

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) pertains to the resolution of the case titled, *Jarboe, et al v. Maryland Department of Public Safety and Correctional Services (DPSCS), et al*, U.S. District Court of Maryland Case No. 1:12-cv-00572-ELH, and is entered into between Christopher Jarboe, Carroll Connelly, Vander Davis, Gary Denmark, and Garfield Redd (collectively, “Plaintiffs”), and Maryland Department of Public Safety and Correctional Services (“DPSCS”), Maryland Division of Correction (“DOC”), Maryland Department of Labor, Licensing and Regulation, Division of Workforce Development and Adult Learning (Correctional Education) (“DLLR”), Maryland Correctional Enterprises, DPSCS Secretary Gary D. Maynard, Stephen T. Moyer (as substitute for Gary Maynard pursuant to Fed. R. Civ. Pro. 25), J. Michael Stouffer, Wayne Webb (as substitute for J. Michael Stouffer pursuant to Fed. R. Civ. Pro. 25), Paulette Francois, Julie Squire (as substitute for Paulette Francois pursuant to Fed. R. Civ. Pro. 25), James Rzepkowski (as substitute for Julie Squire pursuant to Fed. R. Civ. Pro. 25), and Stephen M. Shiloh, Maryland Correctional Institution- Jessup (“MCI-J”), Western Correctional Institution (“WCI”), Dayena Corcoran, Carroll Parrish (as substitute for Dayena Corcoran pursuant to Fed. R. Civ. Pro. 25), J. Phillip Morgan, and Richard J. Graham (as substitute for J. Phillip Morgan pursuant to Fed. R. Civ. Pro. 25) (collectively, “Defendants”). The foregoing individuals and entities are each referred to as a “Party” and collectively as the “Parties.”

The Parties hereby stipulate and agree as follows:

### ***RECITALS***

**WHEREAS**, Plaintiffs are or were previously inmates in the custody of DPSCS who claim a disability by virtue of their being deaf and have filed a lawsuit against the Defendants in the United States District Court for the District of Maryland, styled *Jarboe, et al. v. Maryland Dept. Pub. Safety and Corr. Svcs., et al.*, Civil No. ELH-12-00572 (the “Litigation”), claiming violations of the Americans with Disabilities Act of 1990, Pub. L. 101-336, codified at 42 U.S.C. §§ 12101-12213, and regulations promulgated thereunder (the “ADA”), the Rehabilitation Act of 1973, Pub. L. 930112, codified at 29 U.S.C. §§ 701-797b, and regulations promulgated thereunder (the “Rehabilitation Act”), and the U.S. Constitution, based upon Defendants’ alleged failures to provide technology, equipment, and services to accommodate Plaintiffs’ disabilities;

**WHEREAS**, Defendants have denied and continue to deny liability for such alleged violations;

**WHEREAS**, the Parties desire, through this Agreement, to resolve and settle the Litigation without the costs and burdens associated with further litigation with respect to the claims and defenses raised in the Litigation.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and which consideration includes, but is not limited to, the mutual promises and covenants contained herein, the Parties hereby agree to be bound as follows:

## ***AGREEMENT***

### **I. DEFINITIONS.**

- A. “Auxiliary Aids and Services” include, but are not limited to, “Interpreters,” “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, TTYs, videotext displays, written materials, 28 C.F.R. § 35.104, as well as “Videophones,” access to telephone relay services, and visual alert or alarm systems. For purposes of this Agreement, Auxiliary Aids and Services do not include vibrating clocks or in-line amplifiers meaning DPSCS will not automatically provide or pay for such devices. DPSCS will give “primary consideration” to the requests of the Deaf inmate in determining what type of auxiliary aid and service is necessary. 28 C.F.R. § 35.160(b)(2).
- B. “Deaf” persons means individuals who are unable to hear well enough to rely on their hearing as a means of processing information and who rely on Auxiliary Aids and Services to effectively communicate and who qualify as individuals with disabilities under the Americans with Disabilities Act as amended by the ADA Amendments Act of 2008. *See* 42 U.S.C. § 12102(4); P.L. 110-325.
- C. “Direct Threat” means a significant risk to the health or safety of the Deaf Inmate or others that cannot be eliminated by reasonable accommodation. A finding of Direct Threat will be based on and supported by objective evidence.
- D. “DLLR” means the Maryland Department of Labor, Licensing and Regulation, and includes its Division of Workforce Development and Adult Learning and Department of Correctional Education.
- E. “DLLR employees,” “DLLR staff,” and “DLLR personnel” include all employees, agents, and other staff of DLLR whose job responsibilities place them on a regular basis in contact with Deaf inmates and the immediate supervisors of those employees, agents, or other staff.
- F. “DPSCS” means Maryland Department of Public Safety and Correctional Services.
- G. A “DPSCS Activity” is any activity made available to inmates on a voluntary basis by DPSCS in which an inmate voluntarily participates, and is not assigned by case management in accordance with state law or COMAR 12.02.24.02.A.(10)-(11).
- H. “DPSCS Correctional Facilities” means Baltimore City Correctional Center; Brockbridge Correctional Facility; Chesapeake Detention Facility; Central Maryland Correctional Facility; Correctional Mental Health Center-Jessup; Eastern Correctional Institution; Eastern Correctional Institution Annex; Jessup

Correctional Institution; Maryland Correctional Institution-Hagerstown; Maryland Correctional Institution-Jessup; Maryland Correctional Institution for Women; Maryland Correctional Training Center, Maryland Reception, Diagnostic and Classification Center; Metropolitan Transition Center; North Branch Correctional Institution; Patuxent Institution; Roxbury Correctional Institution; and Western Correctional Institution.

- I. “DPSCS employees,” “DPSCS staff,” and “DPSCS personnel” include all staff of the Maryland Department of Public Safety and Correctional Services (DPSCS) whose job responsibilities place them on a regular basis in contact with Deaf inmates and the immediate supervisors of those employees.
- J. “DPSCS Prerelease Housing Units” mean all the pre-release housing units to which inmates confined in DPSCS Correctional Facilities set forth in section I(H) may be housed.
- K. “Effective Communication” means communication with Deaf inmates that is as effective as communication with the general inmate population, 28 C.F.R. § 35.160(a), and will, when necessary, include the provision of appropriate Auxiliary Aids and Services, such as Qualified Interpreters.
- L. “Effective Date” means the date that the Maryland Board of Public Works approves this Agreement.
- M. “Hard of Hearing Inmate” means an inmate whose hearing is corrected by hearing aids so that he or she can understand the spoken word, communicate orally, and use a standard telephone. Hard of Hearing inmates are not covered by this Agreement, except the repair terms outlined in Section IX(E) for telecommunication devices and the maintenance terms of Section V(C) for Auxiliary Aids and Services will also apply to hearing aids for such individuals.
- N. “Intake” means the process from the point in time at which an inmate is taken into the custody of DPSCS at a DPSCS Correctional Facility through the point in time at which the inmate is received at and assigned to a unit within a maintaining DPSCS Correctional Facility, including but not limited to: orientation, medical, psychological, education testing and evaluation, and assignment.
- O. “Intake Form” means the form included in a Deaf inmate’s base file to be provided by DPSCS and completed by all deaf inmates to allow them to select which, if any, Auxiliary Aids and Services they would prefer for all programs, activities, medical appointments and procedures, disciplinary hearings, and all other complex or lengthy communication with prison staff. The name of the Intake Form will be determined upon the creation of an executive directive.
- P. “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. Examples of Interpreters include, but are not limited to, sign

language interpreters, oral transliterators, and cued-language transliterators. *See* 28 C.F.R. § 36.104.

- Q. “Litigation” means the action filed in U.S. District Court for the District of Maryland styled *Christopher Jarboe, et al. v. MDPSCS, et al.*, Case No. ELH 12-00572.
- R. “Offsite Medical Care” means medical care that is provided at a location not owned, operated, or contracted by DPSCS.
- S. “Onsite Medical Care” means medical care that is provided at a DPSCS Correctional Facility, including medical care provided by third parties in DPSCS Correctional Facilities owned or operated by DPSCS.
- T. “Primary Consideration” means that in determining what type of Auxiliary Aids and Services are necessary to comply with the ADA and this Agreement, DPSCS agrees to give primary consideration to the expressed preference request for a particular Auxiliary Aid or Service by the individual with the disability, the Deaf inmate. *See* 28 C.F.R. § 35.160.

