

**Voluntary Resolution Agreement  
Between the United States of America and University of Vermont Medical Center**

**I. Parties to Agreement**

1. The Parties to this Voluntary Resolution Agreement (“Agreement”) are:
  - a. the United States of America (“United States”) by and through the U.S. Department of Justice and U.S. Attorney’s Office for the District of Vermont (“DOJ”), pursuant to its jurisdictional authority under Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36, (“Title III of the ADA”), and the U.S. Department of Health and Human Services, Office for Civil Rights (“HHS”), pursuant to its jurisdictional authority under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, and its implementing regulation, 45 C.F.R. Part 84 (“Section 504”) and Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116 and its implementing regulation, 45 C.F.R. Part 92 (“Section 1557”), and
  - b. University of Vermont Medical Center f/k/a Fletcher Allen Health Care (“UVMHC”).

**II. Background**

2. This matter was initiated when two individuals brought complaints to DOJ alleging violations of Title III of the ADA and its implementing regulation.
3. Complainant 1 alleged that UVMHC discriminated against her by failing to provide her with the full and equal enjoyment of UVMHC’s goods, services, facilities, privileges, advantages or accommodations and by failing to provide appropriate auxiliary aids and services when necessary for effective communication while she was receiving medical treatment at UVMHC on April 24, 2013.
4. Complainant 2 alleged that UVMHC discriminated against him, while he was receiving medical treatment at UVMHC on February 28, 2013 and in July 2013, by failing to provide him with the full and equal enjoyment of UVMHC’s goods, services, facilities, privileges, advantages or accommodations and by failing to provide appropriate auxiliary aids and services when necessary for effective communication.
5. Both Complainants are deaf and use American Sign Language (“ASL”) as their primary means of communication. Each is an individual with a disability within the meaning of Title III of the ADA, 42 U.S.C. § 12102(1), Section 504, at 29 U.S.C. § 705(9)(B), and Section 1557, 45 C.F.R. § 92.4.
6. As a result of these complaints and in cooperation with DOJ, HHS initiated a compliance review of UVMHC with regard to UVMHC’s policies and procedures for ensuring effective communication with individuals who are deaf or hard of hearing to determine UVMHC’s compliance with Section 504 and Section 1557.

7. The United States has conducted an investigation of the Complainants' allegations. UVMMC has cooperated in that investigation. UVMMC initially provided significant data demonstrating its efforts to utilize numerous techniques and technologies to ensure effective communication for individuals who are deaf or hard of hearing. As an academic medical center, UVMMC understands the importance of training and is committed to improving its process for providing appropriate auxiliary aids and services for persons with disabilities. During on-going discussions with the United States, UVMMC has also worked diligently to continue to improve policies, training, procedures and its notification to staff, patients and the public about auxiliary aids and services available to Patients and Companions who are deaf or hard of hearing.

### **III. Jurisdiction**

8. Title III of the ADA, 42 U.S.C. §§ 12181–12189, and its implementing regulation, 28 C.F.R. Part 36, prohibit public accommodations, including hospitals, from discriminating on the basis of disability in the full and equal enjoyment of their goods, services, facilities, privileges, advantages or accommodations.
9. The Attorney General is authorized, pursuant to section 308(b)(1)(B) of the ADA, to bring a civil action under Title III, enforcing the ADA in any situation where a pattern or practice of discrimination is believed to exist or a matter of general public importance is raised.
10. UVMMC, a domestic non-profit corporation, is a “public accommodation,” as defined in 42 U.S.C. § 12181(7)(F) and 28 C.F.R. § 36.104. As a public accommodation, it must comply with the ADA. UVMMC recognizes that the ADA prohibits public accommodations, including hospitals, from discriminating on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). UVMMC takes its responsibility under the ADA seriously and is committed to having policies and procedures in place to facilitate appropriate access to its services.
11. Section 504, 42 U.S.C. § 794(a), and its implementing regulation, 45 C.F.R. Part 84, prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance. A recipient of HHS financial assistance shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question. 45 C.F.R. § 84.52(d).
12. Section 1557, 42 U.S.C. § 18116, and its implementing regulation, 45 C.F.R. Part 92, prohibit discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. Section 1557 provides that, except as provided in Title I of the Patient Protection and Affordable Care Act (ACA), an individual shall not, on the grounds prohibited under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving federal financial assistance or under any program or activity

that is administered by an Executive Agency or any entity established under Title I of the ACA. A recipient shall provide appropriate auxiliary aids and services to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question and shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others in health programs and activities, in accordance with the standards found at 28 C.F.R. §§ 35.160 through 35.164 (regulation implementing Title II of the ADA). 45 C.F.R. § 92.202(a)-(b). The relevant provisions of the regulation implementing Section 1557 went into effect on July 18, 2016.

13. HHS is responsible for investigating complaints and conducting compliance reviews to determine if recipients of HHS funding operate their programs and activities in compliance with Section 504 and Section 1557. HHS has the authority, where appropriate, to negotiate and secure voluntary compliance agreements. If noncompliance cannot be corrected by informal means, HHS may take any action authorized by law.
14. UVMHC is a recipient of financial assistance from HHS, including through its participation in the Medicare, Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.*, and Medicaid, Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*, programs.

