

# **EXHIBIT A**



2. Plaintiffs' complaint alleges that IDOC has denied Plaintiffs and other deaf and hard of hearing inmates in IDOC custody the assistance they need to communicate effectively and participate in IDOC programs and services, in violation of the Americans with Disabilities Act ("ADA"), the Rehabilitation Act, the Religious Land Use and Institutionalized Persons Act, and the Eighth and Fourteenth Amendments to the Constitution of the United States.

3. Plaintiffs brought this action as a class action on behalf of themselves and all current and future deaf or hard of hearing individuals incarcerated in IDOC facilities who require accommodations, including interpreters or other auxiliary aids or services, to communicate effectively, and/or to access programs or services available to individuals incarcerated by IDOC. By order dated October 8, 2014, the Court granted Plaintiffs' motion for class certification, certifying a class of deaf and hard of hearing IDOC inmates (the "Class").

4. Through this action, Plaintiffs have sought declaratory and injunctive relief to remedy the alleged past violations of the statutory and constitutional rights of the Class, and to prevent future violations of the same.

5. In the interest of compromise and settlement and in recognition of the positions of the Parties to the above case, Plaintiffs, by their counsel, and Defendant Baldwin, by his counsel, and in his official capacity as Director of IDOC, have agreed to enter into this Settlement Agreement. Without conceding any infirmity in their claims or defenses, after extensive discovery, the Parties have engaged in arm's-length settlement negotiations to resolve the claims raised by this action as set forth in Plaintiffs' Complaint. Plaintiffs and Defendant have reached an agreement for settling this litigation that the Parties believe is fair, reasonable, and adequate to protect the interests of the Parties. The Parties believe that this Settlement Agreement will benefit deaf and hard of hearing inmates who are confined in IDOC correctional facilities.

6. The terms of this Settlement Agreement shall be applicable to and binding upon the Class, the Defendant in his official capacity as Director of IDOC, the IDOC and its officers, agents, and employees, and the successors and assigns of each of them.

7. This Settlement Agreement applies to all of IDOC's existing correctional facilities housing adult male and female inmates, as well as any new facilities where adult inmates are confined during the life of this Settlement Agreement.

8. By entering into this Settlement Agreement, neither the Defendant, IDOC, nor the State of Illinois admits any liability regarding the allegations made in this action, and nothing herein shall be deemed as an admission of fault of any kind by the Defendant or IDOC. The Defendant and IDOC specifically deny that any incarcerated individuals' rights have been violated or will be violated in the future. Moreover, this Settlement Agreement and all reports drafted in response to it may not be used as evidence of liability or lack of liability in any other legal proceeding.

9. The Parties will file this Settlement Agreement with the Court, and ask that the Court approve it; approval is a condition precedent to the Settlement Agreement's effectiveness. Upon Court approval and subsequent termination of the Court's jurisdiction and completion of the obligations under this Settlement Agreement, this Settlement Agreement shall constitute full and final settlement of the Plaintiffs' and Class members' claims that have been brought, and claims for injunctive relief that could have been brought in this action, relating to the factual allegations in the Complaint or the provision of Auxiliary Aids and Services to deaf and hard of hearing inmates while in IDOC custody, from the beginning of time to the Effective Date of this Settlement Agreement.

## **II. JURISDICTION**

10. This Court has subject matter jurisdiction over this litigation pursuant to 28 U.S.C. §§ 1331 and 1343 and the authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65.

11. For purposes of this Settlement Agreement, the Parties consent to and will not contest the jurisdiction of this Court over this matter.

12. The Court shall retain jurisdiction over this matter to enforce the terms and conditions of this Settlement Agreement, to resolve disputes arising hereunder, and for such other actions as may be necessary or appropriate for construction or execution of this Settlement Agreement, as limited by the Termination provisions below.

## **III. DEFINITIONS**

The following definitions shall apply to the following terms used in this Stipulation of Settlement:

13. “Agency ADA Coordinator” shall mean an employee of IDOC who has oversight over Class Members receiving the auxiliary aids and services necessary for effective communication for access to programs and services as set forth in this Settlement Agreement.

14. “Audiological Evaluation” means a procedure performed by a licensed audiologist to measure the type, degree, configuration, and level of a person’s hearing loss through audiological tests that result in an audiogram. The Audiological Evaluation is specifically designed to measure the level of hearing rather than screen whether a person may be deaf or hard of hearing. IDOC will request, and exercise reasonable effort to obtain from all licensed audiologists performing Audiological Evaluations, an “Audiological Report” that makes findings as to (1) the level and nature of hearing loss in each ear of the person subject to the evaluation; and (2) whether

the person subject to the evaluation would benefit from a hearing aid in the person's left ear, right ear, both ears, or neither ear.

15. "Auxiliary Aids and Services" that may be provided include, but not be limited to, the following: Qualified Interpreters; Video Remote Interpretation ("VRI"); real-time computer-aided transcription services; telephone handset amplifiers; assistive listening devices; assistive listening systems; hearing aids; hearing aid batteries; headphones; vibrating alarm clocks and watches; tactile alarm clocks and watches; telephones compatible with hearing aids; closed caption decoders; open – and closed – captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones; and other effective methods of making aurally delivered information available to Deaf or Hard of Hearing individuals.

16. "Auxiliary Aids and Services Assessment" shall mean an individualized assessment of an inmate performed by a Qualified Specialist (as defined herein) for the purpose of determining what Auxiliary Aids and/or Services are necessary to ensure effective communication with the inmate and to permit the inmate to adequately, equally and fully participate in all services, programs, activities, benefits, and other opportunities offered at the IDOC facility in which the inmate is incarcerated to inmates who are neither Deaf nor Hard of Hearing.

17. "Certified Deaf Interpreter (CDI)" is an individual who is deaf or hard of hearing who works with a hearing Qualified Interpreter to ensure effective interpretation between a person speaking in English and a person who is deaf or hard of hearing who is not fluent in English or American Sign Language. After the Qualified Interpreter has interpreted spoken English into American Sign Language, the CDI interprets from American Sign Language to a form of sign

language understood by the deaf or hard of hearing person who does not have fluency in either English or American Sign Language. A CDI is certified to have demonstrated knowledge and understanding of interpreting, deafness, the Deaf community, and Deaf culture, as well as specialized training and/or experience in the use of gesture, mime, props, drawings and other tools to enhance communication, as well as native or near-native fluency in American Sign Language. A CDI may be appropriate in several situations including, but not limited to, when the deaf person has underdeveloped ASL skills, limited socialization in the deaf community, limited education, cognitive challenges, delayed language, organic issues causing affect deficiencies, mental illness, and other physical challenges. In Illinois, all persons working as a CDI are required to be licensed pursuant to the Illinois Interpreter for the Deaf Licensure Act of 2007, 225 ILCS 443/1 et seq., and the regulations thereunder at 68 IL Admin Code 1515.10 et seq.

18. “Chief Administrative Officer” shall mean the highest ranking official of a correctional facility.

19. “Class Counsel” refers to counsel of record for the named Plaintiffs in this matter and the “Class Members.”

20. “Class” or “Class Members” refers to all current and future deaf or hard of hearing individuals incarcerated within IDOC who require accommodations, including interpreters or other Auxiliary Aids or Services, to communicate effectively to adequately access programs or services available to individuals incarcerated within IDOC.