DPSCS will honor the Deaf inmate’s expressed request unless DPSCS can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under 28 C.F.R. § 35.164. The decision that a particular request for Auxiliary Aids and Services would result in a fundamental alteration of DPSCS’ programs and services or in undue financial and administrative burdens must be made by the Secretary of DPSCS or his designee after considering all the resources available for use in the funding and operation of the agency’s programs and services and must be accompanied by a written statement of the reasons for reaching that conclusion. *See* 28 C.F.R. § 35.164.

- U. “Qualified Interpreter” means a person who is able to interpret effectively, accurately, and impartially, both receptively and expressively, with the individual Deaf inmate using any necessary specialized vocabulary. A Qualified Interpreter depends on the needs of the inmate and 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 person who is Deaf and blind. For sign language interpreters, a Qualified Interpreter is one who holds one or more of the following current, valid certifications:
  - Registry of Interpreters for the Deaf Certification as a CI/CT, CSC, MCSC, OTC, CDI, or RSC;
  - National Association of the Deaf (NAD) Certification Level 3, 4, or 5;
  - NAD/RID National Interpreter Certification NIC, NIC Advanced, or NIC Master; or

- Any Maryland certification with the same or substantially equivalent proficiency standards.

A cued speech transliterator will be certified by the Cued Language Transliterator National Certification Examination.

The parties agree that future certifications that are the equivalent of these certifications will be considered valid minimum certification, so long as those certifications are kept current.

- V. “TTYs” or “TDDs” means devices that are used with a telephone to communicate with persons who are Deaf by typing and reading communications.
- W. “Video Remote Interpreting” (VRI) means video interpreting accomplished by use of video conference technology over high-speed internet lines.
- X. “Videophone” means a telephone with a camera and screen for visual, real-time communications.

## II. GENERAL POLICIES

### A. Non-discrimination Based on Disability

DPSCS will ensure that Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units have an equal opportunity to participate in and enjoy the benefits of services, programs, or activities as non-Deaf inmates similarly situated.

DPSCS will ensure that former Deaf inmates under post-release supervision by Parole and Probation have an equal opportunity to participate in and enjoy the benefits of services, programs, or activities as former non-Deaf inmates similarly situated.

DPSCS retains the discretion to determine that certain activities may present a Direct Threat to Deaf inmates or former Deaf inmates or others and may therefore choose not to provide such Deaf inmates or former Deaf inmates some of its services, programs, and activities. *See* 28 C.F.R. 35.104; 28 C.F.R. 35.139. DPSCS is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burden. *See* 28 C.F.R. § 35.164.

### B. ADA Coordinator and Auxiliary Aids and Services Designees

DPSCS has designated an ADA Coordinator and will maintain the ADA Coordinator position as required by this Agreement. DPSCS agrees that the ADA Coordinator will be trained and knowledgeable concerning the requirements of federal and state law regarding DPSCS’ obligations to provide full and equal enjoyment of its services, programs, and activities to Deaf inmates, and the contents of this Agreement.

DPSCS will notify counsel for the Plaintiffs of the ADA Coordinator designee assigned to DPSCS Headquarters. Thereafter, the name and contact information for the ADA

Coordinator will be kept updated in a prominent place on the DPSCS website. The ADA Coordinator's name and contact information will also be posted in a secure area in any housing unit in which Deaf inmates are held.

Within thirty days of the Effective Date of this Agreement, DPSCS will designate an individual or individuals at each DPSCS Correctional Facility where Deaf inmates are held who will be responsible for coordinating and overseeing Auxiliary Aids and Services for Deaf inmates and for implementing this Agreement as applicable to such DPSCS Correctional Facility.

Within thirty days of the Effective Date of this Agreement, DPSCS will designate an individual who will be responsible for coordinating and overseeing Auxiliary Aids and Services for Deaf inmates held at a DPSCS Prerelease Housing Unit and for implementing this Agreement as applicable to DPSCS Prerelease Housing Units.

Within thirty days of the Effective Date of this Agreement, DPSCS will designate regional coordinators for any Probation and Parole Office where any Deaf former inmate is actively on post-release supervision. These designees will be responsible for coordinating and overseeing Auxiliary Aids and Services for Deaf former inmates consistent with and for implementing this Agreement. These designees will be familiar with and knowledgeable concerning the contents of this Agreement and assist in implementing this Agreement as applicable to such office.

DPSCS agrees to train all Shift Commanders at each DPSCS Correctional Facility and DPSCS Prerelease Housing Unit where Deaf inmates are held on the procedures necessary to satisfy this Agreement.

DPSCS agrees that Deaf inmates will be given the opportunity to meet with the Warden, Assistant Warden, or Facility Administrator at least quarterly at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units. At these meetings, Deaf inmates will have the opportunity to discuss issues of importance to the Deaf inmate community with the Warden, Assistant Warden, or Facility Administrator. A Qualified Interpreter and Auxiliary Aids and Services will be provided at these meetings as necessary.

### **III. INTAKE PROCEDURES AND SUBSEQUENT PROVISION OF AUXILIARY AIDS AND SERVICES**

#### **A. General Policy**

At Intake, from the point that a Deaf inmate notifies DPSCS staff of his or her disability, the Deaf inmate will be provided with access to Qualified Interpreters or appropriate Auxiliary Aids and Services, as necessary, to afford the Deaf inmate Effective Communication. To achieve Effective Communication with respect to the Intake process, Qualified Interpreters or Auxiliary Aids and Services will be provided, upon request, to aid in the explanation of prison policies and procedures. After transfer to the maintaining facility, the Deaf inmate will participate in orientation and receive instruction on how to use the available telecommunications equipment and other Auxiliary Aids and Services at the facility. Within six months from the

Effective Date of this Agreement, DPSCS will implement a written policy governing the Intake process for Deaf inmates that includes, at a minimum, the following terms:

1. The assessment, and if necessary testing, for Deafness or hearing impairments by Medical staff of all inmates who demonstrate difficulty hearing or notify the proper officials of difficulty in hearing at any point during the Intake process.
2. The creation of a form to be used at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units appended to the policy, by which a Deaf inmate will indicate his or her preferences for Auxiliary Aids and Services for various prison services, programs, and activities in which an inmate would reasonably be expected to be involved while incarcerated, whether mandatory or voluntary, including all situations as to which Auxiliary Aids and Services are to be provided to Deaf inmates pursuant to this Agreement. The form is referred to herein as the “Intake Form.” DPSCS will give primary consideration to the type of Auxiliary Aid or Service that is indicated on the inmate’s Intake Form. This form will include, but is not limited to, the options for the following activities and programs to which DPSCS has agreed to provide Qualified Interpreters and/or interpreters as necessary that satisfy, at a minimum, the requirements of 28 C.F.R. § 36.104 under this Agreement:
  - For medical care and appointments, including dental, vision, audiological and mental health care for Deaf inmates
  - For disciplinary hearings in which Deaf inmates may participate
  - For transfer and classification meetings and interviews that impact Deaf inmates
  - For transitional programming for Deaf inmates
  - For educational programming for Deaf inmates
  - For work programming for Deaf inmates
  - For any other programs that require complex or lengthy communications between staff and Deaf inmates.
3. A procedure for administration of the Intake Form will be established. The Intake Form will be administered to any inmate who is deemed by the Medical Staff to be Deaf at the time that the inmate is received by their first maintaining DPSCS Correctional Facility for orientation. The Intake Form will be administered at the earliest practical opportunity during orientation.

4. DPSCS will provide access to a Qualified Interpreter or other Auxiliary Aids and Services, upon request, for the Deaf inmate to understand and complete the Intake Form.
5. DPSCS will provide written notification on initial Intake and orientation materials that the Deaf inmate may request a Qualified Interpreter or other Auxiliary Aids and Services for assistance in understanding any written materials provided and/or the Intake Form.
6. A procedure for Deaf inmates to make amendments to the Intake Form will be established. A Deaf inmate may change his or her preferences indicated in the Intake Form, including changing, adding, or waiving services, absent an objective showing of abuse. If a determination is made by DPSCS that the inmate has abused the Intake Form process, the inmate may appeal the decision through the administrative remedy procedure. A Deaf inmate may complete an Intake Form, upon request, at any time during his or her incarceration even if he or she had previously declined services.
7. The Intake Form is to be maintained in the inmate's base file and will be consulted and used by DPSCS and/or DLLR staff that performs services at DPSCS Correctional Facilities or DPSCS Prerelease Housing Units for the entire duration of the inmate's incarceration.

