

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
Tallahassee Division**

**DISABILITY RIGHTS FLORIDA, INC.,**

**Plaintiff,**

vs.

**Case No. 4:16-cv-47-RH-CAS**

**JULIE JONES, in her official capacity as  
Secretary of the Florida Department of  
Corrections,**

**Defendant.**

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT**

**Table of Contents**

**I. BACKGROUND**

**II. DEFINITIONS**

1. Days.....	2
2. Deaf/Hard of Hearing Inmates.....	2
3. Inmates with Vision Disabilities.....	2
4. Inmates with Mobility Disabilities.....	2
5. Covered Inmates .....	3
6. Compelling Security Concern.....	3

**III. GENERAL PLAN OF COMPLIANCE**

7. Location of Covered Inmates .....	3
8. General Time Frames for Implementation of Requirements of General Plan of Compliance.....	3
9. Recreational Tracks.....	4
10. Health, Safety, & Welfare .....	4
11. Changes to Physical Disability Policies .....	4
12. Initial Identification of Disabilities and Accommodations at Reception .....	5
13. Periodic Re-assessments of Covered Inmates .....	5

14. Repair or Replacement of Preexisting Accommodations; Sending to Designee.....	6
15. Making Materials Available in Accessible Formats.....	6
16. Procedure for Requests for Aids, Services, and Accommodations.....	6
17. Other Requests for Accommodation.....	6
18. Passes .....	7
19. No Co-Pay or Charge for Accommodations.....	7
20. Confiscation of Approved Accommodations.....	7
21. Work Release Centers and Re-entry Programs .....	7
22. Work and Educational Programming.....	8
23. PRIDE.....	8
24. Natural Supports .....	8
25. Allegations of Retaliation or Harassment.....	8

#### **IV. TRAINING**

26. FDC Staff.....	8
27. Covered Inmates .....	10
28. Impaired Inmate Assistant.....	10

#### **V. COMPLIANCE REQUIREMENTS FOR DEAF/HARD OF HEARING INMATES**

29. Qualified Interpreters: American Sign Language, Oral Interpreters and Transliterators .....	11
30. Access to Qualified Interpreters: American Sign Language, Oral Interpreters or Transliterators .....	12
31. Use of Handcuffs .....	13
32. Hearing Aids .....	13
33. Teletypewriters .....	14
34. Telephone Amplification and Hearing Aid Compatibility.....	14
35. Captioned Telephone (“CapTel”).....	14
36. Video Relay Services .....	14
37. Alert Systems .....	15
38. Vibrating Watches .....	15
39. Open or Closed Captioning.....	15
40. FM Transmitters and Receivers.....	16

#### **VI. COMPLIANCE REQUIREMENTS FOR INMATES WITH VISION DISABILITIES**

41. Housing.....	16
42. White Canes .....	16
43. Talking Watches .....	17
44. Key Locks.....	17
45. Magnifiers.....	17
46. Recorders/Players .....	17
47. General Library Services .....	18

48.	Law Library Services .....	18
49.	Time to Work with Impaired Inmate Assistants, Library Clerks, and Law Clerks in or Near the Law Library .....	18
50.	The Division of Blind Services' Talking Book Program .....	18
51.	Call Out Lists .....	19
52.	Medical Care .....	19
53.	Correspondence Courses from Hadley School for the Blind.....	19
54.	Access to Grievance, RMAR, and DR System.....	19
55.	Impaired Inmate Assistants .....	20
56.	FM Transmitters and Receivers.....	20

**VII. PLAN OF COMPLIANCE FOR INMATES WITH MOBILITY DISABILITIES**

57.	Modifications to Prisons Where IMDs Will Be Housed.....	200
A.	Selection of an Architect.....	200
B.	Facilities and Areas in Facilities That Mark Mazz Has Already Inspected.....	21
C.	Facilities and Areas in Facilities That Mark Mazz Has Not Inspected.....	22
58.	Wheelchairs .....	24
59.	Prosthetic Devices .....	24
60.	Other Accommodations .....	25
61.	Bathrooms and Showers .....	25
62.	Impaired Inmate Assistants (IIAs) .....	26

**VIII. IMPLEMENTATION OF THE PLAN OF COMPLIANCE**

63.	Agreement to Implement the Plan of Compliance .....	26
64.	No Admission .....	26
65.	Agreement is the Product of Multiple Sessions.....	26
66.	Voluntary Dismissal.....	27
67.	Meetings.....	27
68.	Continued Protection and Advocacy Activities.....	28
69.	Party Liaisons and Presentation of Concerns.....	28
70.	DRF's Access to Records.....	28
71.	Confidential Legal Visits and Telephone Calls with Inmates .....	30
72.	Compliance Visits .....	31

**IX. VIOLATION OF SETTLEMENT AGREEMENT**

73.	Procedures for Allegations of Significant Breach of this Agreement .....	31
A.	Notice of Significant Breach .....	32
B.	Response to Notice of Significant Breach.....	32
C.	Reply Regarding Significant Breach.....	33
74.	DRF's Remedy for FDC's Alleged Significant Breach .....	33
75.	Effect of DRF's Inaction or Action With Respect To A Suit To Enforce .....	33

## **X. OTHER PROVISIONS**

76. Authentication of Documents .....	34
77. Attorney’s Fees and Costs .....	34
78. Modification of the Manner in Which FDC Provides Accommodations to Covered Inmates .....	34
79. Modification of Agreement .....	35
80. Force Majeure Clause .....	35
81. Agreement Binding on Successors .....	35
82. Agreement Constitutes Entire Agreement .....	35
83. Effective Date of Agreement .....	36
84. Agreement Subject to Legislative Appropriations .....	36
85. Release .....	37
86. Compliance with Section 45.062 .....	37

## **EXHIBITS**

- A. List of Institutions
- B. Implementation Schedule
- C. Public Announcement for Professional Architectural Services
- D. Accessibility Items at Prisons Inspected by Mark Mazz
- E. Architect Inspection Procedures
- F. Business Associate Agreement
- G. Procedures for the Compliance Visits

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
Tallahassee Division**

**DISABILITY RIGHTS FLORIDA, INC.,**

**Plaintiff,**

**vs.**

**Case No. 4:16-cv-47-RH-CAS**

**JULIE JONES, in her official capacity as  
Secretary of the Florida Department of  
Corrections,**

**Defendant.**

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT**

The Plaintiff, DISABILITY RIGHTS FLORIDA, INC., (“DRF”) and the Defendant, JULIE JONES, sued in her official capacity as Secretary of the Florida Department of Corrections (“FDC”) (collectively the “Parties”), have entered into this Settlement Agreement (“Agreement”) as a plan for settling this litigation. Both Parties agree to comply with the following terms. The Parties do not intend that this Agreement will be enforceable by an order of this Court. As set forth below, this Agreement is a contract enforceable in state court should the FDC significantly breach this Agreement. That this Agreement is not a Consent Decree is a key factor in FDC’s willingness to enter into this Agreement.

