to its employees. After two rounds of comments, that training appears accurate and complete. It is attached as Appendix II.

As for the required ADA Coordinator training, the ADA Coordinators are being offered the ADA Title II training provided online by the ADA National Network, at <http://www.adatitle2.org>. This is excellent training as far as it goes—it covers federal law. In addition, I have myself provided two powerpoints for ADA Coordinator Training to the Department, and conducted those trainings in February 2017. One is about the Settlement Agreement; the other is about the role of the ADA Coordinator. It is my understanding that the powerpoints are posted where each ADA Coordinator can refer to them, and that they are also included in the Department's computer based training library, so that new ADA Coordinators can complete them on-line. These two powerpoints are attached as Appendix III.

Status: Largely compliant, some additional steps necessary. Now that the computer-based training is available, KDOC needs to ensure that it is completed by all appropriate staff. Some version should be taken by medical contractors, as well, to facilitate their compliance with the agreement. In addition, the ADA Coordinators need to continue to develop and conduct role-specific in-person training.

C. Coordination

The Department has made progress on useful coordination and information sharing related to the Agreement. The Director of Operations, Chris Kleymeyer, has designated the Department's Safety Director, Webb Strang, to coordinate as useful. Mr. Strang has created a shared computer folder with a collection of useful documents, and has also worked on some information technology issues—modifying KOMS (the Kentucky Offender Management System) to include a Department-wide flag for inmates with disabilities particularly relevant to safety and security. In addition, the Department has instituted a practice of including the ADA Coordinators as recipients of routine transfer memos that inform facilities of the inmates being transferred in. The ADA Coordinators then have an opportunity to check to see if incoming inmates have any pertinent disability.

It would be useful to continue to strengthen coordination among the ADA Coordinators, so that information and insight can be shared.

III. INSTITUTION-LEVEL COMPLIANCE WITH THE AGREEMENT

I have at this point visited all but one of the Department's twelve adult institutions. (I have not yet been to the Bell County Forestry Camp, which currently houses five hard-of-hearing inmates.) My site visit report for visits in December 2016 and February 2017 is attached as Appendix IV. As previously, the site visit report assesses Settlement compliance as of the date of my visits; it also makes a few recommendations for how to improve compliance.

The site visit report is detailed, and I will not repeat it here. A few general comments on compliance trends may, however, be useful.

Inmate Identification and Tracking. I am now getting more larger and more complete lists of deaf and hard-of-hearing inmates. In the most recent quarter, I received notice of 227 inmates—a substantial increase from prior quarters. This increase marks improvements in identifying and tracking deaf and hard-of-hearing inmates. The institutions continue to work on identifying inmates who are hard-of-hearing. Even once inmates are identified, however, some tracking problems remain, however: each quarter a few names are omitted from the lists I receive—and from the ADA Coordinators' own records. It appears that there remain hand-off errors, when a deaf or hard-of-hearing inmate moves from one institution to another. This is not just a matter of recordkeeping, but of services and accommodations. Inmates who are not appropriately tracked are unlikely to receive accommodations or audiology services they depend on. In the most recent quarterly report, I was able to identify 17 additional inmates from prior lists who *should* have been on institutional lists. As I describe in Part II.C, above, on my recent recommendation, the ADA Coordinators are now supposed to receive the routine transfer memos that list incoming inmates for each institution, and that should help solve the problem. In addition, I have been informed that the Department is implementing a system-wide KOMS improvement that will allow cross-institution tracking of deaf and hard-of-hearing inmates (and of inmates with other disabilities). I am hopeful that over the next several months, this issue will be fully resolved.

Table 1: Distribution of Kentucky Deaf and Hard-of-Hearing Inmates

Institution	Site Visits		# of Deaf/HOH Inmates	
	Visit 1 Date	Visit 2 Date	~Nov. 2016	Apr. 2017
Bell County Forestry Camp	NA	Fall 2017, TBD	0	5
Blackburn Correctional Complex	Dec. 2016	Aug. 2017	5	4
Eastern Kentucky Correctional Complex	Dec. 2016	Fall 2017, TBD	9	11
Green River Correctional Complex	July 2016	July 2017	26	35
Kentucky Correctional Institution for Women	June 2016	Aug. 2017	13	13
Kentucky State Penitentiary	July 2016	July 2017	6	11
Kentucky State Reformatory	Feb. 2016	Feb. 2017	64	75
Little Sandy Correctional Complex	Dec. 2016	Fall 2017, TBD	18	8
Luther Lockett Correctional Complex	June 2016	Aug. 2017	6	26
Northpoint Training Center	Dec. 2016	Aug. 2017	15	28
Roederer Correctional Complex	June 2016	Aug. 2017	10	16
Western Kentucky Correctional Complex Ross-Cash Center	July 2016	July 2017	5 1	10 2
TOTAL			178	244

Qualified Interpreter Services. It continues to be the case that Video Remote Interpretation (VRI) is not being used as routinely as the Settlement calls for. In addition, most institutions have not put in place the systems necessary to provide in-person qualified interpreter services, when necessary.

Hearing Aid Access. One of the key compliance challenges for the Department is to identify inmates in need of a hearing aid and to timely provide that hearing aid. Process failures continue, so that provision of needed hearing aids sometimes stalls completely, and sometimes is extremely slow. I have devoted considerable attention to this issue over the past months, and in my most recent site visits and quarterly report request, sought an audiology progress report for each deaf/hard-of-hearing inmate at each institution. For all the inmates who may need a hearing aid but don't yet have one, I have requested frequent updates, to track them through the process. I am hopeful that by the end of this summer, each facility will have smoothed out its process for ensuring timely provision of appropriate audiology services.

Once existing inmates receive the hearing aids they need, the most crucial facility for diagnosis and hearing aid provision will be Roederer Correctional Complex (RCC), the Department's men's reception facility. I am informed that since my 2016 site visit to RCC, the Department has been able to bring in on-site audiology services, to make the process more

efficient and effective. This is an excellent development; I look forward to learning more about it on my 2017 site visit.

Assessments and Materials for Deaf Inmates. The Agreement requires that all deaf and hard-of-hearing inmates be provided with “materials providing information about the Auxiliary Aids and Services available to Deaf Inmates and instructions for how to obtain, request, or use those Auxiliary Aids and Services.” The language of these materials is required to be “designed to be accessible to each Deaf Inmate.” (III.F.1) The materials provided inmates have not, however, been either comprehensive or accessible. I have recommended improvements; the recommended versions are Appendix V. In addition, the Agreement requires assessments of each inmate’s need for various types of auxiliary aids and services (III.C); these assessments are not yet reliably occurring at every institution.

Other Auxiliary Aids for Hard-of-Hearing Inmates. A variety of auxiliary aids can assist with effective communication for hard-of-hearing inmates. Different institutions have made different good moves in this direction. For example, some facilities broadcast television audio on a radio channel, so that inmates can listen via a personal radio and earbuds; this reduces ambient noise in shared space and also enables inmates who need amplification to hear the tv. One institution is providing wireless personal amplification in congregated religious services. Much more work remains, but the steps already taken are starting the Department on the path it needs to follow. I will direct additional attention to this issue in the coming year; for right now, a good deal of information on the auxiliary aid progress made thus far is included in Appendix IV’s Exhibit D.