B. Provision of Auxiliary Aids and Services Specified in the Intake Form

After Medical staff determines that an inmate is Deaf and the Intake Form has been completed, DPSCS will make best efforts and give primary consideration to providing the types of Auxiliary Aids and Services requested on the Intake Form and continue to provide such services consistent with this Agreement, unless the Deaf inmate affirmatively indicates he or she does not want such services. Accordingly, additional requests for Auxiliary Aids and Services by the inmate are not required, unless the inmate wishes to request Auxiliary Aids or Services other than those previously requested and provided; however, in the event that Auxiliary Aids and Services are not present or malfunctioning, the inmate has an affirmative duty to notify DPSCS staff. The purpose of the Intake Form, however, is to be an administrative convenience for DPSCS and does not limit the obligation of DPSCS to provide Auxiliary Aids and Services to all Deaf inmates who have requested and qualify for such services as set forth in this Agreement or by law.

C. Ensuring Staff Awareness Through Identification Cards

DPSCS will take appropriate steps to ensure that all DPSCS personnel at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units having regular contact with a Deaf inmate are made aware of such person's need for Auxiliary Aids and Services so that Effective Communication with such person and the safety of the person will be ensured. Upon identifying an inmate as Deaf during the Intake process, the inmate will be offered a distinct identification ("ID") card that clearly identifies him or her as Deaf. This ID card will use the term "Deaf" and

will not use the terms “Hearing Impaired.” The inmate can accept this card or decline it in favor of a standard issue identification. If a Deaf inmate declines the distinct ID card, he or she will sign a Waiver and that document will be kept in the inmate’s base file. The Waiver under this section does not waive the Deaf inmate’s right and/or access to eligible services and is limited only to the inmate’s option to accept the distinct ID card. The inmate will not be precluded from changing his or her preference during his or her period of incarceration to remove the waiver. The distinct ID card will be provided within a reasonable period of time.

The ID card will signify to DPSCS personnel that the inmate is Deaf, might not respond to oral commands, and may require Auxiliary Aids and Services. When DPSCS staff takes a Deaf inmate’s ID card, the Deaf inmate will be given another item by DPSCS staff that will identify the inmate as Deaf.

All staff having regular contact with a Deaf inmate in a DPSCS Correctional Facilities or DPSCS Prerelease Housing Units will be trained on the meaning of the distinct ID cards.

#### D. Interpretation of Written Materials

As of the Effective Date of this Agreement, and upon a Deaf inmate’s request at the DPSCS Correctional Facility or DPSCS Prerelease Housing Unit where the inmate is incarcerated, DPSCS will provide the Deaf inmate written materials it provides to all inmates, and upon request, provide a Qualified Interpreter to permit the Deaf inmate to understand the contents of the written materials.

At the request of the Deaf inmate, DPSCS will promptly and within a reasonable period of time provide that Deaf inmate with the opportunity to meet with a DPSCS staff member and a Qualified Interpreter to ask any further questions regarding the written or interpreted materials.

#### E. Creation of Jarboe Settlement Materials

Within six months of the Effective Date of this Agreement, DPSCS will create written materials outlining the services available to Deaf Inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units. These written materials are referred to herein as “Jarboe Settlement Agreement Materials.” The Jarboe Settlement Materials are intended to outline the services available pursuant to DPSCS’ obligations under this Agreement. Immediately upon creation of the Jarboe Settlement Agreement Materials, and promptly upon any amendments thereto, DPSCS will provide the Jarboe Settlement Agreement Materials to all currently incarcerated Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units and to Deaf former inmates supervised by the Department of Parole and Probation. DPSCS will create the Jarboe Settlement Agreement Materials using language designed to be accessible to Deaf inmates. DPSCS will provide the Jarboe Settlement Agreement Materials promptly to any other inmate housed at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units who is determined by Medical staff to be Deaf. During the Intake process, such Jarboe Settlement Materials will be provided to Deaf inmates with the orientation materials provided to all other inmates. Upon request, DPSCS will promptly and

within a reasonable period of time provide any Deaf inmate at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units with a Qualified Interpreter to interpret the Jarboe Settlement Agreement Materials and ask any questions regarding the Jarboe Settlement Agreement Materials.

Upon request, DPSCS will promptly and within a reasonable period of time provide any former Deaf inmate with a Qualified Interpreter to interpret the Jarboe Settlement Agreement Materials and ask any questions regarding the Jarboe Settlement Agreement Materials.

#### F. Subsequent Need for Accommodations

If an inmate at a DPSCS Correctional Facility or a DPSCS Prerelease Housing Unit is not found to be Deaf at his or her Initial 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 have the opportunity to request these services through completing or amending his or her Intake Form. DPSCS will provide an inmate who was initially not found to be Deaf with a hearing assessment if so requested by Medical staff. If that individual is found to be Deaf, DPSCS will follow its policy implemented pursuant to Section III.A of this Agreement, as if the inmate were subject to the initial Intake process, and otherwise treat such inmate as a Deaf inmate under this Agreement.

### IV. HOUSING

#### A. General Policy

DPSCS has the discretion to house Deaf inmates at whatever DPSCS Correctional Facility or DPSCS Prerelease Housing Unit it deems appropriate.

#### B. Schedule of Accommodations

Regardless of which DPSCS Correctional Facility or DPSCS Prerelease Housing Unit is a Deaf inmate's place of incarceration, personnel at those DPSCS Correctional Facilities and DPSCS Prerelease Housing Units will provide the Deaf inmate with a schedule showing when Qualified Interpreters and/or other Auxiliary Aids and Services are available. This schedule will be provided to currently incarcerated inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units within three months of the Effective Date of this Agreement.

### V. PROVISION OF AUXILIARY AIDS AND SERVICES

#### A. General Policy

In order to ensure equal opportunity to participate in and enjoy the benefits of a service, program, or activity of DPSCS, DPSCS will provide appropriate Auxiliary Aids and Services, as required by this Agreement, the U.S. Constitution, the ADA, and the Rehabilitation Act. This will include programs or services to Deaf inmates provided by third party vendors, contractors, or state funded entities such as community colleges.

Appropriate Auxiliary Aids and Services, including Qualified Interpreters, will be made available so that Deaf inmates housed at DPSCS' Correctional Facilities and DPSCS Prerelease Housing Units may have an equal opportunity to participate in all services, programs, and activities offered to other inmates housed at DPSCS' Correctional Facilities and DPSCS Prerelease Housing Units.

These services, programs, and activities will include, but are not limited to: orientation; medical evaluations and treatments; disciplinary proceedings; and during any other programs including, but not limited to, rehabilitative, educational, or transitional programs offered to other similarly situated incarcerated individuals.

In those instances where DPSCS permits volunteers to provide DPSCS Activities, and religious services, and religious meetings to inmates, DPSCS will notify the volunteer organization or individual volunteer, if it is aware, that the DPSCS Activity, religious services, and religious meetings will be attended by one or more Deaf inmates. The parties agree that the Interpreter for DPSCS Activities, religious services, and religious meetings does not need to be a "Qualified Interpreter" as defined in this Agreement. If the volunteer organization or individual volunteer has an interpreter for the DPSCS Activities, religious services, and religious meetings, DPSCS will ensure that the interpreter, at a minimum, satisfies the requirements of 28 C.F.R. § 36.104. If, however, the volunteer organization or individual volunteer does not provide an interpreter for the DPSCS Activities, religious services, and religious meetings, DPSCS will provide for those DPSCS Activities, religious services, and religious meetings that involve complex or lengthy communication an interpreter who satisfies, at a minimum, the requirements of 28 C.F.R. § 36.104. This provision does not alter DPSCS' obligation to provide other appropriate Auxiliary Aids and Services for DPSCS Activities, religious services, and religious meetings that involve complex or lengthy communication so that there is Effective Communication with the Deaf inmate. When providing any Auxiliary Aids and Services, DPSCS will give primary consideration to the Deaf inmate's preferred Auxiliary Aid or Service as indicated on the Intake Form referenced in section I(O) of this Agreement for the DPSCS Activities, religious services, and religious meetings.

DPSCS retains the discretion to determine that certain services, programs, or activities present a Direct Threat to Deaf inmates or others and may therefore choose not to provide such Deaf inmates some of its services, programs, and activities.

DPSCS is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burden. 28 C.F.R. § 35.164.

DPSCS will provide and maintain written instructions for the use of all Auxiliary Aids and Services. These instructions will cover, though not necessarily be limited to, use of TTYs and Videophones when installed and implemented.

## B. Medical Devices

All Auxiliary Aids and Services required by this Agreement, the ADA, and Section 504 of the Rehabilitation Act, which are deemed by DPSCS or its medical provider to be

medically necessary, will be provided promptly upon request and free of charge to Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units. Hearing aids are included in this subsection and will also be promptly provided upon request and free of charge to inmates who have been determined by DPSCS or its medical provider to require such devices, but are otherwise excluded from the remainder of this Agreement, pursuant to Section I(M) herein, because their hearing is corrected by hearing aids so that they can understand the spoken word, communicate orally, and use a standard telephone.