21. “Communication Plan” shall mean the ADA Individualized Communication Plan described in Section IX, which contains the information gathered through the Auxiliary Aids and Services Assessment, and shall list the accommodations approved for the offender.

22. “Deaf or Hard of Hearing inmate” means an inmate who, unaided by hearing aids or any medical device, is unable to hear in either one or both ears to a sufficient degree to be able to understand the spoken word, particularly with the level of noise in the prison environment. Persons who cannot hear in one ear to a decibel level of 40 are presumed to meet the definition of Deaf or Hard of Hearing. For purposes of the accommodations, rights, and other provisions outlined herein, an inmate shall be deemed to meet the definition of “Deaf or Hard of Hearing inmate” at the earliest of these points in time: (a) if the inmate, as of the date of this Agreement, has already been designated by, or treated as, Deaf or Hard of Hearing by IDOC; (b) if a Hearing Screening of the inmate demonstrates that the inmate meets the definition; or (c) if an Audiological Examination of the inmate demonstrates that the inmate meets the definition.

23. “Effective Date” shall mean the date upon which this Settlement Agreement is approved and entered by the Court or a motion to approve or enter the Settlement Agreement is granted, whichever occurs first, as recorded on the Court’s docket.

24. “Facility ADA Coordinator” shall mean a person at each IDOC facility responsible for ensuring that Class Members at that facility receive the auxiliary aids and services necessary for effective communication for access to programs and services.

25. “Hearing Screening” means a standard, recognized medical procedure performed by appropriate medical staff to identify whether an individual may have a hearing issue, including whether they may be deaf or hard of hearing. Such a screening does not measure the level of hearing a person has but identifies only whether a person might have a hearing issue, including whether the person may be deaf or hard of hearing. Such a screening may consist of multiple steps, such as a test for gross hearing loss, then a test using an audioscope.



26. “High Stakes Interactions” are defined as those in which the risks of miscommunication or misunderstanding are high and the consequences of miscommunications may have serious repercussions for inmates. High Stakes Interactions include: medical care and appointments, including dental, vision, audiological, mental health care and appointments, and include both individual therapy and group counseling sessions (unless the medical care or appointment is routine and does not involve substantial conversation, for example, blood work for routine lab tests or regular allergy shots); disciplinary investigations and disciplinary hearings; educational programs, specific training sessions and general educational opportunities that include a verbal component; vocational programs that include a verbal component; transfer and classification meetings; meetings with the Facility ADA Coordinator to discuss Auxiliary Aids and Services in the development of the inmate’s Communication Plan.

27. “Intake Physical Examination” means the physical examination that IDOC administers to all new inmates upon the inmate entering IDOC custody.

28. “Periodic Physical Examination” means the physical examination that IDOC administers to inmates on a cyclical basis.

29. “Primary Consideration” means that in determining what type of Auxiliary Aids and Services are necessary to comply with the ADA and this Settlement Agreement, IDOC shall give primary consideration and substantial weight to the expressed preference for a particular Auxiliary Aid or Service made by the Deaf or Hard of Hearing inmate. *See* 28 C.F.R. §35.160. Primary Consideration is subject to and limited by the provisions in Paragraph 51 of this Settlement Agreement.

30. “Qualified Interpreter” means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially,

both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, certified deaf interpreters, and cued-language transliterators. 28 C.F.R. §35.104. A Qualified Interpreter must be licensed to practice in the State of Illinois pursuant to the Interpreter for the Deaf Licensure Act of 2007, 225 ILCS 443/1-900. No inmate or Correctional Officer qualifies or may be used as a Qualified Interpreter.

31. “Qualified Specialist” shall mean a person, contracted through the Chicago Hearing Society or otherwise, who is familiar with American Sign Language, oral communication, and gestural communication who has experience assessing the reading and writing ability of Deaf and Hard of Hearing individuals, and who is able to determine when a Certified Deaf Interpreter is necessary. The Qualified Specialist performs an Auxiliary Aids and Services Assessment.

#### **IV. IDENTIFYING DEAF AND HARD OF HEARING INMATES THROUGH HEARING SCREENING AND AUDIOLOGICAL EVALUATIONS**

32. Within ninety (90) days of the Effective Date, IDOC (either through amendment of IDOC Administrative Directive No. 04.03.101 §§ II(G)(2)(a) and (b), or otherwise) shall adopt a policy and procedure pursuant to which Hearing Screenings are required as a routine and regular part of (a) IDOC’s Intake Physical Examination for all inmates; and (b) IDOC’s Periodic Physical Examinations of all IDOC inmates who self-report as deaf or hard of hearing or who have been determined to have hearing loss during their Intake Physical Examination.

33. Within thirty (30) days after IDOC takes the action identified in Paragraph 32, a Hearing Screening shall take place for (a) all Intake Physical Examinations and (b) Periodic Physical Examinations of inmates who self-report as deaf or hard of hearing or who have been

determined to have hearing loss by an Intake Physical Examination. This shall not apply to individuals who are in the custody of the IDOC for less than 24 hours and are then either released or transferred to a different correctional agency or governmental entity.

34. Within ninety (90) days of the Effective Date, IDOC shall implement a procedure whereby inmates can request to receive a Hearing Screening and, if an inmate makes such a request, the inmate will receive such a screening within thirty (30) days. An inmate's request for a hearing aid or to be identified as Deaf or Hard of Hearing will be considered a request for a Hearing Screening.

35. Within ninety (90) days of the Effective Date, IDOC shall prominently display in all IDOC facility inmate living units and medical units a notice informing inmates that they may request a Hearing Screening. This notice shall be in large print, at least 20 point font, and in simple English. It may be removed after being posted for twenty-one (21) calendar days. Inmates who do not have access to the posted notice due to various safety or other restrictions imposed on them shall receive a copy of the notice.

36. Within ninety (90) days of the Effective Date, IDOC (either through amendment of IDOC Administrative Directive No. 04.03.101 §§ II(G)(2)(a) and (b), or otherwise) shall adopt a policy and procedure pursuant to which inmates whose Hearing Screenings determine that they may be Deaf or Hard of Hearing must be referred to an audiologist for an Audiological Evaluation at the earlier of: (a) thirty (30) days after arrival to their home facility; or (b) 45 days after being admitted into IDOC custody. If, after an initial referral, an inmate is transferred before his audiological appointment, then IDOC shall have fourteen (14) days to issue a new referral. The failure to show appropriate response to presentation stimuli in either ear during the Hearing Screening will indicate that the inmate may be Deaf or Hard of Hearing.

37. Inmates identified as Deaf or Hard of Hearing by Audiological Evaluation shall (a) undergo an Auxiliary Aids and Services Assessment, outlined herein; and (b) undergo a new Audiological Evaluation every three years, to determine if changes in hearing have occurred. If it is determined by both the Deaf or Hard of Hearing inmate and IDOC that the inmate is to be considered Deaf or Hard of Hearing and does not need a Hearing Screening to prove such status (i.e., profoundly deaf inmate who would not benefit from hearing aids), the Deaf or Hard of Hearing inmate may be referred directly to the Auxiliary Aids and Services Assessment, without a Hearing Screening.

38. IDOC shall document and maintain in the inmate's medical file the results of all Hearing Screenings and Audiological Evaluations which will include a record containing a description of the determination made as to the type, degree, and configuration of any hearing loss or hearing level. IDOC shall note in a centralized database of inmates (which contains the characteristics and information set forth below), whether the inmate has been classified as Deaf or Hard of Hearing.