Direct Threat Determinations. With respect to services, programs, and work, the Settlement Agreement requires that deaf and hard-of-hearing inmates receive access “substantially equivalent” to similarly situated non-deaf Inmates, but, consistent with the ADA, explains that the Department “retains the discretion to determine that certain activities present a Direct Threat of injury or death to Deaf Inmates” and on that basis, bar deaf or hard-of-hearing inmates from the activity. (See I.4, II.A, V.A.4, VI.F.) Consistent with the Americans with Disabilities Act, the Settlement Agreement defines “Direct Threat” to mean “a significant risk to the health or safety of one or more Deaf Inmates or others that cannot be reduced or eliminated by reasonable accommodation. A finding of Direct Threat must be based on and supported by objective evidence.” (I.4). Whenever a Direct Threat is found, the Agreement requires prompt notification to me, as Settlement Monitor, that “explain[s] the reasoning in support of such determination.” (II.A, V.A.4, VI.F). My visits revealed that the staff who make decisions about job assignments, in particular, had not all been trained on the Settlement Agreement’s relevant provisions—either the substantive or the reporting obligations. Moreover, when I inquired, it became clear that the decisionmaking process was not appropriately individuated. Some jobs have been ruled off limits for all hard-of-hearing inmates, even though there is often no reason for such a bar. What the Settlement Agreement and the ADA require is individuated decisionmaking that considers the particular job and the particular inmate, with prompt reporting to me so I can offer technical assistance. I am working on this with the Department.

IV. RECOMMENDATIONS, FUTURE SITE VISITS, AND DEPARTMENTAL REPORTING

As a result of my site visits and the light they have shed on implementation challenges, I have made 82 recommendations for the Department, to assist in compliance with the Agreement. These are compiled in Appendix IV's Exhibit B.

Now that I have finished a full year of site visits, including two visits to KSR, the facility with the most deaf/hard-of-hearing inmates, I am finding many fewer items that need additional recommendations. Accordingly, I am shifting my approach to site visits. Beginning with the visits, scheduled for July and August of this year, I will develop and use a compliance checklist. I hope that sharing this checklist once it is developed will allow each institution to self-audit.

In addition, now that both I and the ADA Coordinators better understand the steps towards compliance, I am shifting more of the compliance monitoring to a more comprehensive records and information request, which I will issue twice each year. I have done the first of these requests (Appendix VI), and obtained most of the requested information from the 12 institutions; I am continuing to work through various followups with the individual institutions.

V. CONCLUSION

The Kentucky Department of Corrections continues to progress towards compliance with the Settlement Agreement, but implementation challenges remain. All the recommendations I have made so far are compiled in Appendix IV, Exhibit B. Going forward, my plan is to assess compliance institution-by-institution using itemized checklists, which I will include in future Court reports.

Dated: May 31, 2017

Respectfully submitted,



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Appendix I

Settlement Agreement (with numbered paragraphs, for ease of reference)

SETTLEMENT AGREEMENT BETWEEN DEFENDANTS THE COMMONWEALTH OF KENTUCKY ET AL. AND PLAINTIFFS OSCAR ADAMS AND MICHAEL KNIGHTS [NUMBERED FOR USE IN COMPLIANCE MONITORING]

I. DEFINITIONS

- [I.]1. “ADA” means the Americans with Disabilities Act, codified at 42 U.S.C. § 12101 et seq., as amended by the ADA Amendments Act of 2008 (P.L. 110-325).
- [I.]2. “Auxiliary Aids and Services” include, but are not limited to, “Qualified Interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,” 42 U.S.C. § 12103, such as hearing aids, computer-aided transcription services, assistive listening systems, closed caption decoders, open and closed captioning, “TDDs” or “TTYs” as defined below, videotext displays, written materials (*see* 28 C.F.R. § 35.104); as well as Videophones, access to telephone relay services, visual alert or alarm systems, and bed shakers.
- [I.]3. “Deaf Inmates” means Inmates who are unable to hear well enough to rely on their hearing as a means of processing information, who rely on Auxiliary Aids and Services to Effectively Communicate and who qualify as individuals with disabilities under the ADA, including deaf, hard of hearing, or hearing impaired persons. *See* 42 U.S.C. § 12102(4). .
- [I.]4. “Direct Threat” means a significant risk to the health or safety of one or more Deaf Inmates or others that cannot be reduced or eliminated by reasonable accommodation. A finding of Direct Threat must be based on and supported by objective evidence.
- [I.]5. “Effective Communication” and “Effectively Communicate” means communication with Deaf Inmates that is substantially as effective as communication with the general Inmate population (*see* 28 C.F.R. § 35.160(a)) and will, when necessary, include the provision of appropriate Auxiliary Aids and Services, such as Qualified Interpreters. Effective Communication affords Deaf Inmates an opportunity to participate in, and enjoy the benefits of, the KDOC’s services, programs, or activities in a way that is substantially equal to the opportunity provided to a similarly situated non-Deaf Inmate. In determining what form of Auxiliary Aids and Services is necessary, primary consideration shall be given to the request of the Deaf Inmate for such Auxiliary Aids and Services (*see* 28 C.F.R. § 160(b)(2)).
- [I.]6. “Effective Date” means thirty (30) days after this Agreement is filed with the Court.
- [I.]7. “Inmate” means any person in the custody of the KDOC.

- [I.]8. “KCDHH” means the Kentucky Commission on the Deaf and Hard of Hearing.
- [I.]9. “KDOC” means Kentucky Department of Corrections.
- [I.]10. “KDOC program” means any program or activity, or aid, benefit, or service as defined by the ADA and Section 504 (*see* 28 C.F.R. § 35.130, § 41.51) available to Inmates of KDOC for which the KDOC does more than only provide physical space at its facilities, including but not limited to, programs, activities, aids, benefits, or services mandated by law, qualifying for educational or early release credits, and/or ordered as part of an Inmate’s sentence.
- [I.]11. “KDOC employees,” “KDOC staff,” and “KDOC personnel” each and collectively include all employees, contractors, agents, and other staff of the KDOC whose job responsibilities place them on a regular basis in contact with Deaf Inmates, and the supervisors of those employees, contractors, agents, or other staff.
- [I.]12. “KDOC Adult Institution” means any facility owned or operated by the KDOC for the care and custody Inmates, including but not limited to Bell Country Forestry Camp, Blackburn Correctional Complex, Eastern Kentucky Correctional Complex, Green River Correctional Complex, Kentucky Correctional Institute for Women, Kentucky State Penitentiary, Kentucky State Reformatory, Little Sandy Correctional Complex, Luther Luckett Correctional Complex, Northpoint Training Center, Roederer Correctional Complex, and Western Kentucky Correctional Complex.
- [I.]13. “Off-site Medical Care” means medical care that is provided at a location not owned or operated by the KDOC.
- [I.]14. “On-site Medical Care” means medical care that is provided at a KDOC facility, including medical care provided by third parties in facilities owned or operated by the KDOC.
- [I.]15. “Parole hearing” means any hearing or meeting during which an Inmate is being offered the opportunity to be released from KDOC custody on parole.
- [I.]16. “Plaintiffs” means, for purposes of this Agreement, Oscar Adams (inmate #243676) and Michael Knights (inmate #233021).
- [I.]17. “Plaintiffs’ Counsel” means attorneys-of-record for Plaintiffs in *Oscar Adams and Michael Knights, et al., v. Commonwealth of Kentucky, et al.*, Case No. 3:14-cv-00001 (E.D. Ky.) at the time this Agreement is signed.
- [I.]18. “Qualified Interpreter” means a person who is able to interpret effectively, accurately, and impartially, both receptively and expressively, with an individual Deaf Inmate using any necessary specialized vocabulary. *See* 28 C.F.R. §35.104.

A Qualified Interpreter could include an ASL interpreter, a sign language interpreter using more English-based signs, an oral interpreter, a cued speech transliterator or a tactile interpreter for a Deaf Inmate who is also blind. For sign language interpreters, a Qualified Interpreter is one who holds current, valid certifications and licensure by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

A Qualified Interpreter may be provided by the KDOC either in person, or via Video Remote Interpreting, videoconferencing or other similar means that provide Effective Communication.

[I.]19. “Section 504” means Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 701 et seq. (2014).

[I.]20. “Settlement Monitor” means Margo Schlanger, whose *curriculum vitae* is attached as Exhibit 1.

[I.]21. “TTYs” or “TDDs” means teletypewriters or telecommunications devices for the Deaf, which are devices used with a telephone to communicate with persons who are Deaf by typing and reading communications.