**I. BACKGROUND**

DRF initiated this action by filing a Complaint on January 6, 2016. In the Complaint, DRF alleges that FDC has violated and continues to violate, in a systemic fashion, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Eighth

Amendment to the United States Constitution, and the Due Process Clause of the United States Constitution, in its treatment of inmates who have hearing, vision, and mobility disabilities. FDC responded to DRF's allegations by denying all liability.

DRF did not, and does not, assert any claims based on the treatment of, or on behalf of, FDC inmates with mental, emotional, cognitive, or developmental disabilities, unless those inmates also have a physical disability involving their hearing, vision or mobility. To the extent that inmates with mental, emotional, cognitive, or developmental disabilities also have hearing, vision, or mobility disabilities, this Agreement provides for compliance activities only for their hearing, vision, and mobility disabilities.

This Agreement is the product of multiple mediation meetings, and the Parties believe that this Agreement represents a fair settlement of DRF's claims.

## II. DEFINITIONS

1. **Days.** Unless otherwise specified, references to "days" shall be to calendar days. If the last day of the specified period falls on a weekend or holiday, the due date shall be the next business day.

2. **Deaf/Hard of Hearing Inmates.** Abbreviated herein as "D/HOH inmate". This means an FDC inmate with a physical impairment that substantially limits the inmate's hearing, as defined in the Americans with Disabilities Act, 42 U.S.C. § 12102.

3. **Inmates with Vision Disabilities.** Abbreviated herein as "IVD." This means an FDC inmate with a physical impairment that substantially limits the inmate's seeing, as defined in the Americans with Disabilities Act, 42 U.S.C. § 12102.

4. **Inmates with Mobility Disabilities.** Abbreviated herein as "IMD," or "IMDs." This means an FDC inmate with a physical impairment that affects the inmate's ability to move,

which substantially limits the inmate's major life activities of walking, standing, bending, performing manual tasks, lifting, reaching, or sitting, as defined in the Americans with Disabilities Act, 42 U.S.C. § 12102 and 42 C.F.R. § 35.108.

5. **Covered Inmates.** For purposes of this Agreement, Covered Inmates means any Deaf/Hard of Hearing Inmate, Blind/Visually Impaired Inmate, or Inmate with a Mobility Disability.

6. **Compelling Security Concern.** For purposes of this Agreement, a "compelling security concern," as it relates to a reasonable accommodation, aid, or device, that has been provided or may be provided to a Covered Inmate, exists if the accommodation, auxiliary aid, or device cannot be adequately searched by FDC for contraband, is contraband, has been used as a weapon, can be weaponized to harm the Covered Inmate or others, or can be used to facilitate an escape. Documentation of the compelling security concern shall be maintained.

### III. GENERAL PLAN OF COMPLIANCE

The Parties agree to the following Plan of Compliance:

7. **Location of Covered Inmates.** Effective July 1, 2017, FDC will begin to locate Covered Inmates in the facilities listed in the attached Exhibit A. This will be accomplished by June 30, 2018, except for inmates in restrictive housing. Covered Inmates in restrictive housing cells will be moved as the architectural modifications to the restrictive housing cells are completed. All restrictive housing cells will be completed no later than December 31, 2019. The services contemplated for the Covered Inmates will be provided at the facilities listed, in accordance with the implementation schedules referred to herein.

8. **General Time Frames for Implementation of Requirements of General Plan of Compliance.** Attached as Exhibit B is an Implementation Schedule which describes the time

frames for implementation of the requirements of the General Plan of Compliance, except for architectural modifications which are described in paragraph 57 below. The Parties agree that the timing of compliance as set forth in this document is an essential term of the Agreement.

9. **Recreational Tracks.** Existing recreational tracks at the facilities listed on Exhibit A, that are used for activities such as running and walking by inmates, shall be paved so that they can be safely traversed by IVDs and IMDs.

10. **Health, Safety, & Welfare.** FDC reserves the right to temporarily suspend a Covered Inmate's access to any accommodation, aid, or device, to protect the health, safety, and welfare of inmates or staff.

11. **Changes to Physical Disability Policies.** FDC shall complete a review of its policies, rules, procedures, Health Service Bulletins, manuals, the Inmate Handbook, and post orders, and any associated forms that reference the treatment of Covered Inmates (hereinafter collectively referred to as "policies") to determine which of them must be modified to comply with the provisions of this Agreement. Within one hundred twenty (120) days from the Effective Date, FDC shall provide to DRF, in draft, the revisions to the policies. However, FDC will also provide revised drafts of the policies as they become available. DRF shall have sixty (60) days to provide feedback to FDC on the proposed revised changes. While FDC will consider DRF's feedback, FDC reserves the right to make the final decision as to policy content. Within thirty (30) days after receiving DRF's feedback, FDC will initiate rulemaking for those policies requiring Chapter 120 rulemaking, will adopt any finalized policies not requiring rulemaking, and will provide final copies to DRF. The FDC shall comply with these new policies to the extent that they relate to this Agreement.



12. **Initial Identification of Disabilities and Accommodations at Reception.** At Reception, FDC will attempt to identify whether an inmate has a hearing, vision, or mobility disability. If it is determined that the inmate is a Covered Inmate, FDC will determine the extent of the disability, and whether he or she needs any accommodations, aids, or services. For D/HOH Inmates and IVD Inmates, FDC will evaluate the verbal and written communication skills, reading level, and where appropriate, the inmate's proficiency in sign language (including American Sign Language) by an appropriate professional. The sign language evaluation must be completed by a Qualified Interpreter. The assessment must also include documentation of any needs and accommodations desired by the inmate, and FDC will consider the Covered Inmate's stated preferences. FDC shall conduct an individualized assessment of the need for accommodations, aids, or services required by the Covered Inmate. Results of this assessment will be documented and placed in the Covered Inmate's record, documented in FDC's electronic system (currently called "Offender Based Information System" or OBIS), and will be made available as needed, to FDC staff responsible for the inmate's medical care, programs, or custody and supervision at both Reception and the permanent prison. The FDC will use this information so that needed accommodations, aids, or services are provided.