#### **IV. Purpose of Agreement**

15. The Parties have come to a mutual understanding about the provision of appropriate auxiliary aids and services to ensure effective communication with individuals with disabilities, particularly as it relates to the provision of necessary interpreter services for after-hours Emergency Department visits. The Parties have determined that this matter can be resolved promptly and without further burden or the expense of additional investigation, enforcement proceedings or litigation.
16. In consideration of the terms of this Agreement, the United States agrees to refrain from undertaking further investigation or taking steps toward the filing of a civil suit regarding DJ # 202-78-103, DJ # 202-78-104, and/or HHS/OCR #16-244198 against UVMHC based on the allegations lodged against UVMHC, except as provided in this Agreement. Except as related to the above-mentioned complaints, nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute enforcement proceedings against this entity for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA, Section 504, or Section 1557.
17. UVMHC agrees to the terms stipulated in this Agreement and affirms that it fully intends to comply with all applicable provisions of Title III of the ADA, Section 504, and Section 1557. Nothing in this Agreement shall be construed or deemed as an admission by UVMHC of any liability or fault regarding any of Complainants' factual allegations by UVMHC, that it engaged in any wrongful or illegal activity, that any of the United States' allegations are true, or that any person suffered any injury as a result of the events as alleged by the United States, and nothing in this Agreement shall be construed as a waiver by UVMHC to defend against any allegation claiming that UVMHC violated any

statutes, regulations, or rules administrated by the United States or to prevent or limit the right of these entities to challenge any claim alleging noncompliance under the ADA, Section 504, or Section 1557. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other tribunal as an admission or concession of liability or wrongdoing of any nature on the part of UVMMC except in an action challenging UVMMC's compliance with this Agreement.

## V. Definitions

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

18. The term "Auxiliary Aids and Services" includes qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.
19. The term "Duration of this Agreement" means the period of time this Agreement remains in effect.
20. The term "Effective Date of this Agreement" means the date the Agreement is signed by all Parties.
21. The term "Patient" as used herein means any individual who is seeking or receiving health care services (whether inpatient or outpatient, including consultations, treatment, scheduling of appointments, discussion of billing issues, attending health education classes, and other health care services) from UVMMC.
22. The term "Companion" means a family member, friend, or associate of a Patient who, along with the Patient, is an appropriate person with whom UVMMC should communicate.
23. For the purposes of this Agreement, the term "Primary Consideration" means that UVMMC personnel will inquire as to the choice of auxiliary aid or service of the Patient or Companion who is deaf or hard of hearing and will honor the individual's request unless, based on an objective assessment, another equally effective means of communication is available or that use of the means chosen would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. *See* 28 C.F.R. § 35.160(b)(2) (incorporated by 45 C.F.R. § 92.202), 28 C.F.R. part 35, App. A. at 658 (Jul. 1, 2016).
24. The term "Qualified Interpreter" means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively,

accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified Interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using American Sign Language (ASL) is not necessarily qualified to interpret orally. Someone who has only a rudimentary familiarity with sign language or finger spelling is not a Qualified Interpreter under this Agreement. Likewise, someone who is fluent in ASL but unable to translate spoken communication into ASL or to translate signed communication into spoken words is not a Qualified Interpreter.

25. The term “UVMHC personnel” means all employees who have or are reasonably likely to have direct contact with Patients or Companions, as defined herein, and independent contractors with contracts to work for UVMHC who have or are reasonably likely to have direct contact with Patients or Companions, as defined herein, including, without limitation, nurses, physicians, social workers, technicians, admitting personnel, receptionists, telephone operators, billing staff, security staff, counselors, and therapists, and volunteers. The term also includes all affiliated physicians or other health care professionals who have medical staff privileges that permit them to see and/or treat Patients at UVMHC.
26. The term “video remote interpreting” (“VRI”) means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in 28 C.F.R. § 36.303(f) and 28 C.F.R. § 35.160(d), as set forth in Paragraph 41.

## **VI. Remedial Actions**

### **A. General Nondiscrimination Obligations**

27. Nondiscrimination. UVMHC shall provide individuals with disabilities, including Patients and Companions who are deaf or hard of hearing with an equal opportunity to participate in, and enjoy the benefits of its goods, services, facilities, program, or activity.
28. Discrimination by Association. UVMHC shall not exclude from participation in or deny the benefits of its goods, services, facilities, program or activity to any individual or entity because of the disability of an individual with whom the individual or entity is known or believed to have a relationship or association.
29. Retaliation and Coercion. UVMHC shall not retaliate against or coerce in any way any person who made, or is making, a complaint or exercised, or is exercising, his or her rights under Title III of the ADA, Section 504, or Section 1557, or who has assisted or participated in the investigation of any matter covered by this Agreement.
30. Designation of Civil Rights Coordinator. Within thirty (30) calendar days of the Effective Date of this Agreement, UVMHC shall designate at least one employee to be responsible for:

- a. the coordination of UVMMC's efforts to comply with Title III of the ADA, Section 504, and Section 1557;
- b. the investigation of any grievance communicated to UVMMC alleging noncompliance with Title III of the ADA, Section 504, or Section 1557; and
- c. UVMMC's compliance with the terms of this Agreement set forth herein, including coordinating and/or conducting trainings, maintaining records, providing compliance reports and logs, and creating and modifying policies and procedures.