[I.]22. “Video Remote Interpreting” or “VRI” means a video-telecommunication interpreting service, which uses Qualified Interpreters and is delivered over a high-speed Internet connection. *See* 28 C.F.R. § 35.160(d).

[I.]23. “Videophone” means a telephone with a camera and screen for visual, real-time communications. The term Videophone as used in this Agreement is limited to Videophones intended for the use by Deaf Inmates within the custody of the KDOC, and does not include Videophones within KDOC Adult Institutions intended for the use of the general Inmate population.

II. GENERAL POLICIES

[II.]A. Non-discrimination Based on Disability

The KDOC will ensure that Deaf Inmates have full and equal access to and enjoyment of all services, privileges, facilities, advantages, and accommodations available to similarly situated non-Deaf Inmates. The KDOC shall provide Deaf Inmates with access to services, privileges, facilities, advantages, and accommodations substantially equivalent to those offered to similarly situated non-Deaf Inmates. The KDOC retains the discretion to determine that certain activities present a Direct Threat of injury or death to Deaf Inmates and therefore may not be able to provide such Deaf Inmates full and equal enjoyment of some of its services, privileges, facilities, advantages, and accommodations. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made and explain the reasoning in support of such determination.

[II.]B. ADA Coordinator

[II.B.1.] Within thirty (30) days after the Effective Date of this Agreement, the KDOC will assign a staff member at each KDOC Adult Institution the title, duties, and responsibilities of ADA Coordinator. The KDOC will maintain the ADA Coordinator position at each KDOC Adult Institution as required by law. The ADA Coordinator responsibilities will be a part of the official duties assigned to the person in this role. The ADA Coordinator shall be trained on the requirements of federal and state law regarding the contents of this Agreement and the KDOC's obligations to provide full and equal access to, and enjoyment of, its services, privileges, facilities, advantages, and accommodations to Deaf Inmates.

[II.B.2.] Within thirty (30) days of the Effective Date of this Agreement, the KDOC will notify the Settlement Monitor of the identity of each KDOC employee assigned the title, duties and responsibilities of ADA Coordinator. The name and contact information for each ADA Coordinator will be displayed and regularly updated on the KDOC's website. The name and contact information of each KDOC Adult Institution's ADA Coordinator will be communicated to all Deaf Inmates incarcerated in each respective KDOC Adult Institution, and will also be prominently posted in a secure area in any housing unit in which Deaf Inmates are held.

[II.B.3.] ADA Coordinators will assist with providing, coordinating, and overseeing Auxiliary Aids and Services for Deaf Inmates and for implementing this Agreement. The ADA Coordinators will be provided with and responsible for knowing the contents of this Agreement, and will assist with implementing this Agreement. The ADA Coordinators will be available to assist with various aspects of accommodating Deaf Inmates. In such situations, ADA Coordinators will ensure Effective Communication for the Deaf Inmates.

III. INITIAL CLASSIFICATION, ASSESSMENT, AND ASSIGNMENT

[III.]A. General Policy

[III.A.1.] The KDOC will provide Deaf Inmates at initial intake, assessment, and classification with Effective Communication. The purpose is to facilitate communication between the Deaf Inmate and KDOC personnel (or other persons) during medical, psychological, and educational testing and evaluation, as well as to provide an explanation of prison policies and procedures, including Inmate discipline, grievances, and how to utilize the TTY, Videophone and other Auxiliary Aids and Services.

[III.A.2.] As of the date of this Agreement, initial intake, assessment, and classification for male Inmates occurs at Roederer Correctional Complex (RCC) and for female Inmates at the Kentucky Correctional Institution for Women (KCIW).

[III.]B. Hearing Assessment

As part of the initial intake, assessment, and classification, medical staff will assess and, if necessary, test all persons who may be a Deaf Inmate for Deafness. If medical staff determines that an Inmate is Deaf, medical staff will note the disability in the Inmate's institutional file, and

will promptly notify the appropriate ADA Coordinator. Any Deaf Inmate who was not assessed at the initial intake, assessment, and classification will be assessed at the annual classification review.

[III.]C. Auxiliary Aids and Services Assessment

[III.C.1.] After medical staff determine that an Inmate is Deaf, the KDOC will presume that Auxiliary Aids and Services in the form of Qualified Interpreters, visual notifications, telecommunication devices, and other aids and services set forth in this Agreement are necessary to ensure Effective Communication and substantially equal services, privileges, facilities, advantages, and accommodations.

[III.C.2.] If any Deaf Inmate indicates that he or she does not require any or all of the Auxiliary Aids and Services set forth in this Agreement, he or she will sign a Waiver of Auxiliary Aids and Services and that document will be kept in the Inmate's institutional file.

[III.C.3.] If an Inmate is not found to have a hearing impairment at his or her initial intake, assessment, and classification, initially refuses, or does not request Auxiliary Aids and Services, but later believes that Auxiliary Aids and Services are necessary to ensure Effective Communication, he or she will fill out a Request for Auxiliary Aids and Services Form. KDOC will provide the Inmate who was initially not found to have a hearing impairment with a hearing assessment if so ordered by medical staff. If that individual is found to be Deaf, KDOC will follow the procedures set forth in this section.

[III.]D. Ensuring Staff Awareness Through Identification Cards

[III.D.1.] The KDOC will take appropriate steps to ensure that all KDOC personnel having regular contact with any Deaf Inmate are made aware of such Inmate's need for Auxiliary Aids and Services so that Effective Communication with, and the safety of, the Deaf Inmate will be ensured. Upon identifying an Inmate as Deaf during initial intake, assessment, and classification, the Deaf Inmate will receive a distinct identification (ID) card that clearly identifies him or her as a Deaf Inmate. The ID card will signify to the KDOC personnel that the Inmate is Deaf, may not respond to verbal commands, and may require Auxiliary Aids and Services. If any KDOC staff takes any Deaf Inmate's ID card, the Deaf Inmate will be given another official indicator of his or her Deaf status.

[III.D.2.] All KDOC staff having regular contact with any Deaf Inmate will be trained on the meaning of the distinct ID cards.

[III.D.3.] The KDOC will post at the entrance to all KDOC Adult Institutions housing Deaf Inmates a notice clearly stating that the KDOC Adult Institution houses Deaf Inmates and that the Deaf Inmates carry an ID card or other official indicator with them. The notice will include a picture of the ID card and other official indicator carried by Deaf Inmates. The Notice will also be posted outside each housing unit where Deaf Inmates are held.

[III.D.4.] If any Deaf Inmate indicates that he or she does not wish to wear an ID card identifying him or her as Deaf as set forth in this Agreement, he or she will sign a Waiver of Deaf Inmate ID Card and that document will be kept in the Inmate's institutional file. If any Deaf Inmate signs a Waiver of Deaf Inmate ID Card but later requests to wear an ID card identifying him or her as Deaf as set forth in this Agreement, he or she will promptly be provided an opportunity to fill out a Request for Deaf Inmate ID Card form. The KDOC will then promptly provide the Inmate with a Deaf Inmate ID card and update the Deaf Inmate's institutional file.

[III.]E. Interpretation of Materials

The KDOC will provide the Deaf Inmate materials it provides to all Inmates. In providing these materials, the KDOC agrees to Effectively Communicate with the Deaf Inmate. *See, e.g.*, 28 CFR 35.160(b)(2). At the request of the Deaf Inmate, the KDOC will provide that Deaf Inmate with a meaningful opportunity to meet with a KDOC staff member and a Qualified Interpreter to ask any questions regarding the written or interpreted materials.

[III.]F. Creation and Interpretation of Rights Materials

[III.F.1.] Within ninety (90) days of the Effective Date of this Agreement, the KDOC will provide each Deaf Inmate with materials providing information about the Auxiliary Aids and Services available to Deaf Inmates and instructions for how to obtain, request, or use those Auxiliary Aids and Services. The KDOC will create these materials using language designed to be accessible to each Deaf Inmate. The KDOC will provide these materials to Deaf Inmates with the orientation materials provided to all other Inmates at initial intake, assessment, and classification.