13. **Periodic Re-assessments of Covered Inmates.** At least once per year, FDC will conduct periodic re-assessments of Covered Inmates to determine whether any changes in accommodations are necessary. These re-assessments shall include but not be limited to determining whether the Covered Inmate is receiving effective accommodations for his or her disability, whether the Covered Inmate desires any other accommodations, and a medical examination, if appropriate. Results of any changes in the Covered Inmate's status, or his or her

permitted accommodations, will be provided, or made available, to FDC staff responsible for the Covered Inmate's medical care, programs, or custody and supervision.

**14. Repair or Replacement of Preexisting Accommodations; Sending to Designee.**

If a Covered Inmate comes into custody with an accommodation, auxiliary aid, or device and the accommodation, auxiliary aid, or device requires repair, FDC may provide another accommodation, auxiliary aid, or device in lieu of repairs. If this occurs and the Covered Inmate wishes to keep the original accommodation, auxiliary aid, or device, the Covered Inmate will be allowed to send the accommodation, auxiliary aid, or device to his or her designee.

**15. Making Materials Available in Accessible Formats.** All materials distributed or made available to inmates, including paper forms, signs, handbooks, orientation materials, instructional videos, grievances, etc., must also be in accessible formats.

**16. Procedure for Requests for Aids, Services, and Accommodations.** If an inmate requests an accommodation, aid, or service, the FDC will consider the request in good faith, interview the inmate if necessary, and refer the inmate for a medical evaluation as needed. The determination that an inmate, who has requested an accommodation, is not a Covered Inmate shall be made only after a recommendation from a medical doctor, if appropriate, and written approval by the statewide ADA Coordinator or his or her designee. The reasons for the determination must be documented in writing in the inmate's record.

**17. Other Requests for Accommodation.** If a Covered Inmate requests an accommodation, aid, or service that is not covered elsewhere in this Agreement, after a determination of need is made under the prior paragraph, FDC will provide the requested accommodation, aid, or service to the Covered Inmate unless (1) FDC has a compelling security, health, safety, or welfare concern, (2) the inmate already has an effective accommodation, (3) the

accommodation would cause an undue financial or administrative burden to FDC, (4) another reasonable and effective accommodation is available, or (5) the accommodation would constitute a fundamental alteration of an identifiable FDC program, service, or activity. The reasons for the denial must be documented in writing in the inmate's record.

18. **Passes.** The FDC will issue passes to Covered Inmates to implement any accommodations, aids, and services it has provided. All necessary passes for Covered Inmates will remain in effect even when a Covered Inmate is transferred to another facility, so that the Covered Inmate does not lose his or her accommodations, auxiliary aids, and services solely because of the transfer.

19. **No Co-Pay or Charge for Accommodations.** If FDC refers a Covered Inmate for a medical visit to assess the need for an accommodation, aid, or service, no medical co-pay will be charged to the Covered Inmate. No charges shall be assessed to a Covered Inmate for accommodations, aids, or services, including batteries to use the accommodation device, that are or have been previously approved by FDC.

20. **Confiscation of Approved Accommodations.** The FDC shall not confiscate a Covered Inmate's approved accommodation, aid, or service or fail to renew or approve a pass for a Covered Inmate's approved accommodation, aid, or service, unless there is a compelling security concern. All confiscations of Covered Inmates' approved accommodations, aids, or devices must be approved by the institutional warden who will confer with an ADA Coordinator and the Chief Health Officer of the institution.

21. **Work Release Centers and Re-entry Programs.** FDC will not refuse to send a qualified Covered Inmate to a community work release center or reentry program because the inmate has a mobility, hearing, or vision disability.

22. **Work and Educational Programming.** FDC shall not deny an otherwise qualified Covered Inmate access to work, vocational, or educational programming on the basis of that inmate's disability. If a Covered Inmate applies for a work position, or a vocational or educational opportunity, and that inmate meets the skill, experience, and education requirements, medical restrictions, custody level, criminal history and time remaining on sentence requirements, the FDC will not deny that individual the position or opportunity without documentation by an ADA Coordinator. The ADA Coordinator shall document whether (1) FDC can make reasonable modifications in policies, practices or procedures to permit the inmate to meet the essential functions of the position or opportunity, and (2) the modifications fundamentally alter the nature of the program, service or activity. Enrollment in courses offered by the Hadley School for the Blind shall not be the basis for denying an IVD inmate access to work, vocational, or educational programming that is otherwise available.

23. **PRIDE.** FDC shall not prevent a qualified Covered Inmate from participating in PRIDE work programs because the inmate has a mobility, hearing, or vision disability.

24. **Natural Supports.** A Covered Inmate shall not be punished on the sole basis that he or she asked another inmate for help due to his or her disability, or accepted such help, and an inmate shall not be punished on the sole basis that he or she provided such help.

25. **Allegations of Retaliation or Harassment.** Allegations of retaliation or harassment will be promptly investigated by FDC, and appropriate action will be taken.

#### **IV. TRAINING**

26. **FDC Staff.** By July 1, 2018, FDC shall begin to provide training appropriate to the responsibilities of all FDC medical care, programs, and custody and supervision staff who interact with Covered Inmates, on the following subjects: (A) disability laws, (B) the FDC's

process of evaluating impairments and disability, and providing information regarding that to staff, (C) the use and evaluation of impaired inmate assistants, (D) the process for Covered Inmates to request accommodations, (E) the availability and the use of accommodations that are provided by the FDC, (F) general information as to how to effectively work with Covered Inmates, (G) explanations of the use of sign language by D/HOH inmates, (H) the limitations of hearing aids, (I) appropriate ways to guide inmates who are blind or visually disabled, (J) orienting blind or visually disabled inmates to their environment, (K) assisting blind or visually disabled inmates with submitting grievances, appeals, Reasonable Modification or Accommodation Requests, Disciplinary Report paperwork and appeals, and other similar documents; (L) functional implications of being a D/HOH, IVD, or IMD inmate ; and (M) common misunderstandings about an individual's remaining sight, hearing, and mobility. The FDC shall utilize reasonable efforts to consult with the Florida Department of Education Division of Blind Services and the Florida School for the Deaf and Blind to develop its training modules. This training shall be provided by qualified personnel, and may be via webinar or online training. As draft written training materials for different training modules are completed, FDC will provide those materials to DRF. Within nine (9) months after the Effective Date of this Agreement, FDC will provide DRF with a copy of the written materials to be used for the training for DRF's feedback. DRF will respond within thirty (30) days; however, FDC reserves sole discretion on the content of its training materials. Within eleven (11) months after the Effective Date of this Agreement, FDC will provide DRF with a copy of any videos or online materials that may be used for the training for DRF's feedback. DRF will respond within thirty (30) days; however, FDC reserves sole discretion on the content of any video or online training materials. All staff who interact with Covered Inmates will receive a first training by July 1,

2019. This training will be repeated on an annual basis. When this training becomes available, new staff shall complete it as part of their initial orientation and training.