**B. Provision of Effective Communication**

- 31. Appropriate Auxiliary Aids and Services. Consistent with Title III of the ADA, Section 504, and Section 1557, UVMMC will furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities, and take appropriate steps to ensure that communications with Patients, Companions, and members of the public who are deaf or hard of hearing are as effective as communication with others. UVMMC will provide appropriate auxiliary aids and services in a timely manner, in accessible formats, and in such a way so as to protect the privacy and independence of the individual with a disability consistent with the provisions set forth in this Agreement.
- 32. Prohibition of Surcharges. All appropriate auxiliary aids and/or services required by this Agreement will be provided free of charge to Patients and Companions who are deaf or hard of hearing.
- 33. Program Administrator. Within ninety (90) calendar days of the Effective Date of this Agreement, UVMMC shall designate at least one UVMMC employee as a Program Administrator, who shall be available twenty-four (24) hours a day, seven (7) days a week, to answer questions and provide appropriate assistance regarding immediate access to, and proper use of, the appropriate auxiliary aids and services, including Qualified Interpreters, required by this Agreement. The Program Administrator, or any individual to whom the duties are delegated when the Program Administrator is incapacitated or unavailable, will know where auxiliary aids are stored and how to operate any auxiliary aid and will be responsible for the maintenance, repair, replacement, and distribution of any auxiliary aid. UVMMC shall circulate and post broadly within the hospital the name and/or title, telephone number, function, and office location of the Program Administrator(s), including a TTY telephone number, through which the Program Administrator(s) can be contacted twenty-four (24) hours a day seven (7) days a week by UVMMC personnel, Patients, or Companions. The person designated as the Program Administrator may be, but it not required to be, the same person as the Civil Rights Coordinator described in Paragraph 30.
- 34. Timing of Communication Assessment and Determination. UVMMC personnel will perform and document a communication assessment as part of each initial Patient assessment, and reassess communication effectiveness regularly throughout the visit, as described herein. If there is any indication from an initial assessment, inquiry, request, or UVMMC's observations that a Patient or Companion is deaf or hard of hearing and auxiliary aids and services are necessary, UVMMC personnel who are primarily

responsible for coordinating and/or providing patient care services, including but not limited to medical providers and Case Management & Social Work (“CMSW”) staff, in consultation with the Patient or Companion wherever possible, will determine which appropriate auxiliary aids and services are necessary. The initial assessment and determination of which appropriate auxiliary aids and services are necessary will be made at the earliest of the following:

- a. the time an appointment is scheduled, provided that the Patient or Companion communicates the need for auxiliary aids or services;
- b. the time UVMMC becomes aware that a Patient or Companion who may require auxiliary aids or service is en route to UVMMC; or
- c. the time the Patient or Companion initially comes in contact with UVMMC personnel.

In all instances where UVMMC personnel become aware that a Patient or Companion is en route to the Emergency Department (by ambulance or otherwise), UVMMC personnel will make reasonable efforts to conduct an assessment in advance of the Patient or Companion’s arrival and seek to have appropriate auxiliary aids and services available as soon as practicable after the Patient or Companion’s arrival at UVMMC.

35. Communication Assessment Criteria. In determining which type of auxiliary aids or services are needed to ensure effective communication, UVMMC shall give Primary Consideration to the requests of a Patient or Companion who is deaf or hard of hearing. The determination made by UVMMC personnel will take into account all relevant facts and circumstances, including without limitation the following:
  - a. the method of communication used by the individual, giving Primary Consideration to the Patient’s or Companion’s request for or statement of need for a particular auxiliary aid or service;
  - b. the nature, length, and complexity of the communication at issue;
  - c. the context in which the communication is taking place, including the reasonably foreseeable health care activities of the Patient and the Patient’s health status or changes thereto; and
  - d. with regard to the provision of Qualified Interpreters, the circumstances described in Paragraphs 39-41.
36. Documentation of Communication Assessment Relating to Provision of Auxiliary Aids and Services. Documentation of any assessment and determination as to the provision of auxiliary aids and services will be maintained in the Patient’s medical records and, for the Duration of this Agreement, will also be maintained in the Auxiliary Aid and Service Log(s), as set forth in Paragraph 45. Consistent with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 C.F.R. Parts 160 and 164, UVMMC shall label or make a notation in the Patient’s record to alert UVMMC personnel to the fact that the Patient or Companion is deaf or hard of hearing and will take appropriate steps to ensure that all UVMMC personnel reasonably likely to have contact with a Patient or a Companion are made aware of the auxiliary aid or service(s) that have been identified as necessary to communicate effectively with the Patient or

Companion. Additional records may be maintained through the STRATUS VRI system at UVMCC.