#### C. Maintenance of Auxiliary Aids and Services

DPSCS will maintain all Auxiliary Aids and Services for Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units in working condition at all times or promptly repair them. Hearing aids are included in this subsection and will be maintained in working conditions at all times or promptly repaired for all inmates who have been determined by DPSCS or its medical provider to require such devices, regardless of whether the inmate is otherwise excluded from the remainder of this Agreement, pursuant to Section I(M) herein, because his or her hearing is corrected by hearing aids so that they can understand the spoken word, communicate orally, and use a standard telephone. DPSCS staff will attempt to resolve complaints about any malfunctioning equipment within one week of receiving that complaint and no later than one month after receiving the complaint. DPSCS will initiate a work order or other applicable mechanism for resolving the issue within a week of the complaint. DPSCS will not be considered in breach of this provision if the delay is caused by third party vendors, delivery errors, or any other issue caused by third parties or circumstances outside of DPSCS control.

### VI. QUALIFIED SIGN LANGUAGE INTERPRETERS AND OTHER AUXILIARY AIDS AND SERVICES

#### A. Contracts

In accordance with and subject to applicable procurement laws and regulations, DPSCS will enter into one or more written contracts with Interpreter Service Providers (“IS Providers”), to provide Qualified Interpreters at the events and intervals, set forth in this Agreement. The contracts with the IS Providers will specifically state that only “Qualified Interpreters,” as defined in this Agreement, will be used by DPSCS and the IS Providers agree to provide only such interpreters to DPSCS. If DPSCS is currently bound by an IS Provider contract it will add this requirement at the next opportunity, to the extent feasible and permitted by applicable procurement laws and regulations.

#### B. General Policy

DPSCS will provide an in-person Qualified Interpreter five days per week for seven hours per day at MCI-J. If there is a material change in the number or needs of Deaf inmates at MCI-J, DPSCS will re-evaluate the number and/or frequency of in-person Qualified Interpreters. The number of in-person Qualified Interpreters to be retained and the hours during which those interpreters shall be available to ensure compliance with this Agreement, shall be determined solely by the DPSCS.

DPSCS will provide an in-person Qualified Interpreter at other DPSCS Correctional Facilities and DPSCS Prerelease Housing Units where deaf inmates are incarcerated as necessary.

DPSCS will be responsible for scheduling and overseeing the provision of Qualified Interpreters. With the exception of DPSCS Activities, religious services, and religious meetings where such volunteers provide an interpreter for the DPSCS Activities, religious services, and religious meetings, all interpreters provided as accommodations to Deaf inmates will be Qualified Interpreters.

### C. Other Means of Communication

#### 1. General Policy

DPSCS agrees that at all times DPSCS employees will continue to attempt to communicate with Deaf inmates at its DPSCS Correctional Facilities and DPSCS Prerelease Housing Units for such purposes and to the same extent, as they would communicate with the individuals but for their disability, using all available means of communication. This provision in no way lessens DPSCS' obligation to provide Qualified Interpreters or other Auxiliary Aids and Services in certain situations and in a timely manner to the extent required by this Agreement.

#### 2. Video Remote Interpreting (VRI)

DPSCS will provide access to and have available for, emergency situations and otherwise as deemed necessary by DPSCS, on-demand video remote interpreting which comports with the following standards at all DPSCS Correctional Facilities at which Deaf inmates are incarcerated:

- high quality, clear, delay-free full-motion video and audio over a high-speed Internet connection;
- a clear, sufficiently large, and sharply delineated picture of the interpreter's and the Deaf individual's heads, arms, hands, and fingers, regardless of the body position of the Deaf inmate, unless rendered impracticable by an emergency situation;
- voices being transmitted are clear and easily understood, and
- operation is uncomplicated and easily accomplished by non-technicians.

DPSCS will implement VRI no later than twelve months of the Effective Date of this Agreement. In procuring VRI services, DPSCS will require that the VRI provider(s) selected will utilize only Qualified Interpreters. DPSCS will ensure that at least one of the VRI systems is housed in the medical unit of DPSCS Correctional Facility at which Deaf inmates are incarcerated.

### **3. Written Notes**

DPSCS employees at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units will receive training with respect to communication difficulties Deaf inmates have. The training will include advising the DPSCS employees that note writing may be the only immediate form of communication available to a Deaf inmate and that DPSCS employees are expected to respond to a Deaf inmate in writing where that is the best present means of communication, to the same extent they would make a verbal response in a similar situation involving a non-Deaf inmate. Where circumstances make a written response impractical at the time, training will instruct that the DPSCS employee should attempt to follow up with the Deaf inmate as time later permits. This training will be coordinated by the ADA coordinator for the institution in conjunction with the statewide ADA coordinator.

## **D. Onsite Medical Care**

### **1. General Policy**

DPSCS will provide Auxiliary Aids and Services, including Qualified Interpreters, for scheduled appointments between Deaf inmates and medical personnel at DPSCS Correctional Facilities, including, but not limited to, review of medical history, medical appointments, follow up meetings or appointments, and treatment meetings. DPSCS will give primary consideration to the type of Auxiliary Aid or Service that is indicated on the inmate's Intake Form.

### **2. Informing Appropriate Medical Staff**

DPSCS staff responsible for coordinating Auxiliary Aids and Services for Deaf inmates at the DPSCS Correctional Facility at which a Deaf inmate is incarcerated will ensure that Medical staff is aware that the inmate is deaf and notify Medical staff of the inmate's preferences as outlined on the Intake Form, if such classification has not already been performed by the Medical staff at that DPSCS Correctional Facility. DPSCS staff responsible for coordinating Auxiliary Aids and Services for Deaf inmates housed in DPSCS Prerelease Housing Units will ensure that Medical staff is aware that the inmate is deaf and notify Medical staff of the inmate's preferences as outlined on the Intake Form, if such classification has not already been performed by the Medical staff at that DPSCS Prerelease Housing Unit.

### **3. Scheduling Medical Appointments with Interpreters**

DPSCS staff at each DPSCS Correctional Facility, or their designee, shall be responsible for ensuring that Qualified Interpreters are scheduled for all medical appointments requiring them or that other appropriate Auxiliary Aids and Services are provided in conjunction with such appointments. Appointments for Deaf inmates will be scheduled within the same time period from the initial request as those for other inmates.

### **4. Emergency Events**

After VRI is implemented pursuant to this Agreement, DPSCS will make best efforts to provide VRI at DPSCS Correctional Facilities for use in unscheduled medical

emergencies. If remote interpreting services are not appropriate in the situation, DPSCS personnel will work in conjunction with Medical staff to attempt to secure an in-person Qualified Interpreter or other Auxiliary Aids or Services as soon as possible. Life saving and other emergency medical care should never be delayed because no interpretation services are available.

For the following categories of Deaf inmates, VRI may not provide Effective Communication, and an in-person Qualified Interpreter or other Auxiliary Aids or Services may be the most appropriate auxiliary aid or interpretive service. In such circumstances, DPSCS shall make best efforts to provide an in-person Qualified Interpreter

- Deaf inmates who have limited ability to move their heads, hands, or arms; vision problems; cognitive or consciousness issues; or pain issues;
- Deaf inmates who must be moved to areas of the DPSCS Correctional Facility that do not have a designated high speed Internet line; and
- Deaf inmates who will be treated in rooms where space considerations mitigate against using the service.
- Deaf inmates who have psychiatric or mental health issues that complicate communications through VRI.

#### E. Offsite Medical Care

DPSCS or its designee will inform all offsite medical providers that a Deaf inmate at a DPSCS Correctional Facility or DPSCS Prerelease Housing Units requiring a Qualified Interpreter or other Auxiliary Aid or Service will be seeking medical care offsite as soon as possible.

In the case of an emergency, DPSCS will inform an offsite medical provider that a Deaf inmate at a DPSCS Correctional Facility or DPSCS Prerelease Housing Units requiring an in-person Qualified Interpreter or other Auxiliary Aid or Service is being transported to the offsite care provider. DPSCS will notify the offsite medical care provider as soon as possible. Notification will include the estimated time of arrival.

This Agreement may not be construed to require the DPSCS to provide Qualified Interpreters or other Auxiliary Aids or Services to inmates receiving offsite medical care. Provision of Qualified Interpreters or other Auxiliary Aids or Services to inmates in such circumstances by DPSCS shall be at the DPSCS' discretion in accordance with applicable law.