27. **Covered Inmates.** At Reception, FDC will provide additional orientation for Covered Inmates that includes the following subjects, as appropriate: (A) skills training, (B) orientation at the permanent prison, (C) the impaired inmate assistant program, (D) orientation to accommodations and services that are being provided (this must include information about devices available at FDC prisons), (E) quarterly impaired inmate meetings, (F) FDC's ADA coordinators, (G) filing requests for accommodation (including grievances and Reasonable Modification or Accommodation Requests), (H) services provided by The Division of Blind Services' Talking Book Program, and (I) services provided by the Hadley School for the Blind. The materials must be provided in a format that is appropriate and accessible for the individual Covered Inmate. When the Covered Inmate is transferred to a permanent prison, appropriate ADA training will be provided as needed.

The FDC shall facilitate general skills training for IVD inmates through the Hadley Institute for the Visually Impaired and Blind, and FDC shall also offer training on the use of the auxiliary aids and devices that have been provided to these inmates. The goal of this training is to promote independence among the IVD inmates. The FDC shall offer IVD inmates who have difficulty safely and independently moving on, and negotiating, steps, curbs, terrain, and facilities, skills training for traveling independently. The FDC shall also offer all Covered Inmates, as needed, skills training in self-care, shaving, the safe and independent administration of medicine, and traveling independently.

28. **Impaired Inmate Assistant.** Impaired Inmate Assistants ("IIAs") will receive initial and periodic training as to their job duties and performance criteria, as well as assisting

Covered Inmates. The assistance training will be designed to educate the IIAs to (A) a Covered Inmate's needs, (B) the use and evaluation of impaired inmate assistants, (C) general information as to how to effectively work with Covered Inmates with disabilities, (D) functional implications of being deaf/hard of hearing, blind/visually impaired, or having a mobility disability; and (E) common misunderstandings about an individual's remaining sight, hearing, and mobility.

Training for IIAs that assist IVD inmates will also include topics such as guiding, assisting with talking watches, assistance in recreational activities, reading aloud, assistance at meals, traveling stairs, and maintaining confidentiality of information.

Training for IIAs that assist with IMDs will also include topics such as safely pushing a wheelchair, helping someone to transfer to another seat, and assistance with daily life activities.

## **V. COMPLIANCE REQUIREMENTS FOR DEAF/HARD OF HEARING INMATES**

29. **Qualified Interpreters: American Sign Language, Oral Interpreters and Transliterators.** A qualified sign language interpreter ("interpreter") is one who, via a video remote interpreting service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. An individual does not need to be registered or licensed in order to be considered to be a qualified sign language interpreter, but an individual holding a valid certification from the National Registry of Interpreters for the Deaf or the National Association of the Deaf shall be deemed to be a qualified sign language interpreter. Preference will be given to interpreters who hold a certification from the National Registry of Interpreters for the Deaf or the National Association of the Deaf. FDC will exercise reasonable efforts to utilize interpreters who hold a certification from the National Registry of Interpreters for the Deaf or the National Association of the Deaf in hiring or contracting with interpreters.

30. **Access to Qualified Interpreters: American Sign Language, Oral Interpreters or Transliterations.** FDC shall make available an interpreter to any D/HOH inmate whose effective means of communication is sign language or speech-reading/lip-reading in the following situations: (A) medical, dental, and mental health appointments; (B) scheduled meetings with classification officers; (C) education programs; (D) substance abuse programs; (E) intake and orientation; (F) disciplinary hearings; (G) work and job training, including at PRIDE; (H) religious services; (I) any training for matters that are outside the routine day-to-day schedule; (J) PREA training; and (K) any pre-release and re-entry instructions.

The phrase “make available” includes making an interpreter available by video remote interpreting (VRI) service, or by an on-site appearance. VRI shall not be used when it is not effective. FDC shall adopt a policy to implement the use of VRI for D/HOH inmates. VRI will not be utilized if:

- A. A qualified sign language interpreter is available to provide onsite interpretation;
- B. The event at issue is long or complex;
- C. The individual has a secondary disability (such as low vision or physical mobility) that may impede the ability of the inmate to fully access the communications; and
- D. The individual has cognitive, psychiatric, or linguistic difficulties which impede effective communication through VRI.

To the extent that FDC provides qualified interpreters via VRI services, FDC shall provide:

- (1) 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;



- (2) 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;
- (3) A clear, audible transmission of voices;
- (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI; and
- (5) Use of the VRI equipment in a location which safeguards the inmate's privacy, as much as any non-disabled inmate's privacy is protected.

31. **Use of Handcuffs.** Except when an inmate is being transported, FDC shall, as a reasonable accommodation, handcuff in the front D/HOH inmates whose effective means of communication is by sign language or writing, and shall only handcuff those inmates behind the back when there is a compelling security reason to do so. During disciplinary hearings, FDC will ensure that a D/HOH inmate whose effective means of communication is by sign language or writing, shall have sufficient freedom of movement for their hands.

32. **Hearing Aids.** When a D/HOH inmate is determined by FDC to need a hearing aid, it will be provided free of charge. When necessary as a reasonable accommodation, bilateral hearing aids will be provided. The FDC shall not confiscate the hearing aids of inmates who come to prison with them, but shall permit such inmates to retain and use them during their time in prison, unless there is a compelling security or medical reason; however, in the event that repair of such hearing aids is necessary, the FDC retains the option of providing the inmate with replacement hearing aids. FDC will provide training to inmates and staff on the processes to be used so that hearing aid batteries can be obtained free of charge. The FDC shall repair or replace hearing aids within a maximum of sixty (60) days of being advised of the need, unless due to the severity of the repair more time is necessary, in which event the repair shall be completed within a maximum of ninety (90) days.

33. **Teletypewriters.** Teletypewriters or a successor technology (TTYs) will be available in the dormitories for those D/HOH inmates who choose to use TTY in lieu of Videophones, or other devices and have the capability of using them. D/HOH inmates shall be permitted two times the normal time to use the TTY. The FDC shall ensure that staff is trained on how to operate the TTYs. Broken TTYs will be repaired or replaced within thirty (30) days. The TTY paper will be replaced when necessary. While the TTY is unavailable due to needed repairs, FDC will ensure that the inmate has access to another TTY. The FDC shall ensure that D/HOH inmates have access to the TIPS line using TTY. For legal calls, a TTY, for which a printout will not be maintained, will be available in another location on the compound which permits privacy.