[III.F.2.] In providing these materials, the KDOC agrees to Effectively Communicate with the Deaf Inmate. *See, e.g.*, 28 CFR 35.160(b)(2). At the request of the Deaf Inmate, the KDOC will provide that Deaf Inmate with a meaningful opportunity to meet with a KDOC staff member and a Qualified Interpreter to ask any questions regarding the written or interpreted materials.

IV. HOUSING

[IV.]A. General Policy

[IV.A.1.] The KDOC has the discretion to house Deaf Inmates at whatever KDOC Adult Institution it deems appropriate. *See, e.g.*, KY Corrections Policy and Procedure 18.7.

[IV.A.2.] Wherever a Deaf Inmate is housed, that Deaf Inmate retains all rights as required by this Agreement, the U.S. Constitution, the ADA, Section 504, and Kentucky laws, along with any other applicable federal and state laws, and this Agreement.

[IV.]B. Schedule of Accommodations

Within ninety (90) days of the Effective Date of this Agreement, KDOC personnel at those KDOC Adult Institutions where Deaf Inmates are housed shall provide each Deaf Inmate with a schedule showing when Qualified Interpreters and/or other Auxiliary Aids and Services are available. When the schedule of accommodations changes, including when a Qualified Interpreter will be available, an updated schedule of accommodations will be given to all Deaf Inmates.

V. PROVISION OF AUXILIARY AIDS AND SERVICES

[V.]A. General Policy

[V.A.1.] In order to ensure substantial equality for Deaf Inmates, the KDOC will provide appropriate Auxiliary Aids and Services, as required by this Agreement, the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws. This substantial equality will extend to include KDOC programs for or to Deaf Inmates provided by third party vendors, contractors, or state-funded entities, such as community colleges.

[V.A.2.] Appropriate Auxiliary Aids and Services, including Qualified Interpreters, will be made available so that Deaf Inmates may have an equal opportunity to participate in all services, privileges, and programs offered to other similarly situated Inmates in the KDOC's custody. These services, privileges, and programs will include, but not be limited to: orientation; medical evaluations; On-site Medical Care and healthcare appointments; classification and transfer hearings; grievance, disciplinary, and Parole hearings; and rehabilitative, educational, work, or transitional KDOC programs offered to other similarly situated Inmates in the KDOC's custody.

[V.A.3.] In those instances where the KDOC permits volunteers to provide activities (religious or otherwise)—including programs, services, or meetings—to Inmates in KDOC Adult Institutions where Deaf Inmates are housed, the KDOC will allow the volunteer organization or individual to bring a Qualified Interpreter, subject to the KDOC Adult Institution's security requirements, and will work with the volunteer organization or individual in an effort to have a Qualified Interpreter at the volunteer-provided activities. Such an accommodation must be initiated by request from the Deaf Inmate to the volunteer organization or individual. The responsibility for finding the interpreter will not rest with the KDOC, and proper notice allowing the KDOC to conduct appropriate security clearances must be provided. To the extent the KDOC provides, now or in the future, any religious activities at facilities housing Deaf Inmates, the KDOC shall provide a Qualified Interpreter at such activities upon the request of any Deaf Inmate.

[V.A.4.] The KDOC retains the discretion to determine that certain activities present a Direct Threat of injury or death to Deaf Inmates and may therefore choose not to provide such Deaf Inmates substantially equal enjoyment of some of its services, privileges, facilities, advantages, and accommodations. The KDOC will promptly notify the Settlement Monitor whenever any

such determination is made and explain the reasoning in support of such determination.

[V.A.5.] The KDOC will provide instructions for the use of all Auxiliary Aids and Services to ensure Deaf Inmates' full use and enjoyment of the Auxiliary Aids and Services.

[V.]B. Medical Devices

All Auxiliary Aids and Services required by this Agreement, the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws, which are deemed medically necessary, will be provided promptly upon request, free of charge, to Deaf Inmates subject to a co-payment for that medical device, just as non-Deaf Inmates are charged a co-payment for other medical appliances or devices. This co-pay shall not apply, however, to hearing aid batteries or for any Deaf Inmate who is deemed indigent pursuant to Kentucky Corrections Policy and Procedure 15.7.

[V.]C. Maintenance of Auxiliary Aids and Services

The KDOC shall maintain all Auxiliary Aids and Services in its custody in good working condition at all times.

VI. QUALIFIED SIGN LANGUAGE INTERPRETERS

[VI.]A. General Policy

[VI.A.1.] The KDOC will provide Qualified Interpreters as required by this Agreement, the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws. The KDOC agrees that Deaf Inmates in need of interpreter services will receive a Qualified Interpreter able to facilitate Effective Communication with that particular Deaf Inmate. The KDOC shall provide an in-person Qualified Interpreter at KDOC Adult Institutions where Deaf Inmates are incarcerated in the following circumstances:

- communications concerning medical care and attention, including dental, vision, audiological, and mental health care;
- disciplinary hearings in which the Deaf Inmate may be a suspect of or charged with a rule infraction;
- transfer and classification processes that impact on the Deaf Inmate's status;
- transitional programming;
- rehabilitative programming, including, but not limited to, Alcoholics Anonymous (AA) and Narcotics Anonymous (NA); and
- educational programming.

[VI.A.2.] The KDOC shall also provide an in-person Qualified Interpreter at KDOC Adult Institutions where Deaf Inmates are incarcerated as circumstances warrant. The KDOC will be responsible for scheduling and overseeing the provision of Qualified Interpreters.

[VI.A.3.] When a Deaf Inmate is scheduled to appear at a Parole hearing, the appropriate ADA Coordinator will notify the Kentucky Parole Board of the Deaf Inmate's need for, and the Kentucky Parole Board's duty to provide, Auxiliary Aids and Services for Effective Communication. This notice shall be given no later than seven (7) days before the Deaf Inmate's scheduled Parole hearing. In the event that the Deaf Inmate will be physically present at a KDOC Adult Institution for the Parole hearing, the KDOC will work with the Kentucky Parole Board to ensure that any appointed Qualified Interpreter obtains security clearances in a timely manner.

[VI.]B. Other Means of Communication

KDOC employees will communicate with Deaf Inmates for such purposes, and to the same extent, as they would communicate with non-Deaf Inmates using all available means of communication. This provision in no way lessens the KDOC's obligation to provide Qualified Interpreters in certain situations and in a timely manner.

[VI.]C. On-site Medical Care

[VI.C.]1. General Policy

The KDOC will provide Effective Communication for all scheduled appointments between Deaf Inmates and medical personnel at KDOC facilities, including, but not limited to, review of medical history, medical appointments, follow up meetings or appointments, and treatment meetings. The parties agree that for many Deaf Inmates, a Qualified Interpreter may be a necessary means of providing Effective Communication in these circumstances.

[VI.C.]2. Informing Appropriate Medical Staff

The KDOC will ensure that all medical staff are made aware of an Inmate's Deafness. For each Deaf Inmate, the medical staff will note, in bold marking, the Deaf Inmate's disability on the medical file cover and in the Deaf Inmate's medical file.

[VI.C.]3. Scheduling Medical Appointments with Qualified Interpreters

The KDOC will provide Deaf Inmates with the ability to request Auxiliary Aids and Services to ensure Effective Communication at medical appointments. The KDOC will provide space on any forms used to request medical appointments for Deaf Inmates to request Auxiliary Aids and Services. Appointments for Deaf Inmates requiring Auxiliary Aids and Services will be scheduled within the same time period from the initial request as those for similarly situated non-Deaf Inmates.

[VI.C.]4. Emergency Events

Within ninety (90) days of the Effective Date of this Agreement, the KDOC will provide a Qualified Interpreter via VRI service for use in unscheduled medical emergencies. If VRI

services are not appropriate in the situation, KDOC personnel will work in conjunction with medical staff to attempt to secure an in-person Qualified Interpreter as soon as possible. Lifesaving medical care should never be delayed because no interpretation services are available.