**V. CREATION AND MAINTENANCE OF A CENTRALIZED DATABASE OF DEAF AND HARD OF HEARING INMATES**

39. Within ninety (90) days of the Effective Date, IDOC will employ a centralized database for inmates containing an entry for each Deaf or Hard of Hearing inmate. IDOC may choose to use Offender 360 as this centralized database, so long as Offender 360 has the capabilities required to comply with the terms of this Settlement Agreement.

40. This centralized database will include at least the following information:

- a. the name of the inmate;
- b. the facility at which the inmate is housed;

- c. whether the inmate was provided, and whether the inmate accepted, an identification card as described in this Settlement Agreement;
- d. a copy, or description of the contents, of the written record of the Auxiliary Aids and Services Assessment and Communication Plan for the inmate, as described in this Settlement Agreement; and
- e. a copy, or description of the contents, of any written records concerning the provision of Auxiliary Aids and Services, as described in this Settlement Agreement, including the inmate's Communication Plan.

41. On a continuing basis after the Effective Date, IDOC shall promptly and regularly update the centralized database to account for information relating to all inmates identified as Deaf or Hard of Hearing.

42. This information in the centralized database shall be accessible to all IDOC personnel who are responsible for IDOC's compliance with the ADA or with this Settlement Agreement.

#### **VI. DEAF AND HARD OF HEARING INMATE IDENTIFICATION CARD**

43. Subject to Paragraph 44 immediately below, within thirty (30) days of the Effective Date, or within thirty (30) days of being identified as Deaf or Hard of Hearing in the case of inmates identified as Deaf or Hard of Hearing after the Effective Date, IDOC shall offer inmates identified as Deaf or Hard of Hearing an IDOC-issued inmate identification card that clearly indicates the inmate is Deaf or Hard of Hearing.

44. Deaf and Hard of Hearing inmates will be given the option of declining to receive such an identification card; each inmate shall be free to change his or her mind about whether to receive and carry such an identification card and, barring unforeseen circumstances, IDOC shall

accommodate the inmate's decision within fourteen (14) days provided that once an inmate changes his or her mind pursuant to this paragraph, they must wait either twelve (12) months or upon transfer to a new parent facility, whichever is earlier, to change their mind again.

**VII. DEAF AND HARD OF HEARING INMATE AUXILIARY AIDS AND SERVICES ASSESSMENT**

45. Within sixty (60) days of the Effective Date, IDOC will enter into a contract with Chicago Hearing Society to retain one or more Qualified Specialists who will perform an Auxiliary Aids and Services Assessment for every inmate identified as Deaf or Hard of Hearing.

46. IDOC shall retain a Certified Deaf Interpreter ("CDI") for the Auxiliary Aids and Services Assessment when a Deaf or Hard of Hearing inmate has no proficiency in either English or American Sign Language, or when the Qualified Specialist determines that a CDI is necessary.

47. As to all current IDOC inmates who have been identified as Deaf or Hard of Hearing as of the Effective Date, the Auxiliary Aids and Services Assessment shall be performed within one hundred twenty (120) days of the events described in Paragraph 33 of this Agreement. If the Chicago Hearing Society is unable to provide a willing and able Qualified Specialist, IDOC shall make reasonable efforts to secure a Qualified Specialist to perform an Auxiliary Aids and Services Assessment on the inmate. If IDOC is unable to secure a Qualified Specialist for the inmate, the time frames for obtaining an Auxiliary Aids and Services Assessment outlined in this Agreement will be stayed until such time as the Chicago Hearing Society is able to provide a Qualified Specialist or IDOC is otherwise able to secure one based on reasonable efforts. IDOC will not be considered to be in noncompliance with this provision if it is unable to perform a requirement through no fault of its own.

48. As to all inmates identified as Deaf or Hard of Hearing after the Effective Date, once a Qualified Specialist is retained, the Auxiliary Aids and Services Assessment shall be

performed promptly after, and in any case no later than thirty (30) days after the Audiological Report for the inmate is issued. If the Chicago Hearing Society is unable to provide a willing and able Qualified Specialist, IDOC shall make reasonable efforts to secure a Qualified Specialist to perform an Auxiliary Aids and Services Assessment on the inmate. If IDOC is unable to secure a Qualified Specialist for the inmate, the time frames for obtaining an Auxiliary Aids and Services Assessment outlined in this Agreement will be stayed until such time as the Chicago Hearing Society is able to provide a Qualified Specialist or IDOC is otherwise able to secure one based on reasonable efforts. IDOC will not be considered to be in noncompliance with this provision if it is unable to perform a requirement through no fault of its own.

49. As part of the Auxiliary Aids and Services Assessment, the Qualified Specialist will consult with the Agency ADA Coordinator and/or the Facility ADA Coordinator in the facility where the Deaf or Hard of Hearing inmate is currently housed, or in the case of incoming inmates, will be housed, as to any specific limitations relevant to the Assessment. As part of the Auxiliary Aids and Services Assessment, the Qualified Specialists will consult with the Deaf or Hard of Hearing inmate as to their needs and preferences for communication.

50. Based on the Auxiliary Aids and Services Assessment, the Qualified Specialists shall make and memorialize a determination, as to each Deaf and Hard of Hearing inmate, of the specific Auxiliary Aids and/or Services the inmate needs to communicate effectively (including whether hearing aids, Qualified Interpreters, or other specific aids and services are needed) in at least each of the following prison settings/environments: (a) disciplinary investigations and proceedings; (b) grievance preparation and proceedings; (c) interviews with Internal Affairs or other investigators; (d) interviews or proceedings relating to placement in or removal from protective custody; (e) safety alerts; (f) medical care and appointments, including dental, vision,

audiological, mental health care and appointments, including individual and group therapy or counseling sessions; (g) regular daily environments, such as halls, meal rooms, gyms, and recreational settings; (h) pre-release meetings, including pre-release parole meetings; (i) transfer and classification meetings; (j) meetings with Agency or Facility ADA Coordinator to discuss Auxiliary Aids and Services; (k) library services; (l) educational programs and testing; and (m) vocational, religious, and any other programs and services (and benefits) offered by IDOC to inmates at the facility in which the inmate is incarcerated.

51. The determinations of the Qualified Specialists concerning the Auxiliary Aids and Services that each Deaf and Hard of Hearing inmate requires to communicate effectively in various prison settings shall be followed and implemented for each inmate unless the IDOC has documented that such Auxiliary Aids and Services constitute an “undue financial burden” on IDOC and/or present a clear and present safety and/or security concern that cannot be addressed in any manner except by the denial of the Auxiliary Aids and Services, and IDOC provides the best alternative means of accommodating the needs of the Deaf or Hard of Hearing inmate to effectively communicate that do not implicate the identified security concern. For purposes of this provision, implementing an Auxiliary Aid or Service constitutes an “undue financial burden” when IDOC can meet its burden of showing an undue financial burden under applicable law, including 28 C.F.R. § 35.164, that the determination of an undue financial burden was made by the head of IDOC or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and was accompanied by a written statement of the reasons for reaching that conclusion. Also, if an action required to comply with this Agreement is denied solely due to an undue financial burden, IDOC shall take other action that would not result



in such a burden but would nevertheless ensure that, to the maximum extent possible, individuals who are deaf or hard of hearing receive the benefits or services provided by IDOC.