#### F. Educational, Vocational, and Programming Instruction

DPSCS will provide appropriate Auxiliary Aids and Services for all programs offered at DPSCS Correctional Facilities in which Deaf inmates are qualified, admitted into, and actively participating. DPSCS, in determining the appropriate Auxiliary Aids and Services to be provided, will consider the request by the Deaf inmate on the inmate's Intake Form and any input by the Instructors or staff. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate's preferred

form of Auxiliary Aid and Services as indicated on the inmate's Intake Form will receive primary consideration.

A "DPSCS Program" is any programs defined in COMAR 12.02.24.01 *et seq.* into which an inmate is placed by case management in accordance with State law or COMAR 12.02.24.02(A)(10)-(11).

When the Schedule of Accommodations referenced in Section IV.B changes, including when a Qualified Interpreter will be available, an updated Schedule of Accommodations will be given to all Deaf inmates at DPSCS Correctional Facilities and Prerelease Housing Units.

When a DPSCS inmate at a DPSCS Correctional facility has been found eligible to participate in a DPSCS program, DPSCS will provide a Qualified Interpreter or Auxiliary Aids or Services. In the event there is a delay in providing the service, DPSCS will make best efforts to as promptly as reasonably practicable resolve the delay and provide the service. DPSCS will make efforts to allow the Deaf inmate to continue to participate in the program.

Appropriate Auxiliary Aids and Services will be provided in the following programs:

1. Correctional Educational and Workforce Skills Training provided by DLLR

DPSCS will provide Deaf inmates at DPSCS Correctional Facilities with written materials and open or closed-captioned material, where available. In addition, DPSCS will provide a Qualified Interpreter and other Auxiliary Aids and Services for correctional educational and workforce skills training at DPSCS Correctional Facilities as necessary. DPSCS, in determining the appropriate Auxiliary Aids and Services to be provided, will consider the request by the Deaf inmate on the inmate's Intake Form and any input by the Instructor of the class. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate's preferred form of Auxiliary Aids and Services as indicated on the inmate's Intake Form will receive primary consideration.

2. College Courses at DPSCS

DPSCS will provide Deaf inmates at DPSCS Correctional Facilities with written materials and open or closed captioned material, where available. In addition, DPSCS will provide a Qualified Interpreter and other Auxiliary Aids and Services for classes at DPSCS Correctional Facilities as necessary. DPSCS, in determining the appropriate Auxiliary Aids and Services to be provided, will consider the request by the Deaf inmate on the inmate's Intake Form and any input by the Instructor of the class. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate's preferred form of Auxiliary Aids and Services as indicated on the inmate's Intake Form will receive primary consideration.

3. Vocational Programs at DPSCS Correctional Facilities

DPSCS will provide Deaf inmates at DPSCS Correctional Facilities with written materials and open or closed captioned material, where available. In addition, DPSCS will

provide a Qualified Interpreter and other Auxiliary Aids and Services for vocational programs at DPSCS Correctional Facilities as necessary. DPSCS, in determining the appropriate Auxiliary Aids and Services to be provided, will consider the request by the Deaf inmate on the inmate's Intake Form and any input by the Instructor of the class. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate's preferred form of Auxiliary Aids and Services as indicated on the inmate's Intake Form will receive primary consideration.

#### 4. DPSCS' Maryland Correctional Enterprises Programs ("MCE")

DPSCS will provide Deaf inmates at DPSCS Correctional Facilities with written materials and open or closed-captioned material, where available. In addition, DPSCS will provide a Qualified Interpreter and other Auxiliary Aids and Services for programs at DPSCS Correctional Facilities as necessary. DPSCS, in determining the appropriate Auxiliary Aids and Services to be provided, will consider the request by the Deaf inmate on the inmate's Intake Form and any input by the Instructor of the class. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate's preferred form of Auxiliary Aids and Services as indicated on the inmate's Intake Form will receive primary consideration.

#### 5. DPSCS Programs

DPSCS will provide Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units with written materials and open or closed-captioned material, where available. In addition, DPSCS will provide a Qualified Interpreter and other Auxiliary Aids and Services for DPSCS programs at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units as necessary. DPSCS, in determining the appropriate Auxiliary Aids and Services to be provided, will consider the request by the Deaf inmate on the inmate's Intake Form and any input by the Instructor of the class. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate's preferred form of Auxiliary Aids and Services as indicated on the inmate's Intake Form will receive primary consideration.

#### 6. DPSCS Activities

A DPSCS Activity may be provided by volunteers and may or may not include a fee that is paid by inmates to support the Activity. DPSCS Activities do not include religious services provided to inmates.

DPSCS will provide Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units with written materials and open or closed captioned material, where available. In those instances where DPSCS permits volunteers to provide DPSCS Activities to inmates, DPSCS will notify the volunteer organization or individual volunteer if the DPSCS Activity will be attended by one or more Deaf inmates. The parties agree that the interpreter at these volunteer activities does not need to be a "Qualified Interpreter" as defined in this Agreement. If the volunteer organization or individual volunteer provides an interpreter, DPSCS should ensure that the interpreter satisfies, at a minimum, the requirements of 28 C.F.R. § 36.104.

If, however, the volunteer organization or individual volunteer does not provide an "Interpreter" for the DPSCS Activity, and if that DPSCS Activity involves lengthy or

complex communication, DPSCS will provide an Interpreter for who satisfies, at a minimum, the requirements of 28 C.F.R. § 36.104. This provision does not alter DPSCS' obligation to provide other appropriate Auxiliary Aids and Services for the DPSCS Activity that involves lengthy or complex communication. DPSCS in determining the appropriate Auxiliary Aids and Services will consider the request by the Deaf inmate on the inmate's Intake Form and any input by the volunteer conducting the DPSCS Activity or DPSCS staff. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate's preferred form of Auxiliary Aids and Services as indicated on the inmate's Intake Form will receive primary consideration.

To ensure that an Interpreter or other appropriate Auxiliary Aids and Services are available at an activity attended by Deaf inmates, DPSCS may require a Deaf inmate to provide advance notification of his or her intent to attend whenever DPSCS provides in writing to the Deaf inmates the requirement for advance notification of attendance. The Deaf inmate will provide advance notification to DPSCS of his or her intent to attend consistent with DPSCS' directives in the written notification of the scheduled activity.

DPSCS will allow and encourage outside volunteers to provide activities accessible to Deaf inmates without regard to a volunteer's hearing ability as long as the volunteer meets the same security requirements that are imposed on all other outside volunteers.

DPSCS will offer sign-language instruction to any inmate at a DPSCS Correctional Facility or DPSCS Prerelease Housing Unit who becomes deaf after incarceration if such instruction is ordered by a medical professional employed by the DPSCS' contractual medical provider or an expert employed or retained by DPSCS.

#### G. Work Assignments at DPSCS Correctional Facilities and Prerelease Housing Units

DPSCS will provide opportunities for institutional work assignments for Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units that are consistent with the opportunities for the same assignments given to similarly situated non-Deaf inmates. DPSCS retains the discretion to determine that certain work assignments present a Direct Threat to Deaf inmates and may therefore choose not to provide Deaf inmates those work assignments.

#### H. Religious Services

DPSCS will allow and encourage outside volunteers to provide religious services accessible to Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units without regard to a volunteer's hearing ability as long as the volunteer meets the same security requirements that are imposed on all other outside volunteers. DPSCS will notify the religious service provider if the activity will be attended by one or more Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units. The parties agree that the Interpreter provided by the religious service provider does not need to be a "Qualified Interpreter" as defined in this Agreement. If the religious service provider provides an Interpreter, DPSCS should ensure that the Interpreter satisfies, at a minimum, the requirements of 28 C.F.R. § 35.104. If, however, the religious service provider does not provide an interpreter

for the activity, DPSCS will provide for that activity an interpreter who satisfies, at a minimum, the requirements of 28 C.F.R. § 35.104. This provision does not alter DPSCS' obligation to provide other appropriate Auxiliary Aids and Services, as indicated on the inmate's Intake Form, for the activity. In determining the appropriate Auxiliary Aids and Services, DPSCS will consider the request by the Deaf inmate on the inmate's Intake Form and any input by the religious service provider conducting the activity. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate's preferred form of Auxiliary Aids and Services as indicated on the inmate's Intake Form will receive primary consideration.

To ensure that an Interpreter or other appropriate Auxiliary Aids and Services are available at religious services attended by Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units, DPSCS may require a Deaf inmate to provide advance notification of his or her intent to attend whenever DPSCS provides in writing to the Deaf inmates the requirement for advance notification of attendance. The Deaf inmate will provide advance notification to DPSCS of his or her intent to attend religious services consistent with DPSCS' directives in the written notification of the religious services. A Deaf inmate may provide advance notification of his or her intent to attend weekly religious services on the Intake Form.