[VI.]D. Off-site Medical Care

[VI.D.1.] As early as practicable, the KDOC will inform all off-site medical providers that a Deaf Inmate requiring a Qualified Interpreter or other Auxiliary Aid or Service will be seeking medical care from those off-site medical providers at a particular date and time.

[VI.D.2.] In the case of an emergency, the KDOC will, as soon as possible, inform an off-site medical provider that a Deaf Inmate requiring a Qualified Interpreter or other Auxiliary Aid or Service is being transported to the off-site medical provider. Notification will include the Deaf Inmate's estimated time of arrival.

[VI.]E. Educational, Vocational, and Rehabilitative Programming

The KDOC shall provide appropriate Auxiliary Aids and Services for all KDOC programs, which are offered at KDOC Adult Institutions and which Deaf Inmates are qualified for, admitted into, or in which Deaf Inmates are actively participating. The following appropriate Auxiliary Aids and Services will be provided:

[VI.E.]1. Educational Programs

The KDOC will provide Deaf Inmates with written materials and open- or closed-captioned education materials where available. In addition, the KDOC will provide Effective Communication for educational KDOC program classes. The educational program classes include, without limitation, literacy, adult basic education, GED preparatory, and technical education and certification classes. In determining what form of Auxiliary Aids and Services are necessary, the KDOC shall give primary consideration to the request of the Deaf Inmate for such Auxiliary Aids and Services (*see* 28 C.F.R. § 160(b)(2)).

[VI.E.]2. Vocational/Work Programs

The KDOC will provide Deaf Inmates with written materials and open- or closed-captioned vocational/work materials where available. In addition, and as necessary, the KDOC will provide Effective Communication for vocational/work KDOC programs. In determining what form of Auxiliary Aids and Services is necessary, the KDOC shall give primary consideration to the request of the Deaf Inmate for such Auxiliary Aids and Services (*see* 28 C.F.R. § 160(b)(2)).

[VI.E.]3. KDOC Rehabilitative, Counseling, Therapeutic, Substance Abuse, and Evidence-Based Programs

The KDOC will provide Deaf Inmates with written materials and open- or closed-captioned materials where available. In addition, and as necessary, the KDOC will provide Effective Communication for rehabilitative, counseling, therapeutic, substance abuse, and evidence-based

KDOC programs. In determining what form of Auxiliary Aids and Services is necessary, the KDOC shall give primary consideration to the request of the Deaf Inmate for such Auxiliary Aids and Services (*see* 28 C.F.R. § 160(b)(2)). The KDOC will provide Qualified Interpreters for Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) programs. (

[VI.]F. Work Assignments

The KDOC will provide Deaf Inmates opportunities for institutional work assignments that are consistent with the opportunities for the same assignments given to similarly situated non-Deaf Inmates. The KDOC retains the discretion to determine that certain work assignments present a Direct Threat of injury or death to a Deaf Inmate or others and may therefore choose not to provide the Deaf Inmate a substantially equal opportunity to those work assignments. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made and explain the reasoning in support of such determination.

[VI.]G. Religious Services

[VI.G.1.] The KDOC shall encourage outside volunteers providing religious services to provide Effective Communication for Deaf Inmates as long as the volunteer meets the same security requirements that are imposed on all other outside volunteers.

[VI.G.2.] No Deaf Inmate will be required to attend a religious service where a Qualified Interpreter is not provided in order to receive any religious meal, diet, or otherwise offered religious accommodation.

[VI.G.3.] To the extent that the KDOC provides any religious services, now or in the future, the KDOC shall provide a Qualified Interpreter.

[VI.]H. Transfer and Classification Matters

The KDOC will provide a Qualified Interpreter for any hearings or meetings relating to a Deaf Inmate's transfer to another facility, change in security classification, or any other classification hearing involving the exchange of information between the Deaf Inmate and the KDOC personnel that could affect the Deaf Inmate's status.

[VI.]I. Transitional Programming – Post-Release Supervision (Including Parole)

Upon request, the KDOC will provide appropriate Auxiliary Aids and Services, which may include Qualified Interpreters, for Deaf Inmates under post-release supervision to Effectively Communicate with the individual supervising their post-release supervision.

[VI.]J. Additional Communications

The KDOC will provide Effective Communication, which may include Qualified Interpreters, for any significant communications between Deaf Inmates and KDOC staff that is not specifically discussed in this Agreement. A significant communication includes any

communication for which the Deaf Inmate requests an interpreter, subject to approval by the ADA Coordinator, the Warden, and/or the Warden's designee.

VII. DISCIPLINARY MATTERS

[VII.]A. Qualified Interpreters For Disciplinary Proceedings

[VII.A.1.] The KDOC must provide Deaf Inmates with a Qualified Interpreter in any disciplinary proceeding in which a Deaf Inmate is suspected of, charged with, or a witness to, a disciplinary infraction, including those proceedings carried out under Chapter 15 of the Kentucky Corrections Policy and Procedure and any other disciplinary policies and procedures now in force or subsequently adopted by the KDOC. A Qualified Interpreter must be available to a Deaf Inmate at the following stages of the above-described disciplinary proceedings:

- staff investigations involving the exchange of information between a Deaf Inmate and KDOC personnel, prior to filing a disciplinary report or equivalent;
- investigative interviews that involve the exchange of information between a Deaf Inmate and KDOC personnel (such as when an adverse party is interviewed);
- during any part of the preparation of the disciplinary report that involves the exchange of information between a Deaf Inmate and KDOC personnel;
- during any part of the shift supervisor's review of the disciplinary report that involves the exchange of information between a Deaf Inmate and KDOC personnel;
- during any part of the investigator's review of the disciplinary report that involves the exchange of information between a Deaf Inmate and KDOC personnel;
- giving Miranda warnings to a Deaf Inmate;
- advising a Deaf Inmate of his or her right to consult with an assigned legal aide;
- advising a Deaf Inmate of the anticipated date, time, and place of hearing; and
- during any part of the hearing, or re-hearing, before the Adjustment Committee, Adjustment Officer or Unit Hearing Officer that involves the exchange of information between a Deaf Inmate and KDOC personnel.

[VII.A.2.] Inmate or staff advisors will be provided and accessible to Deaf Inmates who are suspected of, charged with, or witnesses to a disciplinary infraction, on the same terms as they are provided to non-Deaf Inmates. To the extent that a Deaf Inmate has access to his or her advisor, a Qualified Interpreter shall be made available to the Deaf Inmate for any exchange of information between the Deaf Inmate and his or her advisor.

[VII.]B. Miscellaneous

[VII.B.1.] If any Deaf Inmate is a witness at a disciplinary hearing, the KDOC will provide a Qualified Interpreter at the hearing.

[VII.B.2.] The KDOC must hold disciplinary hearings for Deaf Inmates within the same time frame as it holds disciplinary hearings for non-Deaf Inmates.

[VII.B.3.] Nothing in this Agreement precludes any Deaf Inmate who is suspected of or charged with a disciplinary infraction from voluntarily waiving his or her right to a Qualified Interpreter and to proceed through any stage of a disciplinary proceeding without the benefits of a Qualified Interpreter. If, as of the Effective Date of this Agreement, a Deaf Inmate is being punished or is scheduled to be punished for a disciplinary infraction as the result of a hearing in which he or she did not waive his or her right to a Qualified Interpreter, then the disciplinary hearing must be re-heard at a time that a Qualified Interpreter can be present.

VIII. NON-AUDITORY ALERT NOTIFICATIONS

[VIII.]A. General Policy

Deaf Inmates incarcerated at KDOC facilities should not miss announcements, alarms, or any other information audibly conveyed from KDOC staff to the general Inmate population solely because of their disability.