52. The Qualified Specialists will apply the following principles in making the Auxiliary Aids and Services Assessment:

- a. In determining whether a Deaf or Hard of Hearing inmate should be provided hearing aids in any of the foregoing settings/environments, Qualified Specialists shall defer to and accept the findings in the Audiology Report.
- b. If, based on the Audiological Evaluation and Audiology Report, the Qualified Specialist determines that two hearing aids should be provided to any Deaf or Hard of Hearing inmate, then two hearing aids, not one, shall be provided. If the Qualified Specialist determines that one hearing aid should be provided, then one hearing aid, not zero, shall be provided for the ear needing the hearing aid, subject to the conditions in Paragraph 51 of this Agreement.
- c. If the Qualified Specialist determines that a Deaf or Hard of Hearing inmate's primary language is American Sign Language ("ASL"), there is a presumption that the inmate requires an ASL interpreter for High Stakes Interactions.
- d. If the Qualified Specialist determines that a Deaf or Hard of Hearing inmate's primary language is ASL, then there is a presumption that the inmate requires an ASL interpreter for religious services.

- e. Preference for a particular Auxiliary Aid or Service by a Deaf and Hard of Hearing inmate shall be given Primary Consideration.

53. The results of Auxiliary Aids and Services Assessments for each inmate, including the determinations outlined in Paragraph 50 above, shall be documented in the inmate's Communication Plan, in a form attached as Exhibit A to this Agreement. Each inmate's Communication Plan will be placed in the inmate's medical file and on the centralized database referred to herein, and a copy will be provided to the inmate.

#### **VIII. AUXILIARY AIDS AND SERVICES PRIOR TO THE AUXILIARY AIDS AND SERVICES ASSESSMENT**

54. The Parties recognize that in many circumstances, Deaf and Hard of Hearing inmates require access to Auxiliary Aids and Services prior to IDOC's completion of the Auxiliary Aids and Services Assessment.

55. Therefore, prior to the completion of the Auxiliary Aids and Services Assessment for an inmate, IDOC will provide the inmate with a preliminary accommodation if: (a) an inmate has requested an accommodation; (b) it is apparent to IDOC staff that an inmate requires assistance due to being Deaf or Hard of Hearing; and (c) it is feasible for IDOC to provide such accommodation. In such cases, IDOC shall provide the accommodation requested by the inmate until the Auxiliary Aids and Services Assessment has been completed.

56. As set forth further in this Agreement, it is generally considered feasible to provide the following Auxiliary Aids and Services: hearing aids, batteries/maintenance of existing hearing aids or other devices, Qualified Interpreters, VRI, and accessible telecommunications (such as TTY and videophones/VRS).

57. IDOC will designate at least one (1) employee at each intake facility to serve as the Facility ADA Coordinator responsible for ensuring that Class Members receive the Auxiliary Aids and Services necessary for effective communication for access to programs and services requested prior to the completing of the Auxiliary Aids and Services Assessment.

58. All IDOC personnel who interface with inmates during the Intake process will receive training on responding to requests for Auxiliary Aids and Services.

59. Nothing in this Section precludes IDOC from expediting the time frame for performing the Auxiliary Aids and Services Assessment.

**IX. PROVISION AND MAINTENANCE OF AUXILIARY AIDS AND SERVICES TO DEAF AND HARD OF HEARING INMATES AND IMPLEMENTATION OF COMMUNICATION PLAN**

60. Subject to Paragraph 65 below, promptly following completion of an inmate's Auxiliary Aids and Services Assessment, IDOC will provide the inmate, at no cost to the inmate, the Auxiliary Aids and Services provided for in the inmate's Communication Plan.

61. IDOC shall exercise reasonable efforts to secure, in a timely manner, hearing aids for inmates whose Auxiliary Aids and Services Assessments indicate they should be provided a hearing aid or hearing aids.

62. IDOC shall keep an adequate supply of readily available hearing aid batteries so that hearing aid batteries can be replaced promptly upon a need for new batteries; hearing aid batteries shall be replaced within forty-eight (48) hours after an inmate notifies IDOC of the need for new batteries.

63. If an inmate's hearing aid is broken, IDOC shall exercise reasonable efforts to repair the hearing aid in a timely manner. IDOC must evaluate whether any additional Auxiliary Aids and Services are needed during the time the inmate is without a hearing aid.

64. The information contained in the inmate's approved Auxiliary Aids and Services Assessment concerning the Auxiliary Aids and Services the inmate requires to communicate effectively shall be made available to whoever is responsible for providing the inmate Auxiliary Aids and Services, such as counselors; doctors and other medical personnel; personnel communicating with the inmate concerning grievances, disciplinary proceedings, protective custody matters, pre-release and meetings, and transfer or classification meetings; and personnel communicating with the inmate concerning educational and vocational programs and services and library services.

65. IDOC may deny an inmate an Auxiliary Aid or Service provided for in the inmate's Communication Plan only if the Deaf or Hard of Hearing inmate refuses the Auxiliary Aid or Service, if IDOC has a clear and present safety and/or security concern that cannot be addressed in any manner other than by the denial of the Auxiliary Aid or Service, or the acquisition of the Auxiliary Aid or Service would result in an undue financial burden as defined in Paragraph 51 and consistent with the law (including 28 C.F.R. § 35.164), and IDOC provides the next best alternative means of accommodating the needs of the Deaf or Hard of Hearing inmate for access to the programs and services that do not implicate the identified security concern or present an undue financial burden. Any Auxiliary Aid or Service may be modified, revised, or removed from the Communication Plan by agreement of the inmate and the applicable facility ADA coordinator. If an inmate declines an Auxiliary Aid or Service set out in the inmate's Communication Plan, IDOC will provide the inmate a document advising the inmate of the right to such Auxiliary Aid or Service and ask the inmate to sign the document. The Auxiliary Aids and Services provided for in the inmate's Communication Plan will be provided without cost to the inmate unless the inmate intentionally damages, alters, trades, traffics with, or loses the accommodation. In such

circumstances, the inmate shall pay the replacement costs of the accommodation, including any postage.

**X. IDOC STAFF TRAINING ON MATTERS REGARDING DEAF AND HARD OF HEARING INMATES**

66. Within one hundred twenty (120) days of the Effective Date, IDOC shall develop materials to be used in the annual ADA training required by IDOC Administrative Directive No. 04.01.111 § H(1), which shall address:

- a. communicating with individuals who are Deaf and Hard of Hearing;
- b. the unique needs and problems encountered by individuals who are Deaf or Hard of Hearing;
- c. identification of various communication needs for inmates who are Deaf and Hard of Hearing;
- d. the proper use and role of Qualified Interpreters;
- e. a policy for hand restraints to be removed so that Deaf and Hard of Hearing inmates can effectively communicate through American Sign Language;
- f. the use of TTYs, Videophones, and other equipment that IDOC facilities must provide under this Settlement Agreement;
- g. the process for Deaf and Hard of Hearing inmates to effectively communicate with IDOC employees during all High Stakes Interactions;  
and
- h. such other information as relevant to facilitating compliance with this Settlement Agreement.

67. Within one hundred and fifty (150) days of the Effective Date, and on an annual basis thereafter, IDOC will conduct ADA training as required by IDOC Administrative Directive No. 04.01.111 § H(1) using the materials referenced in the preceding paragraph.