#### I. Transfer and Classification Matters

DPSCS will provide a Qualified Interpreter or Auxiliary Aids and Services for any meetings or interviews with DPSCS personnel relating to an inmate's transfer to another DPSCS Correctional Facility or change in security classification involving the exchange of information between the Deaf inmate at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units and DPSCS personnel. DPSCS, in determining the appropriate Auxiliary Aids and Services to be provided, will consider the request by the Deaf inmate on the inmate's Intake Form and any input by appropriate DPSCS personnel. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate's preferred form of Auxiliary Aids and Services as indicated on the inmate's Intake Form will receive primary consideration.

In the event there is a delay in providing the Qualified Interpreters or Auxiliary Aids and Services for meetings or interviews with DPSCS personnel relating to an inmate's transfer to another DPSCS Correctional Facility or change in security classification involving the exchange of information between the Deaf inmate at DPSCS Correctional Facilities or DPSCS Prerelease Housing Units and DPSCS personnel, DPSCS will make best efforts to resolve the delay as promptly as reasonably practicable. DPSCS will schedule the meeting or interview within thirty days of the previously scheduled meeting or interview. DPSCS will not be considered in breach of this provision if there is a delay beyond thirty days that is caused by circumstances outside of DPSCS control.

#### J. Post-Release Supervision

DPSCS will provide Effective Communication between DPSCS staff and a Deaf former inmate supervised by the Division of Parole and Probation. DPSCS will provide a Qualified Interpreter or Auxiliary Aids and Services for all meetings involving significant and complex communication with a former Deaf inmate in the offices of the DPSCS Department of Parole and

Probation after an initial request for a Qualified Interpreter or Auxiliary Aids and Services is received from the former Deaf inmate by DPSCS Department of Parole and Probation staff; more than one request for an Interpreter or Auxiliary Aids and Services will not be necessary. In determining the appropriate Auxiliary Aid and Service, DPSCS will consider the request by the Deaf former inmate. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf former inmate's preferred form of Auxiliary Aid and Service will receive primary consideration.

## VII. DISCIPLINARY MATTERS

### A. Qualified Interpreters for Disciplinary Proceedings at DPSCS Correctional Facilities and Prerelease Housing Units

DPSCS will provide Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units with a Qualified Interpreter or other Auxiliary Aids and Services in any disciplinary proceedings in which Deaf inmate is a victim, witness, suspect, or charged, where there occurs the exchange of information between the Deaf inmate and DPSCS personnel. DPSCS, in determining the appropriate Auxiliary Aids and Services, will consider the request by the Deaf inmate on the inmate's Intake Form. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate's preferred form of Auxiliary Aids and Services as indicated on the inmate's Intake Form will receive primary consideration. A Qualified Interpreter will be available to the Deaf Inmate at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units at any time there is to be the exchange of information between the Deaf inmate suspect and DPSCS personnel, including the following situations:

- Investigative interviews that involve the exchange of information between a Deaf inmate and DPSCS personnel (such as when an adverse party is interviewed);
- Preparation of the Disciplinary Offense Report by the Reporting Officer if it involves the exchange of information between the Deaf Inmate suspect and DPSCS personnel;
- Supervisory Review of the Disciplinary Offense Report if it involves the exchange of information between the Deaf Inmate suspect and DPSCS personnel;
- During the Advisement of Rights/Service of the Disciplinary Report/Waiver of Hearing/Penalty Offer Process or equivalent proceedings, to the extent that they involve the exchange of information between the charged Deaf inmate and DPSCS personnel;
- During the Hearing, or any Re-Hearing, which involves the exchange of information between the charged Deaf inmate and DPSCS personnel.

Inmate representatives will be provided to charged Deaf inmates on the same terms as they are provided when requested by charged hearing inmates. Access to the inmate representative shall be the same for charged Deaf inmates as charged non-Deaf inmates. To the

extent that a Deaf inmate has access to his inmate representative, a Qualified Interpreter shall be made available to the Deaf inmate for any exchange of information between the Deaf inmate and his inmate representative.

#### B. Disciplinary Offense Reports

The supervisor will meet with the Deaf inmate in the presence of a Qualified Interpreter to discuss the Notice of Inmate Rule Violation (“NOIRV”) no less than 24 hours prior to when a Disciplinary Hearing has been scheduled if a NOIRV was filed against a Deaf inmate at a DPSCS Correctional Facility or DPSCS Prerelease Housing Unit, and no Qualified Interpreter or appropriate Auxiliary Aids and Services was provided to the inmate at the time of the pre-Report investigation to afford the Deaf inmate Effective Communication.

#### C. Miscellaneous

If a Deaf inmate is a witness at a disciplinary hearing, DPSCS will provide Auxiliary Aids and Services at the hearing, while the witness is a participant. DPSCS, in determining the appropriate Auxiliary Aids and Services, will consider the request by the Deaf inmate on the inmate’s Intake Form. Pursuant to 28 C.F.R. 35.160(b)(2), the Deaf inmate’s preferred Form of Auxiliary Aids and Services as indicated on the inmate’s Intake Form will receive primary consideration.

DPSCS will schedule disciplinary hearings for Deaf inmates within the same time frame as it schedules disciplinary hearings for non-Deaf inmates. DPSCS may postpone and reschedule disciplinary hearings for a Deaf inmate in need of a Qualified Interpreter pursuant to COMAR 12.02.27.18(C) and COMAR 12.02.27.12.

In the event there is a delay in providing the Qualified Interpreter or Auxiliary Aids and Services, DPSCS will make best efforts as promptly as reasonably practicable to resolve the delay and reschedule the disciplinary hearing pursuant to COMAR 12.02.27.18(C) and 12.02.27.12. DPSCS will schedule the disciplinary hearing date within thirty days of the previously scheduled disciplinary hearing date. DPSCS will not be considered in breach of this provision if there is a delay beyond thirty days if the delay is caused by unavailability of a hearing officer, witnesses, or any other issue caused by third parties or circumstances outside of DPSCS control.

Nothing precludes a Deaf inmate at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units who is a suspect or charged with a disciplinary offense from voluntarily waiving his right to a Qualified Interpreter or Auxiliary Aids and Services and to proceed through any stage of a disciplinary proceeding without the benefits of a Qualified Interpreter or Auxiliary Aids and Services. Nor will failure of DPSCS to provide a Qualified Interpreter in and of itself constitute a sufficient basis for the charged Deaf inmate to reverse or overturn any disciplinary finding or sanction. However, if a Deaf inmate did not waive his right to a Qualified Interpreter or Auxiliary Aids and Services, the disciplinary hearing will be rescheduled to a time that a “Qualified Interpreter” can be present or the Auxiliary Aids and Services can be available.

Except to the extent specifically provided herein, all provisions of the DPSCS' regulations addressing the rules and procedures for the discipline of inmates shall apply with equal force to the discipline of Deaf Inmates.

## VIII. VISUAL ALERT NOTIFICATIONS

### A. General Policy

Deaf inmates incarcerated at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units should not miss announcements, alarms, or any other auditory information from DPSCS staff to the general inmate population solely because of their disability.

### B. Relaying Information

DPSCS will provide an effective visual notification system that will notify Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units of prison wide events and events specific to Deaf inmates. This visual notification system will include notification of daily prison activities, such as wake-up calls, meal times, recreational time, and other announcements in the inmate's cell. DPSCS has the discretion as to which type of notification system it will employ and to change that system, as it deems necessary.

### C. Visual Alarms and Emergency Evacuation

DPSCS will provide Deaf Inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units with an effective visual notification system, which will advise them of an emergency evacuation or other emergency. DPSCS has the discretion as to which type of notification system it will employ and the discretion to change that system, as it deems necessary.

### D. Personal Pagers

DPSCS will provide functional personal pagers, which include visual as well as vibrating functions, in those DPSCS Correctional Facilities and DPSCS Prerelease Housing Units where these aids are currently utilized. Any alarm functions or other auditory function of the pagers that are disruptive to hearing inmates and unnecessary for Deaf inmates will be turned off if that function is available. Pagers will be used as supplemental notification systems to aid in daily notification of consistent announcements and protocols, including wake-up calls, meal times, recreational times, and other normal and customary notifications.

DPSCS personnel will be responsible for operating the pagers and will be properly trained in how to effectively use the technology.

## IX. TELECOMMUNICATION DEVICES

### A. General Policy

DPSCS will provide Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units with telecommunication devices so that they will have access to

communication with people outside of DPSCS that is substantially on the same basis as the access to telecommunication DPSCS provides inmates who are not Deaf and consistent with this Agreement.