37. Determination Not to Provide Requested Auxiliary Aid or Service. If, after conducting the assessment as described in Paragraph 34 of this Agreement, UVMCC determines that it will not provide a particular auxiliary aid or service requested by a Patient or Companion who is deaf or hard of hearing based on undue financial or administrative burden or because an equally effective auxiliary aid or service is available, UVMCC personnel shall so advise the individual requesting the auxiliary aid or service, provide a copy of the Grievance Procedure, and secure a means of effective communication in a timely manner. UVMCC shall document the basis for the determination, including the date of the determination, the name and title of the UVMCC personnel who made the determination, and the alternative auxiliary aid or service, if any, that UVMCC decided to provide, in the Patient's record, as set forth in Paragraph 36, and in the Auxiliary Aid and Service Log, as set forth in Paragraph 45. A copy of this documentation shall be provided to the Patient or Companion upon request.
38. Redetermination and Subsequent Visits. UVMCC shall reassess its determination of which appropriate auxiliary aids and services are necessary, in consultation with the Patient or Companion, regularly throughout the visit to ensure effective communication, and promptly after a Patient or Companion indicates that communication is not currently or has not been effective. UVMCC will document in the Patient's medical records and in the Auxiliary Aid and Service Log, as set forth in Paragraph 45, any instance where a Patient or Companion indicates that the auxiliary aids and services provided by UVMCC have not been effective; any reassessment; and the results of any redeterminations. With respect to any subsequent visits, UVMCC will consult the Patient's records to review what, if any, auxiliary aids or services may be necessary without requiring additional assessments or requests for the appropriate auxiliary aids and services by the Patient or Companion, unless the Patient or Companion indicates otherwise.
39. Circumstances Under Which Qualified Interpreters Will Be Provided. UVMCC shall provide Qualified Interpreters, on-site or through a VRI service, to Patients and Companions as necessary to ensure effective communication. The following are examples of circumstances and types of communication when it is likely be necessary to provide a Qualified Interpreter:
  - a. obtaining a Patient's medical history or description of symptoms and medical condition;
  - b. discussing or explaining a Patient's diagnosis, current condition, prognosis, treatment options or recommendation for treatment;
  - c. discussing or explaining procedures, tests, or treatments;
  - d. discussing or explaining test results;
  - e. discussing or explaining prescribed medications, instructions for how and when medication is to be taken, and possible side effects and interactions of medications;
  - f. obtaining informed consent or permission for procedures, surgery, or other treatment options;

- g. communicating during treatment and testing;
  - h. communicating during discharge or post-operative planning and instruction;
  - i. providing mental health evaluations, group or individual therapy, counseling or other therapeutic activities, including, but not limited to, grief counseling and crisis intervention;
  - j. providing information about blood or organ donations;
  - k. explaining living wills or powers of attorney (or their availability);
  - l. discussing complex financial or insurance matters;
  - m. providing educational presentations, such as classes concerning birthing, nutrition, CPR, and weight management; and
  - n. any other circumstance in which a qualified interpreter is necessary to ensure a Patient's rights provided by law.
40. Video Remote Interpreting (VRI) Services Assessment Criteria. In determining whether a Qualified Interpreter via VRI is appropriate to provide effective communication, relevant factors include the following:
- a. the Patient or Companion is limited in his or her ability to see the video screen, either due to limited vision or the physical positioning of the Patient (e.g., lying in a prone position);
  - b. the Patient or Companion has limited ability to move his or her head, hands, or arms;
  - c. the Patient has cognitive limitations, loss of consciousness, or pain issues;
  - d. there are multiple people in a room and the information exchanged is highly complex or fast-paced;
  - e. the Patient or Companion may move repeatedly to areas of UVMMC that do not have a designated high-speed internet line;
  - f. the Patient will be treated in a room where there are space restrictions; and
  - g. whether the VRI can be provided in accordance with the performance standards described in Paragraph 41.
41. Standards for Providing Video Remote Interpreting (VRI). Whenever a Qualified Interpreter via VRI is provided or used, UVMMC shall ensure that it provides VRI in accordance with the following standards:
- a. Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
  - b. A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
  - c. A clear, audible transmission of voices; and
  - d. Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

Once the system is operating, UVMMC personnel shall ask the Patient or Companion whether the VRI is meeting his or her communication needs and make a record of his or

her response, consistent with Paragraph 36. In the event that the Patient or Companion cannot communicate effectively using any VRI service UVMMC elects to acquire and offer, UVMMC shall make all reasonable efforts to locate an on-site Qualified Interpreter or other auxiliary aid or service that will provide effective communication; periodically inform the Patient or Companion of the status of those efforts; and document the concern and the steps taken to locate a Qualified Interpreter.