68. In addition to the training outlined above, prior to assuming the role of Agency ADA Coordinator or Facility ADA Coordinator, such employees shall receive training on the requirements of this Settlement Agreement, the Americans with Disabilities Act, and the Rehabilitation Act, as well as their specific duties in connection thereof.

## **XI. ORIENTATION**

69. Within 120 days of the Effective Date, IDOC shall provide the following accommodations for Deaf and Hard of Hearing inmates for the inmate orientation program and procedure, including any Statewide and facility-specific orientation programs and procedures:

- a. All written orientation materials including without limitation all orientation manuals, will be drafted in simple and plain English.
- b. All videos used during orientation shall include closed captioning using American Sign Language which has been reviewed for accuracy of the interpretation by the Illinois Deaf and Hard of Hearing Commission or a Qualified Interpreter.
- c. All orientation content communicated by video shall be interpreted into American Sign Language. Prior to their use, all materials translated into American Sign Language must be approved by a Qualified Interpreter or a qualified linguist proficient in both ASL and English to assess the accuracy of the interpretation.

- d. For all inmates attending orientation who IDOC has reason to believe are or may be Deaf or Hard of Hearing, IDOC shall meet with the inmate in a separate, subsequent orientation session to go over all orientation content provided orally at the initial orientation session. If the inmate communicates through American Sign Language, then during the second, separate orientation session, IDOC shall provide a Qualified Interpreter to assist the inmate in understanding any orientation content provided orally.
- e. IDOC shall reserve the first row of seats during the orientation for inmates who are disabled.

## **XII. COMMUNICATION DEVICES/TECHNOLOGIES FOR DEAF AND HARD OF HEARING INMATES**

70. Within ninety (90) days of the Effective Date, except for subsections (c) and (d) below which contain their own time frames, IDOC will make the following communication technologies available at any facility that houses a Deaf or Hard of Hearing inmate:

- a. Video Remote Interpreting (“VRI”): All facilities which house a Deaf or Hard of Hearing inmate for whom sign language interpretation is necessary for effective communication shall have VRI available for communication regarding medical issues. The VRI equipment shall be kept in good working condition at all times and, if broken, shall be fixed, or replaced if necessary, as soon as practicable. The VRI shall comport with 28 C.F.R. 35.160(d).
- b. Teletypewriter (“TTY”): All facilities which house a Deaf or Hard of Hearing inmate shall provide access to at least two TTY units or equivalent technology. IDOC shall enable all such equipment to access publicly

available relay service phone numbers including, but not limited to, 711 and 1-800 numbers. Such equipment shall be kept in good working condition at all times (subject to normal wear and tear and the intentional damaging of the equipment outside the control of IDOC) and if the equipment breaks, it shall be fixed or replaced as soon as practicable. Deaf and Hard of Hearing inmates shall have three times the amount of time to use TTY equipment as non-Deaf and Hard of Hearing inmates who use traditional voice telephones, and the Deaf and Hard of Hearing inmates will be informed of such additional time for TTY usage.

- c. Videophones/VRS: Within 6 months of the Effective Date, all facilities which house a Deaf or Hard of Hearing inmate who communicates primarily through ASL shall provide access to at least one Videophone/VRS. IDOC will ensure that all Videophones/VRS systems are able to call other Videophone/VRS services, which may require the use of 1-800 numbers. Videophones/VRS systems shall be designed to allow voice carry-over relay. The Videophone/VRS equipment shall be kept in good working condition at all times (subject to normal wear and tear and the intentional damaging of the equipment outside the control of IDOC), and if broken, shall be repaired or replaced as soon as practicable. Deaf and Hard of Hearing inmates shall have three times the amount of time to use videophones/VRS equipment than non-Deaf and Hard of Hearing inmates who use traditional voice telephones, and the Deaf and Hard of Hearing inmates will be informed of such additional time for such usage.



- d. Amplified Telephones: Within nine months of the Effective Date, all facilities which house a Deaf or Hard of Hearing inmate shall provide access to at least two telephones which allow amplification to at least 55 decibels. These amplified telephones shall be kept in good working condition at all times (subject to normal wear and tear and the intentional damaging of the equipment outside the control of IDOC), and if broken, shall be repaired or replaced as soon as practicable.
- e. Rates paid for use of telecommunications: IDOC shall ensure that Deaf and Hard of Hearing inmates pay no more than other inmates in the making and receiving of telephone calls regardless of the means of the call.

71. The list of technological equipment in this section is not exhaustive. IDOC agrees to keep abreast of evolving technology and to add additional equipment to reflect technological advances, as warranted and subject to financial considerations.

72. Deaf and Hard of Hearing inmates shall have access to the technological equipment during the same times of day and with no greater restrictions, limitations, or access than those placed on non-Deaf or Hard of Hearing inmates who use regular telephone equipment, except that in some facilities where communication equipment is not located in the cell houses, IDOC shall grant appointments to use the equipment the same day or, at the latest, before 5:00 p.m. the following day, provided that inmates may only make a request for such appointments during the time when non-Deaf or Hard of Hearing inmates have access to regular telephone equipment.

### **XIII. TELEVISION FOR DEAF AND HARD OF HEARING INMATES**

73. Within one hundred eighty (180) days of the Effective Date, IDOC will ensure that all audio-visual media already owned shall display open or closed captioning, and any new audio-visual media purchased for inmate use in IDOC facilities shall support open or closed captioning.

74. New televisions purchased by IDOC for inmate use shall support open or closed captioning.

75. Movies shown through the IDOC system will include either open or closed captioning. Any television in a common area of a facility that houses Deaf and Hard of Hearing inmates must be set so that the captioning is turned on at all times.

76. IDOC shall permit Deaf and Hard of Hearing inmates to purchase televisions which support open or closed captioning with the inmate's own funds to the same extent that non-Deaf and Hard of Hearing inmates are allowed to purchase televisions. In the event that the closed captioning feature contained on televisions purchased through a facility Commissary malfunctions, IDOC personnel will work with the Deaf or Hard of Hearing inmate to address and resolve the problem as soon as practicable.

77. IDOC shall provide Deaf and Hard of Hearing inmates the opportunity to use (at no cost to them) and possess headphones that fit over the ears (compared to ear buds) to allow them to hear television programming without disturbing other inmates, if such headphones are listed on the inmate's Communication Plan. Such headphones become the property of the inmate to whom they are provided, and if the inmate is transferred to another facility, the headphones will be accepted for use by the inmate at the new facility unless the inmate's use of the headphones at the new facility presents safety or security concerns. If the headphones break, and it is not the fault of the inmate, or it is because of normal wear and tear, IDOC shall repair or replace the

headphones as soon as practicable. If such over-the-ear headphones are insufficient for the inmate, other accessories, such as in-line amplifiers or equalizers shall be considered.

#### **XIV. VISUAL AND TACTILE ALERT NOTIFICATIONS FOR DEAF AND HARD OF HEARING INMATES**

78. Beginning shortly after the Effective Date and continuing thereafter IDOC will begin making reasonable efforts to provide, and no later than one hundred eighty (180) days of the Effective Date IDOC shall provide Deaf and Hard of Hearing inmates with a safe and effective tactile notification system that will advise them of events such as the arrival of visitors, commencement of meals, showers, yard time, medical appointments, evacuations, and emergencies. IDOC shall ensure that visual or tactile notification to all Deaf and Hard of Hearing inmates occurs any time a “warning shot” is fired or inmates are ordered to lie on the ground. Deaf and Hard of Hearing inmates will be notified and trained regarding the notification system(s) in use by the IDOC.