34. **Telephone Amplification and Hearing Aid Compatibility.** FDC shall continue to provide standard telephones which offer volume amplification features, and that are compatible with hearing aids.

35. **Captioned Telephone (“CapTel”).** FDC shall provide captioned telephones (“CapTel”) for inmates who (1) can speak but cannot hear on the telephone, (2) do not use sign language to communicate, and (3) are unable to use a TTY phone, as long as the CapTel phones can be used in accordance with FDC’s security requirements.

36. **Video Relay Services.** Video enabled devices shall be available in kiosks in the dormitories which house D/HOH inmates in the facilities listed in Exhibit A to access the Video Relay Service (“VRS”) free of charge. The FDC shall ensure that staff is trained on how to operate the video enabled devices in the kiosks. Video enabled devices available in kiosks in the dorm which are broken will be repaired or replaced, within thirty (30) days. While the video enabled device is unavailable due to needed repairs, FDC will ensure that the D/HOH inmate has

access to another kiosk with another video enabled device in another dorm. The video enabled devices shall have the capability to access the TIPS line. The D/HOH inmates shall be permitted two times the normal time to use the video enabled device. Further, in all the facilities listed in Exhibit A, at least one video enabled device will be available in an area such that the call can be made confidentially for legal or court related calls.

37. **Alert Systems.** The FDC will install light boards and other visual alert systems in dormitories, which will be used to alert D/HOH inmates, whose condition prevents them from hearing announcements for events such as medical and legal call-outs, meal times, recreation times, counts, fire drills, and any other reason when an inmate needs to be alerted. In addition to the above, FDC will also explore other alternatives that may be used to alert D/HOH inmates to the events described above.

38. **Vibrating Watches.** FDC will utilize reasonable efforts to inform or remind the D/HOH inmate of necessary events or appointment “call outs.” If notwithstanding that, the D/HOH inmate is unable to respond to necessary events or appointment “call outs” due to the inmate’s hearing, a vibrating watch will be made available as an accommodation. In addition, all profoundly deaf inmates will receive a vibrating watch.

39. **Open or Closed Captioning.** FDC is not authorized by law to purchase televisions for the recreational use of inmates, so this creates practical impediments to ensuring that closed captioning exists for all television viewing; however, FDC will use reasonable efforts to locate television sets, which have closed captioning and place them in the dormitories where D/HOH inmates will be residing. If despite using reasonable efforts, FDC is unable to locate sufficient numbers of these televisions, this is not a violation of this Agreement. If a television set is equipped with a captioning chip, the captioning must be kept on at all times. All television sets

purchased by the FDC for education and wellness shall have closed captioning ability. If, after this Agreement is executed, any programming is produced by FDC that is transmitted over the television or computer, or any videos or DVDs are purchased by FDC for inmates' use (to include all educational or training material), the programming will be produced with captioning and the videos or DVDs will have captioning.

40. **FM Transmitters and Receivers.** In housing units designated for D/HOH inmates, TVs shall have FM Transmitters, and the FM transmitter will be turned on at all times when the TV is on. Broken FM transmitters will be repaired or replaced within thirty (30) days. When a D/HOH inmate is determined by the FDC to require an FM Transmitter as a reasonable accommodation, receivers will be provided. FDC will provide the additional appropriate devices needed to receive the FM signal.

## **VI. COMPLIANCE REQUIREMENTS FOR INMATES WITH VISION DISABILITIES**

41. **Housing.** IVD inmates will be housed with reasonable access to the IIAs. Dormitories will contain one or more dedicated charging stations for electronic accommodation devices. When IVD inmates are housed in open bay dorms, they shall receive appropriate accommodation for access to the bathroom, which can include orientation to the dorm, a clear path to the bathroom, and, if practicable, a bed close to the bathroom. IVD inmates will not be housed on the second floor of dormitories, except for compelling reasons on a temporary basis, or in the event of an emergency.

42. **White Canes.** White canes will be offered as an available accommodation device for those IVD inmates who are totally or legally blind, or those who have low vision and have difficulty safely and independently moving on, and negotiating, steps, curbs, terrain, and facilities. The length of the white cane shall be based on an individual's height, and generally

should stand at shoulder height, but the preference of the inmate will be considered. White canes must be available for replacement as soon as practicable, but no longer than two (2) weeks, and FDC shall provide an accommodation in the interim, as needed.

43. **Talking Watches.** FDC will utilize reasonable efforts to remind the IVD inmates of necessary events or appointment “call outs.” If, notwithstanding the reminders provided by FDC, and/or changes to the Call Out Lists as discussed below, the IVD inmate is unable to respond to necessary events or appointment “call outs” due to his vision, a talking watch will be made available as an accommodation. In addition, all totally blind inmates will receive a talking watch.

44. **Key Locks.** IVD inmates will be authorized to purchase a key lock to store their possessions in their lockers.

45. **Magnifiers.** Hand held magnifying glasses of various magnifications, which are made of plastic, shall be available in the library for use by IVD inmates. The library shall also contain a CCTV video magnifier for use by IVD inmates. IVD inmates who are legally blind or have low vision will be permitted to have plastic magnifying sheets in the dorms as an accommodation.

46. **Recorders/Players.** If an IVD inmate has made a request, and has demonstrated a need, to independently prepare correspondence, he will be provided with a recorder in or near the library to dictate correspondence despite whatever other aids or devices are available. The location will permit dictation confidentiality. If an IVD inmate has made a request, and has demonstrated a need, to independently listen to correspondence, he will be provided with a player in or near the library to listen to correspondence despite whatever other aids or devices are available. The location will permit confidentiality.

47. **General Library Services.** To the extent reasonably possible, the general library shall offer large print books and other written resources; otherwise, the hand held magnifying glasses, or CCTV video magnifier, can be utilized to enlarge print material. If the general library contains a computer, the computer will have a font enlargement feature, and a screen magnifier. Also, impaired inmate assistants or library clerks will be available to read out loud.

48. **Law Library Services.** The law library shall offer the hand held magnifying glasses to enlarge print material, and impaired inmate assistants or library clerks will be available to read out loud. In addition, computers will have a font enlargement feature, and a screen magnifier. One law library computer shall be equipped with a text-to-speech software (JAWS), and training on the use of the text-to-speech software will be available. If an IVD inmate has an inability due to his vision to read legal documents from retained counsel or the court, and is unable to use any other aid or device for that purpose, the inmate will be able to use an impaired inmate assistant, a law clerk, or a library clerk to read material out loud in a location in or near the law library that will permit confidentiality.