[VIII.]B. Relaying Information

[VIII.B.1.] The KDOC shall provide an effective non-auditory alert system that will notify Deaf Inmates of both prison-wide events (including but not limited to announcements, visitations, and roll-calls) and events specific to Deaf Inmates. The non-auditory alert system must be capable of effectively alerting Deaf Inmates of such events in real time.

[VIII.B.2.] In addition, the KDOC will continue to publish the institution schedule in the handbook that every Inmate receives and to post promptly any schedule changes, which are done by memorandum from the Warden, in all dormitories, the library, and the gym at each KDOC Adult Institution in which a Deaf Inmate is housed. Further, the KDOC will provide all medically necessary hearing aids and assisting devices, including but not limited to, bed shakers.

[VIII.B.3.] The KDOC has the discretion as to which type of non-auditory alerts it shall employ and to change that system as it deems necessary. Nonetheless, the KDOC will promptly advise the Settlement Monitor and the KCDHH of all non-auditory alert systems that the KDOC is considering, and will consult with the Settlement Monitor and the KCDHH in determining whether such devices are acceptable for the stated purpose.

[VIII.]C. Non-Auditory Alarms and Emergency Evacuation

[VIII.C.1.] The KDOC will provide Deaf Inmates with an effective non-auditory alert system that will advise them of an emergency evacuation or other emergency. Such non-auditory alert systems must be sufficient to effectively notify Deaf Inmates of emergencies in real-time and can include flashing strobe lights and bed shakers. The KDOC has the discretion as to which type of non-auditory alerts it shall employ and to change that system as it deems necessary. Nonetheless, the KDOC will promptly advise the Settlement Monitor and the KCDHH of the non-auditory alert systems that the KDOC is considering, and will consult with the Settlement Monitor and the KCDHH in determining whether such systems are acceptable for the stated purpose.

[VIII.C.2.] KDOC personnel shall be responsible for the evacuation or safe relocation of Deaf Inmates during an emergency. Therefore, during emergencies, KDOC employees will personally and Effectively Communicate adequate information about the emergency to Deaf Inmates.

IX. TELECOMMUNICATIONS

[IX.]A. General Policy

The KDOC will provide Deaf Inmates with access to telecommunication devices that enable them to have communication with people outside of the KDOC and that are substantially equivalent—in terms of the amount and quality of the information conveyed—to the communications that non-Deaf Inmates have with people outside of the KDOC using traditional telecommunication devices such as telephones.

[IX.]B. Monitoring Communications

The KDOC may only provide for the monitoring of communications between Deaf Inmates and individuals outside of the KDOC to the same extent and with the same discretion applied to the monitoring of communications between non-Deaf Inmates and those outside of the KDOC.

[IX.]C. Additional Time for Communication

The KDOC will implement a policy that allows Deaf Inmates at least twice as many minutes to complete a Videophone call, and at least three times as many minutes to complete a TTY call, as the number of minutes afforded to other non-Deaf Inmates to make calls using traditional telecommunication devices such as telephones. In the event the KDOC determines this usage arrangement results in less than equitable access to telephones and Videophones for non-Deaf Inmates and Deaf Inmates, after considering the needs and abilities of Deaf and non-Deaf Inmates, the KDOC may adjust the ratio of time provided for Videophone calls and TTY calls. The KDOC will document this determination, including the evidence and reasons in support thereof. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made, and will explain the reasoning in support of such determination.

[IX.D.]D. Technology KDOC Will Provide

The KDOC will make the following communications technologies available at KDCO Adult Institutions where Deaf Inmates are incarcerated to facilitate communication between Deaf Inmates and people outside of KDOC facilities. This list of technological equipment is not exhaustive. The KDOC will keep abreast of evolving technology and will consider adding additional equipment to reflect technological advances, as it deems appropriate or as required by applicable federal and state law. KDOC will provide a list of available communications equipment to Deaf Inmates upon their arrival at the KDOC Adult Institutions in which they are housed.

[IX.D.]1. TTY or TDD

The parties acknowledge that there may be reasonable concerns over the theft and destruction of the TTY/TDD device(s), and that the TTY/TDD device(s) therefore must be maintained in a secured location when not in use. The parties also acknowledge that access to the TTY/TDD device(s) will be made available at times that the KDOC will designate. Nonetheless, for every KDOC Adult Institution at which any Deaf Inmate is incarcerated, in no event will TTY/TDD access for Deaf Inmates be less than equal to the access non-Deaf Inmates have to conventional telephones, except to the extent that Deaf Inmates must request access to the otherwise secured TTY/TDD device(s). A reasonable request by a Deaf Inmate to access the TTY/TDD device(s) will be granted. TTY/TDDs will be located in areas substantially as accessible to Deaf Inmates as conventional telephones are accessible to non-Deaf Inmates. TTY/TDDs will be available for Deaf Inmate use during the same days and hours as conventional telephones. At each KDOC Adult Institution where any Deaf Inmate is incarcerated, the KDOC will ensure that an alternate TTY or TDD unit is available for use when the regular TTY or TDD is broken or otherwise unavailable.

[IX.D.]2. Relay Services

For every KDOC Adult Institution at which any Deaf Inmate is incarcerated, the KDOC will enable all TTYs and TDDs to access publicly available relay service phone numbers such as 711 and 1-800 numbers. Deaf Inmates will not be charged any more than similarly situated non-Deaf Inmates for the use of relay services.

[IX.D.]3. Videophones

[IX.D.3.a.] Within sixty (60) days of the Effective Date of this Agreement, Videophones shall be installed and accessible to Deaf Inmates in any KDOC Adult Institution that houses Deaf Inmates. Access to the Videophone will be made available at times that the KDOC will designate, but in no event will Videophone access for Deaf Inmates be less than equal to the access non-Deaf Inmates have to conventional telephones. Videophones will be located in areas as accessible to Deaf Inmates as conventional telephones are accessible to non-Deaf Inmates. Videophone will be available during the same days and hours as conventional telephones and will not require permission for use to the same extent that conventional telephones do not require permission for use. Deaf Inmates will not be charged for the use of Videophones.

[IX.D.3.b.] Videophones will allow voice carry-over features.

[IX.]E. Responsibility for Maintaining Equipment and Training Staff

[IX.E.1.] The KDOC will ensure that the technology used to permit communication between Deaf Inmates and people outside of KDOC Adult Institutions is in good working order. Further, the KDOC will ensure that all equipment under the KDOC's control that is used to accommodate Deaf Inmates is kept in good working order. KDOC staff shall attempt to resolve complaints about any malfunctioning equipment within a reasonable time of receiving that complaint. To the extent services, equipment, and resources that are outside KDOC's control are involved (for example services or equipment provided by cable, telephone, utilities, or various other companies), KDOC will agree to notify those providers/companies of any problems and, to the extent necessary or possible under the circumstances, work with them expeditiously to resolve the problem.

[IX.E.2.] The KDOC will ensure that KDOC employees are adequately trained in the operation of the technology.

X. MEDIA

[X.1.] The KDOC will ensure that all audio-visual media purchased for Inmate use in KDOC Adult Institutions housing Deaf Inmates includes open- or closed-captioning. Televisions purchased by the KDOC for Inmate use shall support open- or closed-captioning. Captioning will be turned on and remain on at any Deaf Inmate's request.

[X.2.] The KDOC will permit Deaf Inmates to purchase TVs, which reliably support open- or closed-captioning, with their own funds. In the event that the closed-captioning feature contained on TVs purchased through approved commercial channels malfunctions, KDOC personnel will work with the Deaf Inmate to the same extent that the KDOC works with other Inmates regarding malfunctioning personal property to address and resolve the problem within a reasonable time.

XI. HAND RESTRAINTS

[XI.]A. General Policy

[XI.A.1.] According to the KDOC's hand restraint policies, the KDOC will use hand restraints on Deaf Inmates only in the following circumstances:

- when transporting a Deaf Inmate to or from a KDOC Adult Institution;
- when transferring a Deaf Inmate into or out of the special management unit; and
- as needed in response to security threats.