#### **XV. EQUAL ACCESS TO PRISON EMPLOYMENT**

79. IDOC shall not deny an employment opportunity to an otherwise qualified Deaf or Hard of Hearing inmate unless, after conducting an individualized assessment, including consultation with the inmate, it is determined that the Deaf or Hard of Hearing inmate cannot perform the essential functions of the employment opportunity with or without a reasonable accommodation.

#### **XVI. HAND RESTRAINTS REGARDING DEAF AND HARD OF HEARING INMATES**

80. Within sixty (60) days of the Effective Date, IDOC shall implement a policy relating to the removal of handcuffs of Deaf and Hard of Hearing inmates when they are communicating through American Sign Language.

81. Deaf and Hard of Hearing individuals using TTY machines or Videophones shall also be permitted to use the equipment without hand restraints.

#### **XVII. FACILITY AND CELL ASSIGNMENTS AND TRANSFERS OF DEAF AND HARD OF HEARING INMATES**

82. A Deaf or Hard of Hearing inmate may not be transferred solely because of the inmate's Deaf or Hard of Hearing status to a higher security prison, or to a prison which does not offer comparable programming to the inmate's current parent facility.

83. If a Deaf or Hard of Hearing inmate requests to be housed with another Deaf or Hard of Hearing inmate, IDOC shall consider such request.

#### **XVIII. CREATION AND DISSEMINATION OF MATERIALS MEMORIALIZING DEAF AND HARD OF HEARING INMATES' RIGHTS**

84. Within one hundred twenty (120) days of the Effective Date, IDOC will update, each facility's Orientation Manual to include information about the rights of Deaf and Hard of Hearing inmates, as guaranteed by this Settlement Agreement, along with the services available to them (hereinafter "rights materials").

85. IDOC will provide current Deaf and Hard of Hearing inmates, and any future Deaf and Hard of Hearing inmates, with a new Orientation Manual, inclusive of rights materials.

#### **XIX. MONITORING AND REPORTING**

86. The Court, with the assistance of Class Counsel, shall act as a monitor ("Monitor") concerning compliance with this Settlement Agreement.

87. In the role of Monitor, the Court shall receive and analyze information regarding IDOC's compliance with the Settlement Agreement, assess and make findings regarding IDOC's compliance, and enter appropriate orders to ensure both IDOC's compliance and adequate monitoring of IDOC's compliance.

88. In assisting the Court in its role as Monitor, Class Counsel shall receive and analyze information provided by IDOC as described herein, monitor matters relating to Deaf and Hard of Hearing inmates (via such avenues as inmate grievances, inmate interviews, and prison site visits), conduct fact investigation as appropriate, identify actual areas of noncompliance with the Settlement Agreement, attempt resolution of compliance issues with IDOC without Court intervention, make the Court aware of issues that may merit the Court's attention, and move for appropriate action by the Court in the event an issue cannot be resolved without Court intervention. Class Counsel may request that IDOC provide documents or other information reasonably related to the review and evaluation of IDOC's compliance with the Settlement Agreement; should IDOC refuse to provide such documents or information, the Court may determine whether such documents or information should be provided.

89. In addition to any other information requested by the Court concerning IDOC's compliance with the Settlement Agreement, beginning one-hundred twenty (120) days following the Effective Date, and every one-hundred twenty (120) days thereafter, IDOC shall provide the Court and Class Counsel with a report, generated at IDOC's expense and publicly filed (except that, as indicated below, certain elements of the report may be filed under seal in order to protect the security of IDOC facilities and the medical privacy of IDOC inmates), which shall include the following elements:

a. Implementation of Settlement Generally

- (i) a report as to the status of implementation of each of the provisions of this Settlement Agreement, which addresses, in separate sections for each of Sections IV through XIX of this Agreement, the factual information showing whether and how IDOC has implemented the

provisions in each section, including the documents and information set forth in more detail below;

b. Deaf and Hard of Hearing Inmates

- (i) a listing, to be updated as needed with each successive report, of all inmates identified as Deaf or Hard of Hearing and the location where each such inmate is housed (may be filed under seal);

c. Hearing Screenings:

- (i) a copy of any policy or procedure adopted pursuant to Paragraphs 32, 34 and 36 of this Agreement, and the date(s) on which such policies and procedures were implemented;
- (ii) a report of: (a) the number of inmates who since the date of this Agreement have gone through Intake Physical Examination; (b) the number of such inmates who have received a Hearing Screening; and (c) if applicable, a description of the reasons why any inmates did not receive a Hearing Screening;
- (iii) a report of: (a) the number of inmates who since the date of this Agreement have gone through a periodic physical examination; (b) the number of such inmates who have received a Hearing Screening; and (c) if applicable, a description of the reasons why any inmates did not receive a hearing screening;
- (iv) a report of: (a) the names of the inmates who since the date of this Agreement requested a Hearing Screening; (b) whether each such inmate received the requested Hearing Screening; and (c) if

applicable, the reasons why the inmate did not receive the requested Hearing Screening (may be filed under seal);

d. Audiological Examinations:

(i) a report listing each inmate who, based on a Hearing Screening after the date of this Agreement, was found to require an Audiological Evaluation, and a copy of any reports of any such inmate's Hearing Screening(s) (may be filed under seal);

(ii) a report of whether each such inmate who, based on a Hearing Screening after the date of this Agreement, was found to require an Audiological Evaluation, received the Audiological Evaluation; and, if applicable, the reasons why the inmate did not receive the Audiological Evaluation (may be filed under seal);

(iii) a report of the Audiological Evaluations of each inmate who received an Audiological Evaluation since the date of this Agreement, and a copy of the reports of such Audiological Evaluations (may be filed under seal);

e. Qualified Specialists, Auxiliary Aids and Services Assessments, and Communication Plans:

(i) a description of facts showing whether and how IDOC has implemented the requirements in Paragraphs 45-59 of this Agreement;

(ii) a report of the names and hire dates of any individuals serving the IDOC as Qualified Specialists, or Qualified Interpreters;

- (iii) a copy of the written record of any Auxiliary Aids and Services Assessments provided to any Deaf or Hard of Hearing inmate (may be filed under seal);
- (iv) a copy of all Communication Plans for Deaf and Hard of Hearing inmates completed or updated during the relevant time period (may be filed under seal);
- (v) a report of whether determinations made by Qualified Specialists as set out in any Communication Plans are being implemented and, if applicable, a description of the instances in which determinations made by Qualified Specialists have not been implemented, and the reasons why (may be filed under seal);

f. Deaf and Hard of Hearing Inmate Grievances:

- (i) a copy of all grievances filed after the date of this Agreement alleging facts that, if true, would be violations of this Settlement Agreement (may be filed under seal);
- (ii) a copy of any responses to such grievances and a description of the resolution of such grievances (may be filed under seal);

g. Deaf and Hard of Hearing Centralized Database:

- (i) a report describing the implementation of any centralized database required pursuant to Paragraphs 39-42 of this Agreement and the date(s) that such database became effective and operational to meet the requirements in Paragraphs 39-42;



h. Orientation:

- (i) a description of facts showing whether and how IDOC has implemented Paragraph 69 of this Agreement;
- (ii) a copy of the facility inmate orientation manuals implemented pursuant to this Settlement Agreement during the current reporting period, and the date(s) upon which such manuals became effective;

i. ADA Training:

- (i) a report describing facts showing whether and how IDOC has implemented the requirements in Paragraphs 66-68 of the Agreement;
- (ii) a copy of all ADA training materials implemented by IDOC pursuant to this Settlement Agreement, and the date(s) upon which such materials became effective;
- (iii) a copy of all policies and procedures regarding IDOC ADA training created or updated after the date of this Settlement Agreement;

j. ADA Coordinators:

- (i) a list of ADA coordinators at each facility and the Agency ADA Coordinator;

k. Visual/Tactile Notification Systems:

- (i) a report describing any visual or tactile notification system implemented, the date(s) upon which such systems were implemented, and the method by which Deaf and Hard of Hearing Inmates have been notified of any such system(s);

l. Communication Devices and Technologies:

- (i) a report of facts describing whether and how IDOC has implemented the requirements in Paragraph 70-79 of this Agreement;
- (ii) data showing Deaf and Hard of Hearing inmate's usage of communication services including TTY and videophones/VRS;

m. Employment Opportunities:

- (i) a description of any instance in which any Deaf or Hard of Hearing inmate was denied an employment opportunity (may be filed under seal);

n. Identification Cards:

- (i) a list of inmates who after the date of the Settlement Agreement received an Identification Card indicating their hearing issue;

o. Hand Restraints and Cell Assignments:

- (i) a copy of all policies and procedures relating to the implementation of Paragraphs 80-81 of this Agreement, and a description of the date(s) on which such policies and procedures were implemented;
- (ii) a description of facts showing whether and how IDOC has implemented Paragraphs 80-81 of the Agreement;

p. Interpreters:

- (i) a record showing interpreter services provided after the date of the Agreement, which includes the inmate for whom each interpreting service was provided; the date the service was provided; the

reason/event for which the service was provided; and the name of the interpreter;

q. Annual Compliance Reports:

- (i) copies of all annual compliance reports relating to Deaf and Hard of Hearing inmates created pursuant to IDOC Administrative Directive No. 04.01.111 § II(G)(4)(d).

90. Materials and information provided in any report made pursuant to Paragraph 89 do not need to be re-supplied in subsequent reports; only new information since the date of the last report must be provided. However, data and incidents subject to prior reports must be updated with current information at the time of any report. All reports submitted by IDOC pursuant to this Agreement are for the sole purpose of determining compliance with this agreement.

91. Beginning one-hundred-fifty (150) days following the Effective Date, and every one-hundred-twenty (120) days thereafter, or as otherwise scheduled by the Court, the Court shall conduct a hearing with IDOC counsel and Class Counsel to discuss issues relating to IDOC's compliance with this Settlement Agreement, including: the information generated in the compliance reports outlined above and any further actions that need to be taken by the Court or the Parties. The Court may schedule other hearings as well, as the Court deems fit, to deal with issues as they arise relating to the monitoring and enforcement of this Agreement.

**XX. COURT'S RESOLUTION OF ISSUES OF NON-COMPLIANCE**

92. If Class Counsel believes that IDOC may be in violation of the Settlement Agreement, then Class Counsel may investigate and bring any motion to the Court's attention regarding any such potential non-compliance. Consistent with the Federal Rules of Civil Procedure and the Local Rules for the Northern District of Illinois, Class Counsel and IDOC

counsel shall meet and confer and attempt to resolve any issues of potential non-compliance prior to such issues being the subject of any motion with the Court. The Parties are required to negotiate through this process in good faith.

93. If after a hearing the Court finds that IDOC has been in substantial non-compliance with the Settlement Agreement, then the Court has the power to enter, and shall enter, whatever orders are necessary to ensure compliance with the terms of the Settlement Agreement, including ordering equitable or injunctive relief such as requiring IDOC to take actions to become compliant with the terms of this Settlement Agreement. The Court also may award reasonable attorney's fees for any work expended by Class Counsel in investigating and litigating such non-compliance. If the Court does not make a finding of non-compliance, Class Counsel will not be entitled to fees and will not seek them.

94. For the Court to have the power to enter orders necessary to ensure compliance with the terms of this Settlement pursuant to Paragraph 93 and the other provisions of this Settlement Agreement, the Court must simply find that there has been substantial non-compliance with the Settlement Agreement, and need not make any additional findings that the non-compliance with the terms of the Settlement Agreement (or the conduct by IDOC constituting or resulting in non-compliance with the Settlement Agreement) constitutes a violation of federal law or is the result of deliberate indifference. "Substantial non-compliance" as used here means acts or omissions which do not meet the requirements of a particular provision of this Settlement Agreement and have a material effect on the ability of a Party to meet the goals and objectives of the relevant provision. In determining whether particular acts or omissions constitute "substantial non-compliance," the Court must consider, at a minimum, the following factors: the nature of the alleged non-compliance, the extent to which the alleged non-compliance deviates from the

particular settlement terms, such as the number of facilities or inmates affected, the length of any delay in implementing a particular provision in the time allotted under the Agreement, the duration of the alleged non-compliance, and the extent to which the alleged non-compliance has a material effect on the rights of deaf and hard of hearing inmates or the goals and objectives of this Settlement Agreement. No finding of any particular intent – such as deliberate indifference, a lack of diligence, or intentional violation of the Settlement Agreement – is required for a determination of “substantial non-compliance;” however, in fashioning an appropriate remedy for any substantial non-compliance, the Court may consider intent, including any diligence or lack thereof in causing or avoiding any “substantial non-compliance” and whether efforts have been made to cure any “substantial non-compliance.” Neither side will take any position that is contrary to the enforcement terms agreed to herein during the court’s supervision of IDOC’s implementation of the terms of this Settlement Agreement.

#### **XXI. DELIVERY OF INFORMATION TO CLASS COUNSEL**

95. Delivery of information to Class Counsel pursuant to this Settlement Agreement shall be made to: Equip for Equality, Attn.: Barry C. Taylor, 20 North Michigan Avenue, Suite 300, Chicago, Illinois 60602; Winston & Strawn LLP, Attn.: Robert L. Michels, 35 W. Wacker Drive, Chicago, Illinois 60601; Alan Mills, Uptown People’s Law Center, 413 N. Sheridan Rd., Chicago, IL, 60640; and Howard A. Rosenblum, National Association of the Deaf, 8630 Fenton Street, Suite 820, Silver Spring, Maryland 20910. Delivery through electronic means, such as through email or electronic filing with the Court, is acceptable.

#### **XXII. NOTICE**

96. IDOC shall work with Class Counsel to provide notice of the proposed settlement to all Class Members. The Notice shall be in the form of Exhibit B hereto.

### **XXIII. ATTORNEYS' FEES AND COSTS**

97. In full settlement of all attorneys' fees incurred in connection with the Litigation, IDOC shall pay to Class Counsel the amount of \$1,500,000.00 ("Fee Payment"). With respect to the first half of this Fee Payment (\$750,000.00), IDOC will voucher that amount (i.e. submit that amount to the Illinois Office of the Comptroller for payment) by August 1, 2018, if all of the following three conditions (collectively, the "Three Voucher Conditions") have been met by June 30, 2018: (i) this Settlement Agreement is fully executed; (ii) the Court approves this Settlement Agreement; and (iii) all paperwork that is necessary for the vouchering of this half of the amount is submitted to IDOC. With respect to the second half of the Fee Payment, IDOC will voucher that amount by August 1, 2018, if by June 30, 2018 the Three Voucher Conditions are met and IDOC has received its full requested supplemental appropriation for Fiscal Year 2018. If the Three Voucher Conditions are not met by June 30th for the first half of the Fee Payment, then IDOC will voucher the entire amount (both halves) once the Voucher Conditions have been met and within 30 days of when the Illinois General Assembly fully appropriates a full Fiscal Year 2019 budget and the Governor authorizes the funds to IDOC for the payment. The date of the actual payment of any amount that IDOC vouchers is subject to the authority of the Illinois Comptroller.