42. Restricted Use of Adults Accompanying a Patient or Companion to Interpret or Facilitate Communication. UVMMC shall never require or coerce a Patient or Companion who is deaf or hard of hearing to bring another individual to interpret or facilitate communications between UVMMC personnel and such Patient or Companion. UVMMC shall not rely on an adult accompanying a Patient or Companion to interpret or facilitate communication except in either of the following circumstances:
  - a. In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available. This provision applies to exigent circumstances where any delay in providing immediate services to the individual could have life-altering or life-ending consequences and is not intended to obviate the obligation to provide a Qualified Interpreter or other auxiliary aids and services in typical and foreseeable emergencies that are part of the normal operations of a hospital.
  - b. If a Patient or Companion who is deaf or hard of hearing specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that person for such assistance is appropriate under the circumstances. In such circumstances, UVMMC shall advise the Patient or Companion that the full range of auxiliary aids and services is available without charge and shall give appropriate consideration to any relevant issues and concerns that may arise, such as privacy and confidentiality. UVMMC will document such a request in the Patient's medical record. This provision in no way lessens UVMMC's obligation to provide appropriate auxiliary aids and services as required by this Agreement.
43. Restricted Use of Minors to Interpret or Facilitate Communication. UVMMC shall not rely on a minor accompanying a Patient or Companion to interpret or facilitate communications between UVMMC personnel and a Patient or Companion except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.
44. Timeframe for Providing Qualified Interpreters. UVMMC shall ensure that it provides Qualified Interpreters in a timely manner, as set forth below.
  - a. Request for Qualified Interpreter for a non-scheduled incident. For all non-scheduled incidents, such as visits to the Emergency Department after regular business hours, UVMMC will provide a Qualified Interpreter, via an on-site appearance or VRI, as soon as practicable after a request or determination that a

Qualified Interpreter is necessary, within the applicable timeframe for such communication assessments set forth in Paragraph 34, but not later than ninety (90) minutes after such request or determination that an on-site Qualified Interpreter is required and not later than fifteen (15) minutes after such a request or determination that a Qualified Interpreter via VRI is required and effective. Between the time when a Qualified Interpreter is requested and when a Qualified Interpreter is made available, UVMMC personnel will inform the Patient or Companion of the current efforts being taken to secure a Qualified Interpreter and continue to communicate with the Patient or Companion who is deaf or hard of hearing for such purposes and to the same extent as they would have communicated with the person but for the disability, using the most effective means of communication available where appropriate. Notification of the efforts to secure a Qualified Interpreter does not lessen UVMMC's obligation to provide a Qualified Interpreter as required by this Agreement. Efforts to communicate with the Patient or Companion in the interim shall not involve the use of accompanying adults or minors to interpret or facilitate communication, except under the limited circumstances specified in Paragraphs 41 and 42.

- b. Request for Qualified Interpreter for a scheduled events. For all scheduled events when there is at least twenty-four (24) hours in advance of the time when an interpreter is required, UVMMC shall make a Qualified Interpreter available at the time of the scheduled event. Even when there are fewer than twenty-four (24) hours from the request to the scheduled event, UVMMC will make reasonable efforts to provide an on-site Qualified Interpreter for the scheduled event. Such efforts shall include contacting Vermont Interpreter Referral Service (VIRS) or other known interpreters prior to the scheduled appointment to request services. If an on-site Qualified Interpreter is necessary, but not available, and it is medically appropriate to do so, UVMMC may make arrangements, with the Patient's agreement, to reschedule the appointment within forty-eight (48) hours of the request to a time when an interpreter can be appropriately scheduled. If an interpreter fails to arrive for the appointment, UVMMC shall immediately contact the Program Administrator or another resource to arrange for a Qualified Interpreter within the timeframes specified in Paragraph 44.a.
- c. Throughout Hospitalization. UVMMC will continue to provide Qualified Interpreters to Patients and Companions admitted to UVMMC, throughout their hospitalization. Patients and Companions will be apprised that these services are available. CMSW will be responsible for coordinating efforts for providing on-site Qualified Interpreters, as may be necessary for effective communication for the circumstances and types of the communication between the Patient and UVMMC personnel, as described in Paragraph 39. Patients will not be required to renew requests for Qualified Interpreters for these events.

Any deviations from the applicable response times will be documented in the Auxiliary Aid and Service Log, as described in Paragraph 45, and then addressed with the interpreting service provider.

45. Auxiliary Aid and Service Log(s). Within thirty (30) calendar days of the Effective Date of this Agreement, UVMMC shall document and maintain a log, or logs, of each request for an auxiliary aid or service, recording the time and date of the request; the name of the individual who made the request; the name of the individual for whom the auxiliary aid or service is being requested (if different from the requestor); the specific auxiliary aid or service requested; the time and date of the request and, if applicable, the scheduled event; the time and date the auxiliary aid or service was provided; the type of auxiliary aid or service provided if different from what was requested; any deviations from the response times specified in Paragraph 44, and, if applicable, a statement and explanation as to why the requested auxiliary aid or service was not provided, including a description of any alternative auxiliary aid or service provided by UVMMC. Such logs will be maintained for the Duration of this Agreement.