[XI.A.2.] The applicable portions of the KDOC hand restraint policy, summarized above, have been reviewed to confirm when hand restraints are used on Inmates confined to KDOC Adult Institutions. While the policy does not specify the manner in which mechanical restraints are used during Off-site Medical Care, an Affidavit is included as Appendix A to this Agreement describing the two-point bed restraint system used during Off-site Medical Care. The two-point system would allow a Deaf Inmate to use his or her hands for communicating via sign language to some degree. KDOC training will include both the two-point system as well as the agreement that hand restraints will be removed from a Deaf Inmate when the Deaf Inmate is in a secure environment, when security is no longer a threat, or there are other security devices in place to allow the Deaf Inmate to Effectively Communicate.

[XI.]B. Off-site Medical Care

[XI.B.1.] During Off-site Medical Care, the KDOC shall use a two-point hand restraint system to allow for the Deaf Inmate's need for Effective Communication while considering the safety and security of the Deaf Inmate and those located at Off-site Medical Care facilities. The KDOC will include training on use of the two-point hand restraint system in its regularly scheduled training for new and existing employees.

[XI.B.2.] In the event a medical decision made by medical professionals or medical staff that requires or calls for removal or adjustment of hand restraints, the KDOC will follow its secured policy regarding the removal of mechanical restraints where necessary for treatment or emergencies.

[XI.]C. On-Site Medical Care

The KDOC's hand restraint policy, summarized above in Section XI.A., will be followed for On-site Medical Care.

XII. MISCELLANEOUS DEVICES AND AIDS

Where devices such as vibrating clocks and in-line amplifiers are not deemed medically necessary, the KDOC agrees to consider on a case by case basis whether it will allow a particular Deaf Inmate the opportunity to purchase these devices at his or her own expense. The KDOC's decision in this regard will consider, among other issues, whether these devices pose a security risk. The KDOC will have the discretion to make the determination whether any of these devices, and the type of device, is permissible. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made and explain the reasoning in support of such determination. Deaf Inmates will be allowed to purchase alerting devices, vibrating clocks, telephone amplifications, headset amplifiers, and televisions that meet the particular needs of

their disability from an approved vendor so long as the items do not pose a security risk. The KDOC retains the discretion to limit purchases to devices that are available through the Commissary. Deaf Inmates may submit a request in writing to the ADA Coordinator responsible for the KDOC Adult Institution in which they are housed for devices not available from the Commissary. The KDOC will not deny any Deaf Inmate the right to purchase these devices except where they present an articulable security risk, which shall be documented. The ADA Coordinator will maintain written records of all Deaf Inmate requests for these devices and the disposition of the request.

XIII. TRAINING

[XIII.]A. General Policy

[XIII.A.1.] The KDOC, with input from the KCDHH, will provide training as defined in Section XIII.B below to KDOC employees who interact with the Inmate population. The KDOC will incorporate this training into its regularly scheduled training for new and existing employees. This training will be included in current KDOC training within ninety (90) days of the Effective Date of this Agreement. The KDOC will update the training materials as required by law, including but not limited to, the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws.

[XIII.A.2.] The KDOC will provide any materials that may be used for training, as specified under Section XIV of this Agreement, to the Settlement Monitor for review prior to the first training session. In addition, the KDOC, with input from the KCDHH, will update and allow the KCDHH and the Settlement Monitor to review the training as defined in Section XIII.B. at least every two years.

[XIII.]B. KDOC Employee Training

Within ninety (90) days of the Effective Date of this Agreement, the KDOC will begin training KDOC employees on the following topics:

- best practices for communicating with Deaf individuals;
- the unique needs and problems encountered by Deaf and late-Deafened individuals;
- identification of communication needs of persons who are Deaf;
- the psychological implications of Deafness and its relationship to interaction with hearing corrections personnel;
- the proper use and role of Qualified Interpreters;
- directions about using TTYs, TDDs, Videophones and any other telecommunication equipment, and other Auxiliary Aids and Services, currently available at the facility that facilitate communication with Deaf people;

- disciplinary matters, described in Section VII, and grievance proceedings, described in Section XIV;
- the KDOC's anti-discrimination policy;
- all equipment, services, and accommodations available to Deaf Inmates;
- hand restraint policies in the context of Deaf Inmates; and
- the requirements of this Agreement.

XIV. GRIEVANCES

[XIV.1.] All KDOC grievance coordinators will inform Deaf Inmates who file a grievance of the option to share that grievance (or any responses or outcomes) with the ADA Coordinator of the KDOC Adult Institution in which the Deaf Inmate is housed. If the Deaf Inmate agrees to share the grievance (or any responses or outcomes) with the ADA Coordinator, the grievance coordinator will forward a copy of that grievance (or grievance response or outcome) to the ADA Coordinator for review.

[XIV.2.] A written record of all Deaf Inmates' grievances (and any responses and outcomes) will be maintained by the KDOC. For five years following the Effective Date of this Agreement, the Settlement Monitor may request the records of any Deaf Inmate's grievances, as long as the Deaf Inmate signs a waiver of confidentiality pursuant to KRS 197.023, and a copy of that Deaf Inmate's records will be provided, free of charge, to the Settlement Monitor.

[XIV.3.] Within thirty (30) days of the Effective Date of this Agreement, and every three months thereafter, the KDOC will provide the Settlement Monitor with a written summary of grievances filed by Deaf Inmates concerning access to Effective Communication, Auxiliary Aids and Services, or any other issues raised in this Agreement. This written summary will describe, for each grievance, the issue raised by the Deaf Inmate, the KDOC Adult Institution where the grievance was filed, a summary of KDOC's response, and whether and how the grievance was resolved.

XV. MONITORING AND COMPLIANCE

[XV.]A. Plaintiffs' Counsels' Right of Access

To the extent Plaintiffs' Counsel maintains a current or prospective attorney-client relationship with any Deaf Inmate, they shall be provided the same access to that Deaf Inmate and to the records relating to that Deaf Inmate, as any other attorney with a similar relationship to another non-Deaf Inmate.

[XV.]B. The Settlement Monitor's Investigation

[XV.B.1.] For a period of five years after the Effective Date, the following will apply to the extent necessary to permit the Settlement Monitor to thoroughly and objectively assess the KDOC's compliance with and implementation of this Agreement:

- **[XV.B.1.a]** The Settlement Monitor will have unlimited access to all records, files, and papers maintained by the KDOC that relate to the terms of this Agreement. The KDOC will provide a written explanation for any refusal by the KDOC to provide any requested records, files, or papers, and the KDOC and the Settlement Monitor will attempt to reach an agreement before either the KDOC or the Settlement Monitor seek assistance from the Court.
- **[XV.B.1.b]** The Settlement Monitor will have access to all other materials relating to the case *Adams, et al. v. Commonwealth of Kentucky, et al.*, Case no. 14-cv-00001, except for those materials protected by the attorney-client privilege and/or work product doctrine. Any requested materials protected by the attorney-client privilege or work product doctrine will be logged with information including the author, date, nature of the material, reason for the claim of privilege, and persons to whom the material was disseminated, and this log will be provided to the Settlement Monitor.
- **[XV.B.1.c]** The Settlement Monitor will have access to all pertinent staff members and employees of the KDOC. The Settlement Monitor may engage in both formal and informal conferences with staff members and employees, including confidential or group interviews, and such persons will cooperate with the Settlement Monitor fully and will respond to all reasonable inquiries and requests relating to compliance efforts. The Settlement Monitor will contact the Warden or the Warden's designee to schedule these conferences and/or interviews, which will be treated as attorney visits under CPP 14.4.
- **[XV.B.1.d]** The Settlement Monitor may conduct confidential interviews with any Deaf Inmate or with groups of Deaf Inmates incarcerated at Adult KDOC Institutions. Within thirty (30) days of the Effective Date of this Agreement, and every six months thereafter, the KDOC will provide the Settlement Monitor with a current and up-to-date list of Deaf Inmates in the KDOC's custody, which identifies the name, DOC numbers and the KDOC Adult Institution for each Deaf Inmate. The Settlement Monitor will contact the Warden or the Warden's designee to schedule these conferences and/or interviews, which will be treated as attorney visits under CPP 14.4.
- **[XV.B.1.e]** The Settlement Monitor may request KDOC staff members and employees to prepare, where appropriate, written responses to any questions by the Settlement Monitor related to the implementation of the Agreement or issues in this litigation, so long as the request does not interfere with security

obligations of KDOC staff members and employees. The KDOC will not refuse or fail to respond to reasonable requests. Responses to these requests shall be provided in a timely manner that is reasonable and shall not interfere in the security obligations of any KDOC staff members or employees. The KDOC will provide a written explanation for any refusal by the KDOC staff members or employees to provide any requested responses, and the KDOC and the Settlement Monitor will attempt to reach an agreement before either the KDOC or the Settlement Monitor seek assistance from the Court.