98. Nothing in this Section precludes Class Counsel from seeking reasonable attorneys' fees pursuant to Paragraphs 92-93 above.

### **XXIV. STIPULATION PURSUANT TO THE PRISON LITIGATION REFORM ACT, 18 U.S.C. §3626**

99. For purposes of this Settlement Agreement only and in order to settle this matter, the parties agree and represent that this Settlement Agreement complies in all respects with the provisions of 18 U.S.C. 3626(a).

100. The parties agree and represent that the prospective relief specifically contained in this Settlement Agreement are narrowly drawn, extend no further than necessary, are the least intrusive means necessary to address the Plaintiffs' allegations, and are not intended to have an adverse impact on public safety or the operation of a criminal justice system. The parties agree to file an agreed motion asking the Court, as part of its evaluation of the fairness of the Settlement Agreement, to enter an order finding that the provisions of the Settlement Agreement are narrowly drawn, extend no further than necessary to address the violations of federal rights alleged by Plaintiffs, are the least intrusive means necessary to address those alleged violations, and are not intended to have an adverse impact on public safety or the operation of a criminal justice system.

#### **XXV. MODIFICATION**

101. The terms of this Settlement Agreement may be modified only by the Court upon written agreement by the Parties and the Office of the Illinois Attorney General.

#### **XXVI. JUDICIAL RETENTION OF JURISDICTION OF THIS MATTER**

102. The Court shall retain jurisdiction to oversee, supervise, and enforce the terms and conditions of this Settlement Agreement, to resolve disputes arising out of or relating to this Settlement Agreement, and for such other actions as may be necessary or appropriate for execution, construction, or implementation of this Settlement Agreement, as limited by the Termination provisions below.

103. The Parties and the Court shall not take any action to remove, challenge or undermine the Court's jurisdiction over this matter, including to interpret and enforce the provisions of this Settlement Agreement, prior to the Termination of this Settlement Agreement per the terms outlined herein. If for any reason the Court were to lose or decline to assert

jurisdiction over this matter consistent with the terms of this Settlement Agreement, Plaintiffs shall have the right to proceed with this action and fully litigate their claims.

## **XXII. TERMINATION OF JURISDICTION/SETTLEMENT COMPLETION**

104. The Court shall retain such jurisdiction over this matter, including to interpret and enforce this Settlement Agreement, and enter appropriate orders requiring compliance with the Agreement, for not less than two years following the Effective Date. If the Court finds that, during the two years following the Effective Date, IDOC has failed to show that it is in substantial compliance with any portion of this Settlement Agreement, then the Court will extend the period of its jurisdiction to supervise and enforce any such portion of this Settlement Agreement, until IDOC shows it has achieved substantial compliance, for a period of time not to exceed two additional years. Subject to the provisions in Paragraph 107, beginning two years after the Effective Date, the Court's jurisdiction shall terminate with respect to any and all provisions of this Settlement Agreement with which the Court has found IDOC in substantial compliance.

105. Subject to the provisions in Paragraph 103 allowing Plaintiffs to proceed with their claims in certain circumstances, the Class, and each member thereof, agrees to release, and hereby releases and forever discharges the Defendant and the State of Illinois, their agents, former and present employees, successors, heirs and assigns and all other persons ("Releasees") from all actions, claims, demands, suits, causes of action, controversies, and disputes seeking equitable relief (but not claims, demands, suits, causes of action, controversies, or disputes for damages) and any related costs and expenses of such released claims, demands, suits, causes of action, controversies, and disputes, which arose or could have arisen from the facts alleged in or claims made in this Litigation, and which the Class, and each member thereof, owns, has or may have



against the Releasees, whether known or unknown, from the beginning of time until the Effective Date.

106. No promise has been made to pay or give the individual representatives of the Class, or any Class Member, any greater or further consideration other than as stated in this Agreement. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties hereto concerning the subject matter of this Agreement are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party hereto to any other Party concerning the subject matter of this Agreement. All prior and contemporaneous negotiations, possible and alleged agreements, representations, covenants and warranties, between the Parties concerning the subject matter of this Settlement Agreement are merged into this Settlement Agreement. This Agreement contains the entire agreement between the Parties.

107. The Court's jurisdiction shall terminate, and the obligations under this Settlement Agreement shall be complete, consistent with the following procedures:

- a. At any time after two years from the Effective Date, IDOC may make a written request that the Court terminate the Court's jurisdiction and the monitoring and reporting process described herein ("Termination Request"). The request can relate to this entire Settlement Agreement, or any portion thereof.
- b. Following any Termination Request, Plaintiffs, through Class Counsel, shall have not less than sixty (60) days to respond. During those sixty (60) days, Plaintiffs shall have the opportunity to obtain information from IDOC concerning factual issues relevant to the determination of compliance.

Should IDOC not provide reasonably complete and timely information during this period, Plaintiffs may ask the Court to order IDOC to do so, and if the Court grants Plaintiffs' request, the Court shall extend Plaintiffs' time to respond to the Termination Request as appropriate, to allow Plaintiffs to receive sufficient information and evaluate it.

- c. If Plaintiffs oppose the Termination Request, in whole or in part, Plaintiffs must file an objection to the Termination Request within sixty (60) days, or within any longer time frame ordered by the Court.
- d. The Court will grant IDOC's Termination Request and terminate its jurisdiction and the reporting process, if the Court finds that IDOC has shown it has substantially complied with the terms of the Settlement Agreement. The Court may terminate its jurisdiction and the reporting process as it relates to the entirety of this Agreement, or any portion thereof. IDOC shall not be deemed in substantial compliance with the Settlement Agreement (or any portion thereof) if there have been a significant number of violations of provisions of the Settlement Agreement (or any portion thereof).
- e. Termination of the Court's jurisdiction over the Settlement Agreement, in whole or in part, may occur only in the event ordered by the Court, upon a successful Termination Request consistent with the terms of this Agreement.

108. The Settlement Agreement shall remain in effect, and the Court shall retain its jurisdiction over the Settlement Agreement subject to the terms of this Settlement Agreement and

all applicable statutes, Rules of Court, and case law for no more than four (4) years after the Effective Date.

**XXIII. AGREEMENT TO ENTRY OF SETTLEMENT AGREEMENT**

109. IDOC agrees to advocate for, and not to oppose entry of, this Settlement Agreement by this Court, or to challenge any provision of this Settlement Agreement prior to entry of the Settlement Agreement.

110. The parties agree that, upon acceptance of this Settlement Agreement by the Court, the parties shall consent to proceed before the Magistrate Judge in this matter for the remainder of this litigation. This litigation will not be dismissed, and will remain on the Magistrate Judge's active docket, until the Court's jurisdiction terminates consistent with the terms of this Settlement Agreement.