49. **Time to Work with Impaired Inmate Assistants, Library Clerks, and Law Clerks in or Near the Law Library.** Inmates with vision disabilities shall be provided up to fifty percent (50%) additional time to work with IIAs, library clerks, or law clerks in or near the law library beyond that amount of time that is normally afforded to the non-vision disabled.

50. **The Division of Blind Services' Talking Book Program.** Access to The Division of Blind Services' Talking Book Program (the "Program") will be an available accommodation device or aid for IVD inmates. Assistance will be provided to IVD inmates to register for the Program, select Program resources, and to send and receive Program resources. An IVD inmate's access to resources with regard to the number of resources that can be taken

out at one time, the use of the Talking Book players, etc. will be in accordance with the policies of the Program. The FDC will update its policies to reflect the policies of the Talking Book program. When DRF brings any issues with access by IVD inmates to Talking Books to FDC's attention during meetings or through liaisons, FDC will work with Talking Books to try to resolve those issues.

51. **Call Out Lists.** "Call Out" lists shall either be printed in at least 18-22 font, or, if necessary, the information contained on the Call Out list will be provided to the IVD inmates by alternative methods.

52. **Medical Care.** IVD inmates will receive the periodic vision examination that their condition requires. IVD inmates shall receive the treatment, medical procedures, or accommodations that are deemed to be medically necessary. IVD inmates who have been determined by FDC to have a sensitivity to light shall be issued dark tinted glasses or a hat.

53. **Correspondence Courses from Hadley School for the Blind.** Access to correspondence courses from Hadley School for the Blind ("Hadley") will be an available accommodation device or aid for IVD inmates. Assistance will be provided to IVD inmates to register for the Hadley courses, select Hadley courses, and to send and receive Hadley resources. An IVD inmate's access to Hadley resources will be in accordance with the policies of Hadley.

54. **Access to Grievance, RMAR, and DR System.** If an IVD inmate has an inability due to his vision to write written grievances, grievance appeals, requests using the Reasonable Modification or Accommodation forms, or responses to disciplinary actions, the inmate will have access to an impaired inmate assistant, law clerk, or a library clerk to prepare such written items. If that is not possible, the inmate will then have access to a FDC staff member for that purpose. An extension of time for filing informal grievances, formal

grievances, grievance appeals to the Office of the Secretary, or direct grievances to the Office of the Secretary shall be granted when it is clearly demonstrated by the inmate to the satisfaction of FDC that it was not feasible to file the grievance within the relevant time periods and that the inmate made a good faith effort to file in a timely manner.

55. **Impaired Inmate Assistants.** The IVDs, who have been determined by FDC to need an IIA as a reasonable accommodation, shall have access to IIAs who have the ability to effectively communicate with the IVDs to the extent possible, and will possess sufficient literacy skills to read aloud, and to follow oral requests. The IIAs will be periodically evaluated for fulfillment of established job duties and performance criteria, and any information provided by the Covered Inmate will be considered. When an IIA is unavailable, the FDC will make another IIA available. When not in special housing, IIAs shall be housed in the same dorm as the covered. FDC will provide documentation to DRF that Impaired Inmate Assistants have completed the training.

56. **FM Transmitters and Receivers.** If an IVD inmate has a need for enhancement of television sound in order to appreciate the programming, and preferential seating in the day room is not available, a receiver shall be provided to the IVD inmate as an accommodation to be used along with the FM transmitter. When the TV is on, the FM transmitter shall be turned on. Ear buds shall be made available in order to utilize the receiver.

## **VII. PLAN OF COMPLIANCE FOR INMATES WITH MOBILITY DISABILITIES**

### **57. Modifications to Prisons Where IMDs Will Be Housed.**

A. **Selection of an Architect.** Within thirty (30) days after the Effective Date, FDC will initiate procurement of the services of a licensed architect by following the procedures set forth in Florida Statute § 287.055. The selected architect must be



knowledgeable with ADA requirements and standards in prisons or jails, be licensed in Florida, and have experience assessing ADA accessibility in institutionalized settings. FDC will utilize the solicitation document that is attached as Exhibit C as the public announcement for these services. Both DRF and FDC may name one participant to the two-person selection committee that will consider which architect will be selected to perform the work required in this Agreement, consistent with state law procurement requirements. Both members of the selection committee will review each submitted proposal and evaluate them using the criteria set forth in Florida Statute § 287.055 and the applicant's experience assessing ADA accessibility in institutionalized settings, and preliminarily score them using the methodology currently used for competitive selection of professional architectural services, with the goal of selecting the most highly qualified firm. The three top-ranked firms will provide public presentations, after which final scoring will be done by the two-person selection committee. The scores from each member of the selection committee will be averaged and the firms will be ranked according to these scores. The person selected is referred to in this Agreement as the Architect.

The Parties intend for the Architect to be a neutral expert, and accordingly neither party will have contact with him/her about this case (other than for ministerial tasks such as arranging travel and payment) without the other party present or included in the communication. The Architect will be paid by FDC.

**B. Facilities and Areas in Facilities That Mark Mazz Has Already Inspected.** As to the facilities or areas within facilities listed in the attached Exhibit A which Mark Mazz has already inspected, and which FDC will use to house IMDs, FDC

will make the modifications necessary to remedy the items listed on the attached Exhibit D, which is an implementation schedule for architectural modifications which the Parties have agreed will be made. The items highlighted in yellow on Exhibit D, which can be remedied over the short-term, will be modified no later than December 31, 2017. The items highlighted in blue, which are long-term and structural, will be modified no later than June 30, 2020.

By April 30, 2018, the Architect will inspect and complete a written report describing whether the short-term items identified in Exhibit D have been remedied, and will provide that report to DRF and FDC upon completion. By December 31, 2020, the Architect will inspect and complete a written report to determine whether the long-term items identified in Exhibit D have been remedied, and will provide that report to DRF and FDC upon completion. FDC shall remedy any items identified by the Architect in either report as not being remedied within one hundred twenty (120) days of receiving the report, but in no event, no later than April 1, 2021.