- **[XV.B.1.f]** The Settlement Monitor may visit each KDOC Adult Institution so long as the KDOC is provided notice a minimum of thirty (30) days prior to the visit. All visits will be supervised by a KDOC employee. Visits will be limited to only those areas of a KDOC Adult Institution that are affected by this Agreement. Absent Court order or a separate agreement, the Settlement Monitor may visit each KDOC Adult Institution only once in a calendar year. The KDOC will pay the cost of and associated with providing Qualified Interpreters for the Settlement Monitor's visits to KDOC Adult Institutions.

[XV.B.2.] The parties will not refuse reasonable requests for records, files, papers, or other materials or for access to people or other information. The Settlement Monitor will conduct the bulleted monitoring, above, in a reasonable manner to minimize interference with the daily operations of the KDOC. Absent a Court order requiring otherwise, the KDOC retains discretion to prohibit the Settlement Monitor from conducting the aforementioned monitoring on the buildings and premises under the control of the KDOC, but the KDOC will not unreasonably refuse requests for visits.

[XV.B.3.] The Settlement Monitor may hire other persons as the Settlement Monitor determines to be necessary to carry out the Settlement Monitor's duties.

[XV.B.4.] For a period of five years after the Effective Date of this Agreement, the Settlement Monitor will issue semi-annual reports to the Court and the parties detailing the parties' compliance with and implementation of this Agreement.

[XV.B.5.] The KDOC will not pay for the fees and expenses due to the Settlement Monitor for the Settlement Monitor's services under this section.

XVI. RELEASE AND SETTLEMENT OF CLAIMS

[XVI.]A. Release

In consideration of the representations, promises and agreements set forth herein, including the payments as set forth in this Agreement, the sufficiency of which is hereby acknowledged, the Plaintiffs, on their behalf and on behalf of their assignees, heirs, executors, family members, beneficiaries, administrators, successors, and anyone acting, or claiming to act, on their behalf, hereby releases and forever discharges the Commonwealth of Kentucky, Kentucky Justice and Public Safety Cabinet, KDOC, J. Michael Brown, Ladonna Thompson, Kimberly Potter-Blair,

Paula Holden, Jim Erwin, Randy White, Gregory Howard, Clark Taylor, Aaron Smith, Kathy Litteral, Steve Haney, Gary Beckstrom, Alan Brown, Janet Conover, Joseph Meko, Don Bottoms, Ravonne Sims, Steve Woodward, and Bobbie Underwood from any and all claims and causes of action, known and unknown, asserted and unasserted, direct and indirect, and of any kind, nature or description whatsoever, which they had on or before the date of the execution of this Agreement arising out of the facts set forth in the discrimination charge they filed with the U.S. District Court for the Eastern District of Kentucky, Frankfort Division.

[XVI.]B. Dismissal

[XVI.B.1.] The Plaintiffs agree to dismiss with prejudice all claims of the Amended Complaint filed with the U.S. District Court, Eastern District of Kentucky, Frankfort Division (the “Court”), Case Number 3:14-cv-00001.

[XVI.B.2.] The parties agree that the Court will retain jurisdiction over this Agreement as set out in Section XVI.E of this Agreement, below.

[XVI.]C. Attorneys’ Fees, Costs, Disbursements and Expenses

In settlement of all claims for attorneys’ fees and costs, any disbursements and expenses, including expert fees, incurred on behalf of Plaintiffs in this litigation up to and including the Effective Date, the parties agree that within ninety (90) days of the Effective Date of this Agreement, the KDOC shall pay \$250,000.00 as directed by Plaintiffs’ counsel.

[XVI.]D. Damages

Within ninety (90) days of the Effective Date of this Agreement, the KDOC shall directly pay (1) Plaintiff Oscar Adams \$1,500.00 in damages and (2) Plaintiff Michael Knights \$1,500.00 in damages. The KDOC also agrees to pay within ninety (90) days of the Effective Date of this Agreement Plaintiff Michael Knights \$77.62 to compensate for lien charges assessed against him for communications with Plaintiffs’ Counsel regarding this case and settlement.

[XVI.]E. Enforcement Powers

[XVI.E.1.] During the term of the Agreement, as set out in Section XVII.H, Plaintiffs may move the court for reinstatement of the lawsuit, or may elect to seek specific performance or institute an action for breach. An action to enforce this Agreement does not include any action for damages, except for enforcement of Section XVI.D. A Plaintiff seeking to enforce this Agreement can only seek to have a court order the KDOC to comply with the terms of this Agreement.

[XVI.E.2.] The lawsuit may not be reinstated, nor a claim for breach or specific performance of this Agreement brought, before a Plaintiff first notifies the KDOC of the nature of the alleged material non-compliance and gives the KDOC sixty (60) days to cure the alleged breach. The parties agree to non-binding mediation prior to any Plaintiff moving to reinstate the lawsuit or filing an enforcement action.

XVII. MISCELLANEOUS PROVISIONS

[XVII.]A. Non-Admission

It is understood and agreed that this Agreement is a compromise of disputed claims, facts, or allegations. Nothing in this Agreement constitutes an admission of any liability, wrongdoing, or violation of any law, or the admission of the validity of any defense.

[XVII.]B. Private Settlement Agreement

This Agreement is a private settlement agreement within the meaning of 18 U.S.C. § 3626.

[XVII.]C. Confidentiality

No part of this Agreement is or will be considered confidential by the parties. This Agreement will be made available by request under the Freedom of Information Act.

[XVII.]D. Entire Agreement

[XVII.D.1.] This Agreement constitutes the entire Agreement between the parties. There were no inducements or representations leading to the execution of this document, except as stated within the document itself. The terms of this Agreement are contractual in nature.

[XVII.D.2.] All parties agree that the relief provided in this Agreement is narrowly drawn, extends no further than necessary, and is the least intrusive means necessary to correct the violation of Plaintiffs' federally protected rights.

[XVII.]E. Execution

This Agreement may be executed in counterpart originals, all of which, when so executed and taken together, shall be deemed an original and all of which shall constitute one and the same instrument. Each counterpart may be delivered by email (as a .pdf attachment) or facsimile, and an email or facsimile signature shall have the same force and effect as an original signature.

[XVII.]F. Binding

This Agreement is final and binding on the Parties. Each Party has a duty to so inform any such successor in interest.

[XVII.]G. Non-Waiver

Failure by the Plaintiffs to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision will not be construed as a waiver to such enforcement with regard to other instances and provisions.

[XVII.]H. Severability

In the event that a court determines that any provision of this Agreement is unenforceable, such provision will be severed from this Agreement and all other provisions will remain valid and enforceable, provided however that if the severance of any such provision materially alters the rights and obligations of the Parties hereunder, the Parties will attempt, through reasonable, good faith negotiations, to agree upon such other amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.

[XVII.]I. Term of Agreement

This Agreement shall remain in effect for five years from the Effective Date. The KDOC, however, will continue to provide all accommodations required under the law, including under the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws, regardless of any term limit applicable to this Agreement.

Signed: /s/