## **VII. Notice of Nondiscrimination and Availability of Auxiliary Aids and Services**

46. Notice of Nondiscrimination and Availability of Auxiliary Aids and Services and Language Assistance Services. UVMMC shall take appropriate and continuing steps to notify Patients, Companions, UVMMC personnel, and the public, including individuals who are deaf or hard of hearing and individuals who are blind or have low vision, of the rights and protections afforded by Section 504 or Section 1557 and the following:
- a. that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities (Nondiscrimination Statement);
  - b. that it provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities;
  - c. that it provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited English proficiency;
  - d. a description of how to obtain auxiliary aids and services and language assistance services;
  - e. the identity of, and contact information for the Civil Rights Coordinator, the responsible employee designated pursuant to Paragraph 30;
  - f. the availability of the grievance procedure and how to file a grievance; and
  - g. how to file a discrimination complaint with HHS.

## **VIII. Grievance Procedure and Feedback**

47. Grievance Procedure. Within thirty (30) calendar days of the Effective Date of this Agreement, UVMMC shall adopt a Grievance Procedure that incorporates appropriate due process standards and that provides for the prompt and equitable resolution of any complaints alleging discrimination on the basis of disability to ensure it addresses any complaints alleging any action that would be prohibited by the ADA, Section 504, or Section 1557 and the failure to provide appropriate auxiliary aids and services pursuant to this Agreement.

UVMMC may continue to invite Patient and Companion feedback regarding any of UVMMC's services, including its provision of auxiliary aids and services to individuals who are deaf or hard of hearing. Such services are currently provided through UVMMC's Patient and Family Advocacy Department.

48. Publication of Grievance Procedure. Within sixty (60) calendar days of the Effective Date of this Agreement, UVMMC shall take steps to make the Grievance Procedure available to UVMMC personnel pursuant to its administrative procedures and, also, to all interested persons on its website.

### **IX. Training of UVMMC Personnel**

49. Training Requirement. To ensure compliance with this Agreement and the law as it relates to the provision of auxiliary aids and services, UVMMC agrees to conduct the following trainings within the timeframes specified in Paragraph 50. UVMMC shall maintain copies of the training materials and attendance records for each training. Each training shall include members of the deaf and/or hard of hearing community and will be of sufficient duration and content to train UVMMC personnel in the following areas relative to their responsibilities for coordinating or providing patient care:

- a. the requirement to ensure effective communication with Patients and Companions who are deaf or hard of hearing, are blind or have low vision, or have a speech disability;
- b. the health care needs of Patients who are deaf or hard of hearing;
- c. information regarding the types of communication disabilities, including the various degrees of hearing disabilities, the appropriate terminology to use when referring to individuals with disabilities, and cultural diversity in the deaf community;
- d. information regarding different languages and modes of communication used by individuals who are deaf and hard of hearing, such as American Sign Language, Signed English, and speech reading (or lip reading);
- e. information regarding the types of auxiliary aids and services available in the community that will ensure effective communication;
- f. guidance regarding the prompt identification of communication needs of individuals who are deaf and hard of hearing, including determining which types of auxiliary aids and services are necessary and assessing when certain auxiliary aids and services are effective, such as the exchange of written notes;
- g. required procedures for documenting communication assessments and requests for auxiliary aids and services in the Patient's record and the Auxiliary Aid and Service Log, where appropriate;
- h. the proper use and role of interpretive services, including sign language interpreters via on-site appearance or VRI, deaf-blind interpreters, and oral transliterators;
- i. the availability and proper use of auxiliary aids and services to communicate by telephone for individuals who are deaf or hard of hearing, including the use of video relay services (VRS) and text telephones (TTY);
- j. procedures to promptly obtain auxiliary aids and services, including how to quickly and efficiently set up and operate VRI, and the appropriate steps to take

- when efforts to obtain auxiliary aids and services are unsuccessful or communication is not effective;
- k. UVMMC's Grievance Procedure; and
  - l. any other applicable requirements of this Agreement.

50. Timeframe for the Provision of Training

- a. UVMMC Emergency Department Personnel. Within sixty (60) calendar days of the Effective Date of this Agreement, and on an annual basis thereafter for the Duration of this Agreement, UVMMC will provide mandatory in-service training to UVMMC Emergency Department personnel, excluding affiliated physicians, who have responsibility for coordinating and/or providing patient care services.
- b. All Additional UVMMC Personnel. Within ninety (90) calendar days of the Effective Date of this Agreement, and on an annual basis thereafter for the Duration of this Agreement, UVMMC will provide mandatory training for all UVMMC personnel, including but not limited to: the Program Administrator(s), CMSW staff, charge nurses, and all additional medical staff including physicians and residents.
- c. Training of New UVMMC Personnel or other Hospital Personnel. Within sixty (60) calendar days of their start date at UVMMC, all new UVMMC personnel (including physicians and residents) will receive training regarding the availability and use of auxiliary aids and services for Patients and Companions, and regarding the process for assessing the need for such services and the process for obtaining same. Other UVMMC personnel in positions or departments not previously identified herein shall be provided with comparable training as necessary. A screening of a video of any of the trainings provided above will suffice to meet this obligation.