B. Monitoring Communications

DPSCS may provide for the monitoring of communications between Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units and individuals outside of DPSCS to the same extent and with the same discretion applied to the monitoring of communications between non-Deaf inmates and individuals outside of DPSCS.

C. Additional Time for Communication

DPSCS agrees that “equal access” may necessitate access that sometimes appears to be greater access. Within six months of the Effective Date of this Agreement, DPSCS will implement a written policy that allows Deaf inmates at its DPSCS Correctional Facilities and DPSCS Prerelease Housing Units at least twice as many minutes to complete a TTY call as the number of minutes afforded to non-Deaf inmates to make regular phone calls.

D. Technology DPSCS Will Provide

DPSCS will make the following communication technologies available at its DPSCS Correctional Facilities and DPSCS Prerelease Housing Units where Deaf inmates are incarcerated to facilitate communication between Deaf inmates and people outside of DPSCS Correctional Facilities and DPSCS Prerelease Housing Unit.

This list of technological equipment is not exhaustive. DPSCS agrees to keep abreast of evolving technology and to consider adding additional equipment to reflect technological advances, as it deems appropriate.

DPSCS Correctional Facilities and DPSCS Prerelease Housing Units housing Deaf inmates will share a list of communications equipment available to Deaf inmates upon their arrival at the DPSCS Correctional Facility or DPSCS Prerelease Housing Unit.

1. TTY (teletypewriter)

At every DPSCS Correctional Facility and DPSCS Prerelease Housing Units at which a Deaf inmate is incarcerated, DPSCS will provide at least one TTY which will be available and readily accessible during the same hours as the standard telephone is available for non-Deaf inmates. At each DPSCS Correctional Facilities and DPSCS Prerelease Housing Units where a Deaf inmate is incarcerated, DPSCS will keep an additional portable TTY unit for use when the regular TTY is broken or otherwise unavailable.

2. Relay Services

DPSCS will enable all TTYS to access publicly available relay service phone numbers such as 711 and local 1-800 numbers. A Deaf inmate at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units using relay services may not be charged any more than

inmates not using relay services and will be charged the per minute rate established by the DPSCS' contract with its inmate telephone service provider, consistent with applicable law.

DPSCS will also afford Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units the same or substantially similar payment options for personal fees as is allowed non-Deaf inmates, including but not limited to, the use of credit cards and the ability for family and friends to contribute funds to those credit cards.

### 3. Videophones

As long as a Deaf inmate is incarcerated at Maryland Correctional Institution-Jessup (MCI-J), DPSCS will make videophone technology available at MCI-J for use by Deaf inmates no later than twelve months from the Effective Date of this agreement.

As long as a Deaf inmate is incarcerated at Maryland Correctional Institution-Women (MCI-W), DPSCS will make videophone technology available at MCI-W for use by Deaf inmates no later than twelve months from the Effective Date of this agreement.

For any other DPSCS Correctional Facility where a Deaf inmate is incarcerated, DPSCS will make videophone technology available by way of a portable videophone for use by Deaf inmates at the particular DPSCS Correctional Facility no later than twelve months from the Effective Date of this Agreement. For any other DPSCS Correctional Facility, DPSCS will make videophone technology available by way of a portable videophone for use by Deaf inmates who use sign language or are unable to read the communication from TDD or TTY equipment. After videophone technology is implemented by way of a portable videophone pursuant to this Agreement, when a Deaf inmate subsequently becomes eligible for use of the portable videophone or is transferred to a DPSCS Correctional Facility other than MCI-J or MCI-W, DPSCS will make best efforts to make available videophone technology by way of a portable videophone for the inmate's use within one week of the inmate's eligibility or transfer.

Access to the videophones at MCI-J and MCI-W will be made available during the same time as standard telephones and TTYS. Videophones will allow voice carry over relay.

### E. Responsibility for Maintaining Equipment and Training Staff

DPSCS will ensure that the technology used to permit communication between Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units and people outside of DPSCS at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units is in working order. DPSCS staff will attempt to resolve complaints about any malfunctioning equipment within one week of receiving that complaint. DPSCS will also ensure that designated staff members are adequately trained in the operation of the technology.

### X. MEDIA

DPSCS will ensure that all audio-visual media purchased for inmate use in DPSCS Correctional Facilities and DPSCS Prerelease Housing Units housing Deaf inmates includes open or closed captioning.

Televisions which are purchased by DPSCS for inmate use at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units will support open or closed captioning and that captioning may be turned on at a Deaf inmate's request.

DPSCS will permit Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units to purchase TVs which reliably support open or closed captioning with their own funds.

## XI. HAND RESTRAINTS

### A. Off-site Medical Care

DPSCS will implement an operating procedure relating to the handcuffing of Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units that will, whenever possible, permit Deaf inmates to use their hands for Effective Communication. That procedure will permit DPSCS personnel to consider the needs of a Deaf inmate to use his or her hands for Effective Communication purposes. That procedure will also permit DPSCS to consider the use of alternative restraints, such as a stun-belt, in lieu of handcuffs that restrain the hands in a way that prevents Effective Communication. DPSCS will have the ultimate authority relating to decisions about the use/non-use of hand restraints, and whether, and in what manner, to keep a Deaf inmate handcuffed.

### B. On-site Medical Care

If a Deaf inmate at a DPSCS Correctional Facility is permitted to see medical personnel for behavioral reasons and his or her hands have been restrained, DPSCS personnel will consider the needs of the Deaf inmate to use his or her hands for Effective Communication purposes. DPSCS personnel will also consider the use of alternative restraints, such as a stun-belt, in lieu of handcuffs that restrain the hands in a way that prevents Effective Communication. DPSCS will have the ultimate authority relating to decisions about the use/non-use of hand restraints, and whether, and in what manner, to keep a Deaf inmate handcuffed.

### C. On-site Other Circumstances

If a Deaf inmate is being moved about at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units for any purpose other than for behavioral reasons, and his or her hands have been restrained, DPSCS personnel will consider the needs of the Deaf inmate to use his or her hands for Effective Communication purposes. DPSCS personnel will also consider the use of alternative restraints, such as a stun-belt, in lieu of handcuffs that restrain the hands in a way that prevents Effective Communication. DPSCS will have the ultimate authority relating to decisions about the use/non-use of hand restraints, and whether, and in what manner, to keep a Deaf inmate handcuffed.

## XII. MISCELLANEOUS AUXILIARY DEVICES

Where devices such as vibrating clocks and in-line amplifiers are not deemed medically necessary, DPSCS agrees to consider on a case-by-case basis, whether it will allow a particular Deaf inmate at its at DPSCS Correctional Facilities and DPSCS Prerelease Housing

Units the opportunity to purchase these devices at his or her own expense. DPSCS' decision in this regard will also consider whether these devices pose a security risk. DPSCS will have the discretion to make the determination whether any of these devices, and the type of device, is permissible. DPSCS agrees to allow Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units to purchase headphones, in-line amplifiers/equalizers, 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. DPSCS retains the discretion to limit purchases to devices available through the Commissary. Deaf inmates may submit a request in writing to the ADA Coordinator requesting devices not available from the Commissary. DPSCS will not deny a Deaf inmate at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units the right to purchase these devices except where they present a documentable security risk or as specified by DPSCS property policies and schedules. The ADA Institutional Coordinator and ADA Prerelease Housing Coordinator will maintain records of all Deaf inmate requests for these devices and the outcome of the request. These records will be maintained in accordance with DPSCS retention policies. These records will be inspected by the ADA Coordinator assigned to DPSCS headquarters as set forth in section II.B on a quarterly basis.

### XIII. TRAINING

#### A. General Policy

DPSCS will provide training as defined in Section XIII.B below to all DPSCS employees as defined in Section I.(I), as defined in this Agreement. DPSCS will begin providing this training within six months of the Effective Date of this Agreement, and no less than annually thereafter. DPSCS will incorporate this training into its regularly scheduled training for new and existing employees. DPSCS may provide this training using in-person training, or via recorded training. DPSCS will update the training materials as required by law.

#### B. DPSCS Employees

Within six months of the Effective Date of this Agreement, DPSCS will begin training DPSCS employees at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units as that term is defined in this Agreement. Training will include the following topics:

- best practices in communicating with Deaf individuals;
- the unique needs and problems encountered by Deaf 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 other equipment currently available at the facility, which facilitates communication with Deaf people; and

- Disciplinary Matters, described in Section VII, and Inmate Complaints;, described in Section XIV.