**C. Facilities and Areas in Facilities That Mark Mazz Has Not Inspected.**

As to the facilities or areas within the facilities listed in the attached Exhibit A which Mr. Mazz has not inspected, and which FDC will also use to house IMDs, the Architect will conduct inspections in order to identify any items that do not meet ADA accessibility standards in areas where inmates have access. The Architect will inspect all areas where any prisoner is allowed to be, enter, or remain, whether or not prisoners actually enter or remain in that area. The inspections will be otherwise governed by the attached Exhibit E. The Parties may each send one representative, who is not an expert for either side, to accompany the Architect on the tour of the first facility, to ensure that the architect

appropriately applies ADA standards to all areas where inmates have access and inspects all appropriate areas. The inspections shall be completed within two hundred ten (210) days of the Effective Date. A written report listing any items that need to be remedied shall be prepared and provided to both FDC and DRF upon completion. The reports shall also explain whether there were any areas the Architect was not able or not permitted to inspect. DRF will confer with FDC if it believes that any areas were improperly excluded from the inspection, and the Parties shall negotiate in good faith to attempt to reach an agreement about whether the Architect must re-visit a facility to inspect those excluded areas. Within sixty (60) days of receiving the report, FDC shall inform DRF of the items that it will agree to remedy. As to the remaining items, the Parties shall negotiate in good faith in an attempt to reach an agreement on the items that will be modified. The items identified by the Architect as short-term shall be completed within two hundred forty (240) days of receipt of the report. The items identified by the Architect as long-term and structural will be modified no later than June 30, 2020. FDC shall not be required to make any architectural modifications that would result in a fundamental alteration in the nature of a service, program, or activity or in either an undue financial or administrative burden (as defined in 28 C.F.R. § 35.150), or a compelling security concern. Within sixty (60) days from the designated time for completion of the short-term remedies, the Architect will conduct an inspection to determine whether the short-term items have been remedied, and shall provide a written report to both FDC and DRF within sixty (60) days of those inspections. Within sixty (60) days from the designated time for completion of the long-term remedies, the Architect will conduct an inspection to determine whether the long-term items have been

remedied, and shall provide a written report to both FDC and DRF within sixty (60) days of those inspections. FDC shall remedy any remaining items in either report within one hundred twenty (120) days of receiving the report, but in no event later than April 1, 2021.

58. **Wheelchairs.** An IMD, who has been determined to need a wheelchair as an accommodation, may keep the wheelchair he had when he entered prison, absent a documented compelling security, health or safety concern. If that occurs, FDC will provide an alternative reasonable accommodation.

A wheelchair will be provided to any IMD if FDC determines it is necessary as a reasonable accommodation. FDC shall utilize an appropriate professional to determine the size and type of wheelchair.

FDC shall conduct quarterly inspections of the wheelchairs to determine whether they need repair or maintenance. If repair or maintenance is needed, it shall be completed within sixty (60) days of when FDC becomes aware of the need for the repair or maintenance, unless due to the severity of the repair more time is necessary, in which event the repair shall be completed within a maximum of ninety (90) days. In the interim, the IMD will be provided with a “loaner” chair.

59. **Prosthetic Devices.** An IMD, who has been determined to need a prosthetic device as an accommodation, may keep what he had when he entered prison, absent a documented compelling security, health or safety concern.

A prosthetic device will be provided to any IMD if FDC determines it is necessary as a reasonable accommodation. FDC shall utilize and follow the recommendations of an appropriate

professional to determine whether the device is operable, properly fitted, and to show the inmate how to use the device.

FDC shall conduct quarterly inspections of the prosthetic devices to determine whether they need repair or maintenance. If repair or maintenance is needed, it shall be completed within sixty (60) days of when FDC becomes aware of the need for the repair or maintenance, unless a determination is made that the prosthetic must be replaced or, due to the severity of the repair more time is necessary, in which event the repair or replacement shall be completed within a maximum of ninety (90) days. In the interim, the IMD will be provided with an alternative reasonable accommodation.

60. **Other Accommodations.** When an IMD is determined by FDC to require any of the following as a reasonable accommodation, these accommodations shall be provided: canes, walkers, rollators, trapeze bars, orthopedic shoes and socks, braces, wedges, appropriate mattresses, cushions, or wheelchair gloves, so long as there is no compelling security concern. If repair or replacement is needed, it shall be completed within sixty (60) days of when FDC becomes aware of the need for the repair or replacement. In the interim, the IMD will be provided with an alternative reasonable accommodation.

61. **Bathrooms and Showers.** IMDs who have been determined to require special accommodations in the shower or bathroom, such as grab bars, elevated toilets, shower chairs and seats, shower wands, and privacy screens, shall receive those accommodations. If repair or replacement is needed, it shall be completed within sixty (60) days of when FDC becomes aware of the need for the repair or replacement. Until the item is fixed and if it is required so that the IMD may shower or use the bathroom, the IMD will be provided access to a working shower

chair, grab bar, elevated toilet, shower wand, or privacy screen as needed in another dormitory as needed. FDC will permit the IMD to use a privacy screen in the ADA accessible shower.

62. **Impaired Inmate Assistants (IIAs).** If an IMD is determined by FDC to need an IIA as a reasonable accommodation, the IMD shall have access to IIAs who have the ability to push a wheelchair and effectively assist an IMD with walking, standing, transferring, and other daily life activities. The IIAs will be periodically evaluated for fulfillment of established job duties and performance criteria, and any information provided by the Covered Inmate will be considered. When an IIA is unavailable, the FDC will make another IIA available. When not in special housing, IIAs shall be housed in the same dorm as the Covered Inmate they are assisting.

#### **VIII. IMPLEMENTATION OF THE PLAN OF COMPLIANCE**

63. **Agreement to Implement the Plan of Compliance.** Subject to the terms of this Agreement, the Parties agree that the Plan of Compliance resolves all issues which have been raised in the Complaint, and should be implemented.

64. **No admission.** FDC has entered into this Agreement in order to avoid the necessity of trial. Nothing in this Agreement should be construed as an admission of liability by FDC, and the Agreement cannot be used as an admission by either Party in this or any other proceeding. Nothing in this Agreement or FDC's compliance with this Agreement shall be construed as an admission or concession by DRF that FDC is in compliance with the Americans with Disabilities Act, the Rehabilitation Act, or any other statutory or constitutional provision.

65. **Agreement is the Product of Multiple Sessions.** The Plan of Compliance, and this Settlement Agreement, are the product of multiple lengthy negotiation sessions and compromise by both DRF and FDC.

66. **Voluntary Dismissal.** Ten (10) days after the Effective Date, the Parties will file a Stipulated Notice of Dismissal with Prejudice pursuant to Rule 41(a)(1)(ii), Fed. R. Civ. P.