**X. Policies and Procedures and Continued Improvement**

- 51. In addition to being bound by the terms and conditions to this Agreement, UVMMC has implemented the Interpretation Services for Persons Deaf, Hard of Hearing and Deaf-Blind, dated February 5, 2016, ("the Policy"), which the United States previously reviewed in connection with this matter, and also committed to an annual review of specific policies relating to the provision of auxiliary aids and services to individuals who are deaf or hard of hearing. Within ninety (90) calendar days of the Effective Date of this Agreement, UVMMC shall review the Policy and any related procedures, and revise, as necessary, to ensure it is taking steps to provide effective communication with Patients and Companions who are deaf or hard of hearing, consistent with the requirements of this Agreement, the ADA, Section 504, and Section 1557.
- 52. UVMMC will continue to work with VIRS through Vermont Center for Independent Living (VCIL) (or similar organization as may exist from time to time) to identify Qualified Interpreters who may be available to provide interpretive services for Patients and Companions and UVMMC shall maintain a current list of known ASL interpreters and oral interpreters who reside within forty-five (45) miles of UVMMC. UVMMC may,

but is not required to, hire an ASL interpreter on staff.

53. Commitment to Continued Improvement of Process for Providing Appropriate Auxiliary Aids and Services. Within one (1) year of the Effective Date of this Agreement, UVMMC's Risk Management Department will coordinate with CMSW and other relevant stakeholders to undertake the following efforts towards continuous improvement:
- a. An annual review of UVMMC's policies relating to the provision of auxiliary aids and services to individuals who are deaf, deaf-blind, and hard of hearing,
  - b. An annual review of specific processes put in place to implement the terms of this Agreement,
  - c. An annual review of available auxiliary aids and services,
  - d. An annual review of options for providing on-site Qualified Interpreters,
  - e. An annual review of specific procedures to publicize within UVMMC community the availability of auxiliary aids and services at no cost to Patients and Companions, and
  - f. Scheduling, announcing, and promoting training described herein.

UVMMC will report a summary of the status and results of its Continuous Improvement Process in the twelve-month Compliance Report, as described in Paragraph 60.

**XI. Release and Remuneration for Complainants**

54. Release by Complainants. Within fourteen (14) calendar days of the Effective Date of this Agreement, the United States shall deliver to counsel for UVMMC a release signed by each Complainant.
55. Compensatory Relief for Complainants. Within fifteen (15) calendar days of receiving the Complainants' signed releases, UVMMC shall compensate the Complainants pursuant to 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2) in the following amounts: \$\_\_\_\_\_ to be paid to Complainant 1 and \$\_\_\_\_\_ to be paid to Complainant 2. This settlement is for matters that complainants could have pursued under the Americans with Disabilities Act (ADA). UVMMC will not withhold taxes from the monetary award, and the Complainants, through the signed release, will accept full responsibility for taxes due and owing, if any, on such funds. UVMMC will issue to the Complainants an IRS Form 1099 reflecting the amount paid. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Compensatory Relief for purposes of the Internal Revenue laws, Title 26 of the United States Code.
56. Payment of Civil Penalty to the United States. The Parties have agreed that UVMMC will not owe the United States any civil penalties pursuant to 42 U.S.C. § 12188(b)(2)(C).

**XII. Reporting and Monitoring**

57. Unless otherwise provided, all payments, notices, reports or other such documents required by this Agreement shall be submitted to the United States by U.S. Mail at the following address:

Office of the United States Attorney, District of Vermont  
11 Elmwood Ave, Floor 3  
Burlington, Vermont 05401  
Attn: Nikolas Kerest

Unless otherwise provided, all notices, reports or other such documents required by this Agreement shall be submitted to HHS Office for Civil Rights, New England Office, by email to [Susan.Rhodes@hhs.gov](mailto:Susan.Rhodes@hhs.gov).

58. Records. UVMMC shall maintain appropriate records to document the information required by this Agreement, and shall make them available, upon request, to the United States, throughout the duration of this Agreement.
59. Complaints. For the duration of this Agreement, UVMMC shall notify the United States if any person files a lawsuit, written complaint or formal charge against UVMMC or with a state or federal agency (to exclude internal grievances as described in Paragraph 47), alleging that UVMMC failed to provide auxiliary aids or services to deaf or hard of hearing Patients or Companions or otherwise failed to ensure effective communication with such Patients or Companions. Such notification must be provided in writing via certified mail within twenty (20) calendar days of the date UVMMC receives notice of the allegation and must include, at a minimum, the nature of the allegation, the name of the person making the allegation, and any documentation possessed by UVMMC relevant to the allegation. UVMMC will reference this provision of the Agreement in the notification to the United States.
60. Compliance Report. UVMMC shall provide an initial written report (“Compliance Report”) to the United States regarding the status of its compliance with this Agreement within six (6) months of the Effective Date of this Agreement; a second Compliance Report within twelve (12) months of the Effective Date of this Agreement (covering the preceding six-month period); a third Compliance Report eighteen (18) months after the Effective Date of this Agreement (covering the preceding six-month period); and a fourth Compliance Report twenty-four (24) months after the Effective Date of this Agreement (covering the preceding six-month period); and a fifth Compliance Report thirty (30) months after the Effective Date of this Agreement (covering the preceding six-month period) If this Agreement remains in effect more than thirty (30) months after its Effective Date, UVMMC shall provide the United States with a new Compliance Report at each remaining six-month interval.
61. Required Content for Compliance Reports. Each Compliance Report shall include appropriate documentation of the steps UVMMC has taken to comply with each term of this Agreement, including but not limited to:
- a. any revised policies and procedures;
  - b. the distribution of policies and procedures;