#### XIV. INMATE COMPLAINTS

The ADA Coordinator will review all written complaints and appeals filed through the Administrative Remedy Procedure (“ARP”) concerning issues related to deafness submitted by Deaf inmates at DPSCS Correctional Facilities and DPSCS Prerelease Housing Units, and responses given to Deaf inmates, whether the request is terminated favorably, or unfavorably to the Deaf inmate, to ensure compliance with this Agreement.

The ADA Coordinator review under this section is not a part of the DPSCS inmate Administrative Remedy Procedure.

#### XV. MONITORING AND COMPLIANCE

##### A. Provision of Written Materials

DPSCS shall deliver to Plaintiffs’ Counsel, within thirty days of completion, copies of any written policies, notifications and/or other written materials created or called for under this Agreement.

##### B. Plaintiffs’ Counsel Investigation

To the extent Plaintiffs’ Counsel maintains a current attorney-client relationship with any Deaf inmate at a DPSCS Correctional Facility or DPSCS Prerelease Housing Unit, they will be provided the same access to that client and to the records relating to that client, as any other attorney with a similar relationship to another non-Deaf DPSCS inmate.

In addition, and regardless of whether an attorney-client relationship exists, on an annual basis during the term of this Agreement, Plaintiffs’ Counsel will have reasonable access to each DPSCS Correctional Facility or DPSCS Prerelease Housing Unit in which Plaintiffs still incarcerated are housed to conduct an investigation to determine DPSCS personnel’s treatment of Deaf inmates. During this investigation, DPSCS will permit Plaintiffs’ Counsel (1) access to Deaf inmates who are willing to meet with them; (2) access to the formal requests made by inmates for miscellaneous auxiliary devices and the subsequent records maintained by ADA Coordinator pursuant to Section XII of this Agreement; (3) access to documents available under the Maryland Public Information Act (“MPIA”), as set forth below; and (4) access to equipment provided to or for use by Deaf inmates. Requests for documents under (3) above shall be made by written request from Plaintiffs’ Counsel and shall pertain to a subject areas that may be available under the MPIA, including, but not limited to, one or more of the following:

(i) DPSCS’ provider relationships for Auxiliary Aids and Services; (ii) written policies and procedures regarding Deaf inmates; and (iii) any contracts or Agreements related to Auxiliary Aids and Service. In response to such written request, DPSCS will provide documents available for inspection under the MPIA within 30 days of Plaintiffs’ Counsel’s request, except that DPSCS will be provided an additional thirty days to provide the requested documents upon notification of Plaintiffs’ counsel prior to the expiration of the first 30 days. Access to formal requests and records under (2) above, shall include the opportunity to inspect the formal requests

and records and the opportunity to copy or receive copies of them. Access to equipment under (4) above, except equipment issued to or owned by an individual inmate, shall include, upon request, the reasonable opportunity to inspect the equipment and take photographs of the equipment on a semi-annual basis. The cost of duplication of documents requested or provided under this Section XV shall be borne as provided under the MPIA. Any documents that are either privileged and/or confidential may be excluded from this provision solely at DPSCS' determination.

Plaintiffs' Counsel will not be entitled to any attorneys' fees or costs associated with this monitoring provision.

## XVI. NOTICE TO CURRENT INMATES OF AGREEMENT

Within 30 days of the Effective Date of this Agreement, DPSCS will notify each non-Plaintiff Deaf inmate in its custody at its DPSCS Correctional Facilities and DPSCS Prerelease Housing Units of its obligations under this Agreement.

## XVII. RELEASE AND SETTLEMENT OF CLAIMS

### 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, each Plaintiff, by executing this Agreement on their behalf and on behalf of their representatives, assignees, heirs, executors, agents, family members, beneficiaries, administrators, successors, and anyone acting or claiming to act on their behalf, hereby releases and forever discharges the State of Maryland, its agencies, and their successors and assigns, departments, divisions, units, officers, servants, employees, agents, officials, representative and independent contractors, including, but not limited to, Defendants, from any and all claims, demands, damages, actions, causes of action, obligations, debts of whatsoever kind or nature, known and unknown, asserted and unasserted, direct and indirect and of any kind, nature or description whatsoever, which arise or may arise, or which arose or may have arisen, as a result of, or growing out of, injuries or damages alleged to have incurred as a result of facts alleged in the Litigation, whether or not such injuries or damages are contemplated at the present time or whether or not they arise following execution of this Agreement arising out of the facts set forth in the complaint and any amendments thereto filed with the U.S. District Court for the District of Maryland in civil action *Jarboe, et al. v. MDPSCS, et al.* ELH 12-0572.

### B. Dismissal

Upon receipt of a fully-executed copy of this Agreement and the monetary payment required under Subsection C of this Section, Plaintiffs shall dismiss with prejudice the Litigation and all claims set forth therein, by filing in the Litigation within ten days of receipt of such monetary payment, a Stipulation of Dismissal with Prejudice, which counsel for Defendants shall approve and execute. The parties agree that the United States District Court for the District of Maryland will retain jurisdiction over this Agreement as set out in Subsection D of this Section.

Also within ten days of receipt of such monetary payment, Plaintiffs will withdraw any grievances or administrative complaints and terminate any administrative proceedings related to the subject matter of the Litigation.

#### C. Attorneys' Fees, Costs, Disbursements and Expenses, and Damages

This Agreement is contingent upon any necessary approvals, including the approval of the payment of any settlement funds by the Maryland Board of Public Works. Request for such approval shall be made to the Maryland Board of Public Works as soon as practicable after execution of this Agreement.

In settlement of all of Plaintiffs' claims arising out of their encounters with DPSCS up to and including the Effective Date, including any claims for attorneys' fees and costs, any disbursements and expenses, including experts fees incurred on behalf of Plaintiffs in this Litigation, and damages, the State of Maryland shall pay Plaintiffs the sum of \$142,500.00 by check made payable to Foley & Lardner LLP, Client Trust Account within sixty days of Board of Public Works approval.

Counsel who brings an enforcement action on behalf of Plaintiffs pursuant to Subsection D of this Section and who obtains a judgment against DPSCS, will only be entitled to attorneys' fees starting from the date of the filing of the enforcement action, and only at an hourly rate limited to 150% of the hourly rate established under 18 U.S.C. § 3006A, regardless of jurisdiction of the suit.

#### D. Enforcement Provisions

Pursuant to 18 U.S.C. § 3626(c)(2), during the term of the Agreement, Plaintiff(s) may move the court for reinstatement of the lawsuit solely for a claim for breach or specific performance of this Agreement subject to notification as set forth in paragraph 3 of this Subsection. An action to enforce this Agreement does not include any action for damages.

As an alternative to an action for breach of this Agreement, pursuant to 18 U.S.C. § 3626(c)(2), during the term of the Agreement, any Plaintiff(s) may move the court for reinstatement of the lawsuit solely for a claim for breach or specific performance of this Agreement subject to notification as set forth in paragraph 3 of this Subsection. Such an action to enforce this Agreement does not include any action for damages.

The lawsuit may not be reinstated, nor a claim for breach or specific performance of this Agreement brought, before such Plaintiff(s) first notifies DPSCS of the nature of the alleged material non-compliance in writing to the ADA Coordinator designee assigned to DPSCS Headquarters and DPSCS' counsel, to be designated at a later date, and gives DPSCS 60 days to investigate and/or cure the alleged breach. In the event that the alleged breach is cured by DPSCS within the sixty day period, Plaintiff(s) may not move the court for reinstatement of the lawsuit or bring an action for breach or specific performance. Plaintiff is still obligated to comply with and exhaust all administrative remedies procedures prior to filing suit in the event the alleged breach is not cured within the time frame specified in this Agreement.

## XVIII. MISCELLANEOUS PROVISIONS

### A. Non-Admission

It is understood and agreed that this Agreement is a compromise of disputed claims, facts, and 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.

### B. Private Settlement Agreement

This Agreement is a private settlement Agreement within the meaning of 18 U.S.C. § 3626. It is the intent of the parties that this Agreement will not, under any circumstances, be considered a consent decree or its equivalent. Except as expressly provided in part XII, section C of this Agreement, nothing in this Agreement gives rise to any right to recover attorneys' fees or cost of litigation.

### C. Confidentiality

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

### D. Entire Agreement

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

### E. Binding

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

### F. 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 or provisions.

### G. 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 or 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.

XIX. TERM OF AGREEMENT

This Agreement shall remain in effect for three (3) years from the Effective Date.

EXECUTED:

PLAINTIFFS

Christopher Jarboe  
Christopher Jarboe

Gary Denmark  
Gary Denmark

Vander Davis  
Vander Davis

Carroll Connelly  
Carroll Connelly

Garfield Redd

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