- c. the adoption and implementation of a Grievance Procedure;
- d. the distribution of the materials;
- e. the training required by this Agreement, including the training materials and attendance records;
- f. a list of any grievances and/or complaints filed by Patients or Companions regarding the provision of auxiliary aids or services or allegations of discrimination on the basis of disability, including a description of the allegations, the date filed, the status and/or outcome of each grievance or complaint, and a copy of the grievance itself;
- g. a copy of the Auxiliary Aid and Service Log(s) described in Paragraph 45; and
- h. a summary of the results of the Continued Improvement Process described in Paragraph 54.

### **XIII. Enforcement**

- 62. Duration of this Agreement. This Agreement will be in effect for two (2) years and six (6) months from its Effective Date, at which time, if the United States determines that UVMMC has completed all actions required by the Agreement, the United States' review and monitoring of the Agreement shall end.
- 63. Compliance Review and Enforcement. The United States may review compliance with this Agreement at any time. If the United States believes that UVMMC has failed to comply in a timely manner with this Agreement or any requirement thereof, it will raise its claim(s) in writing with UVMMC and the parties will attempt to resolve the concern(s) in good faith. The United States will allow UVMMC sixty (60) calendar days from the date it notifies UVMMC of any breach of this Agreement to cure said breach. If the United States determines it is unable to reach satisfactory resolution of the issue or issues, the United States may take any action authorized by law to secure compliance with Title III of the ADA, Section 504, and Section 1557, including instituting a civil action in U.S. District Court to enforce the terms of this Agreement.
- 64. Violations. If UVMMC violates this Voluntary Resolution Agreement, the United States shall have all such remedies as are allowed under the ADA, Section 504, and Section 1557. The parties agree that in any subsequent legal proceedings the court may treat any violation of this Agreement as a first violation of these statutes for the purpose of calculating civil penalties under 42 U.S.C. § 12188(b)(2)(C), if any.

### **XIV. Miscellaneous**

- 65. This Agreement and the attachments hereto constitutes the entire agreement between the Parties on the matters raised here, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, shall be enforceable. This Agreement is limited to the facts set forth herein and does not purport to remedy any other potential violations of the ADA, Section 504, Section 1557, or any other federal law. This Agreement does not affect the continuing obligations of UVMMC to comply with the provisions of Title III of the ADA, Section 504, and Section 1557.

66. Changing Circumstances. During the term in which this agreement will be in effect, there may be a change in circumstances such as, for example and without limitation, an increased or decreased availability of qualified sign language or oral interpreters or developments in technology to assist or improve communications with persons who are deaf, deaf-blind or hard of hearing. If UVMMC determines that such changes create opportunities for communicating with Patients and Companions more efficiently or effectively than is required under this Agreement, or create difficulties not presently contemplated in the provision of auxiliary aids and services, UVMMC may propose changes to this Agreement by presenting written proposals to the United States. Such changes will then be made to the Agreement if the United States upon review, grants its approval in writing, which approval will not be unreasonably withheld or delayed.
67. 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 inform any such successor in interest.
68. Non-Waiver. Failure by any party to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.
69. Headings. The headings in this Agreement are for convenience only and shall not affect in any way the language of the provision to which they refer.
70. Execution of Agreement. The undersigned counsel represent that they have been fully authorized by their clients to enter into and execute this Agreement under the terms and conditions contained herein.
71. Publication or Disclosure of Agreement. The United States places no restriction on the publication of the Agreement. In addition, the United States may be required to disclose material related to this Agreement to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 522, and its implementing regulation, 45 C.F.R. Part 5.

AGREED BY THE PARTIES:

FOR UNIVERSITY OF VERMONT MEDICAL CENTER, INC.:

//SS//

Dated: \_\_\_\_\_

\_\_\_\_\_  
 Spencer R. Knapp, Esq.  
 Sr. Vice President and General Counsel  
 University of Vermont Medical Center, Inc.  
 f/k/a Fletcher Allen Health Care

FOR THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES:

//SS//

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Susan Pezzullo Rhodes  
Regional Manager, New England Region  
Office for Civil Rights

FOR THE UNITED STATES OF AMERICA:

Eugenia A. P. Cowles  
Acting United States Attorney

//SS//

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Nikolas P. Kerest, Esq.  
Assistant United States Attorney