67. **Meetings.** Until July 1, 2018, representatives of FDC and representatives of DRF will meet in person at least once every quarter—although the schedule may be adjusted with the consent of both Parties—so that DRF can receive information from FDC on the implementation of the above-described Plan of Compliance, and DRF can share any feedback regarding the implementation. The first meeting will occur thirty (30) days after the Effective Date. Thereafter, until April 30, 2021, representatives of FDC and representatives of DRF will meet in person on a quarterly basis, or more frequently as agreed to by the Parties. The meetings shall be held in Tallahassee, Florida at a location chosen by FDC, although the location and City may be adjusted with the consent of both Parties, or the meetings may be held by phone or videoconference with the consent of both Parties. At these meetings, the Parties will discuss the progress of implementation of the Plan of Compliance. It is envisioned that free, open and frank discussions of problems, limitations and successes will further the fulfillment of the Plan of Compliance. The discussions in these meetings shall not be used by either Party should additional or subsequent litigation be necessary. These meetings will also provide an opportunity for DRF to share any inmate specific issues (including providing inmate identifying detail) that may continue to exist notwithstanding FDC's efforts to implement the Plan of Compliance, in order to afford FDC an opportunity to investigate and address those issues. Four (4) weeks before the meeting—although DRF will endeavor to provide this notice as early as practicable—DRF will provide FDC with a report of any claimed problems or deficiencies, giving as much detail as possible regarding the matter, including the date, time, place, identification of any individuals involved, and a description of what occurred.

68. **Continued Protection and Advocacy Activities.** The Parties agree that this Agreement in no way limits DRF's protection and advocacy activities, and DRF may continue these efforts during the implementation of the Plan of Compliance.

69. **Party Liaisons and Presentation of Concerns.** Within thirty (30) days after the Effective Date, FDC and DRF will each designate a representative to serve as a liaison for purposes of ensuring compliance with this Agreement. If the liaison becomes unable, temporarily or permanently, to perform his or her duties, the party for the affected liaison shall designate an alternate who shall perform the duties of the liaison, and shall inform the other party in writing. In addition to the regularly scheduled meetings described in paragraph 67 above, DRF may present, in writing, ideas or concerns to the FDC liaison, including inmate specific concerns (providing as much detail as practicable under the circumstances so that the concerns may be investigated, and, where appropriate, corrective action may be taken). If DRF believes it needs access to a FDC employee or agent, it will be through the FDC liaison, and any written communication will be copied to the designated counsel for FDC. The Parties may also designate an attorney who will be copied on all communications between the liaisons. At the regularly scheduled meetings, described in paragraph 67 above, the Parties shall discuss, among other things, the communications that occur between meetings, the results of any investigation of concerns raised, and any corrective action needed to abide by the Plan of Compliance. Communication at the regularly scheduled meetings and the contact with the liaison shall be the sole methods of exchanging information and matters of concern relating to compliance with this Agreement.

70. **DRF's Access to Records.** Starting one hundred twenty (120) days after the Effective Date, except for documentation described in paragraph 70.D below, and continuing



every one hundred twenty (120) days thereafter until the termination of this Agreement (unless another time period is specified elsewhere in this Agreement), FDC will provide to DRF, at no cost to DRF and without a request from DRF, via email or some other electronic method, copies of the following records:

A. A report, in Excel format, listing every inmate who has been given an “impairment grade” for hearing, vision, or mobility, along with the code that has been assigned to that inmate. If FDC creates a new coding system that codes inmates as having a physical disability, FDC will also provide a report in Excel format that lists all such inmates.

B. A report, in Excel format, of all completed Reasonable Modification or Accommodation Request forms (currently FDC form DC2-530a and DC2-530b) containing the names and DC numbers of each inmate who submitted a request, a summary of the request, the institution the inmate was at when the request was submitted, the institution’s recommendation regarding the request, the action taken on the request, and the date of the decision.

C. A report, in Excel format, of all disability-related grievance appeals, currently labeled as “code 24,” containing the Grievance Appeal case numbers, inmate names and DC numbers, the institution the inmate was at when the Grievance Appeal was received, when it was responded to, when it was mailed, and the disposition.

D. Starting six (6) months after the Effective Date, documentation of sign language interpreter services, which provides the date, inmate name and DC number, and type of event, and whether the services were in-person or via a VRI service, when sign language interpreter services were provided to a D/HOH inmate.

E. All documentation showing the confiscation of any accommodation, aid, or service as referenced in paragraph 20 (Confiscation of Approved Accommodations).

Each production is an update to the prior production. In addition to these regular reports, DRF may request, in writing to the designated FDC liaison, the following additional records relating to hearing, vision, or mobility issues: medical, hospital, classification, and utilization management records; grievances (including appeals and responses); Reasonable Modification or Accommodation Requests; inspector general reports; and applications for the talking book program; of specific inmates DRF reasonably believes to be Covered Inmates. FDC will promptly acknowledge such requests and provide the requested records as soon as practicable after receiving a request. The attached Exhibit F is the Business Associate Agreement which authorizes FDC to disclose these records to DRF to the extent that they contain protected health information. The Parties will comply with the attached Exhibit F. Nothing in this paragraph prohibits DRF from conducting public records requests or other investigations to obtain information that may be related to this Agreement.

71. **Confidential Legal Visits and Telephone Calls with Inmates.** DRF or its representatives may conduct confidential legal visits or telephone calls with inmates DRF reasonably believes are Covered Inmates to ascertain compliance with this Agreement, as one part of DRF's monitoring of this Agreement. DRF will attempt to set up such visits and calls through normal channels, but should DRF experience any difficulties, DRF will notify FDC's counsel, who will attempt to intervene and assist with setting up the visit or call. Within five (5) days after such a confidential legal visit or telephone call, DRF will notify FDC's counsel and the FDC liaison about the name of the inmate(s) with whom DRF or its representatives communicated, the date of the visit or call, the amount of time spent on the visit or telephone

call, and the name of the DRF representative(s) who conducted the visit or telephone call, provided that the inmate agreed to speak with DRF or its representative. If the inmate declines to speak with DRF or its representative for any reason, DRF will not provide the name, DC number, date of the attempted interview, or interviewer's name to FDC.

72. **Compliance Visits.** DRF or its representative shall be permitted to conduct inspections of each facility listed on Exhibit A to ascertain compliance with this Agreement and identify any deficiencies. The inspections will be conducted under the terms and conditions described in Exhibit G. DRF or its representative will be permitted to inspect and test all new auxiliary aids and devices designated for Covered Inmates. The inspections will be conducted at some point between one (1) year after the Effective Date up until the termination of this Agreement. If problems are noted, inspections may be repeated with a focus on any problem areas. The inspections performed under this paragraph will be performed by persons who are not experts.

If during the inspection of a facility it is discovered that there are operational issues or deficiencies with the VRS or the VRI service, DRF may bring an expert knowledgeable in the technical aspects of VRS and VRI services inspect those devices within thirty (30) days. FDC will attempt to arrange to have a representative from its VRS and VRI provider present so that the nature of the technical issues can be identified and quickly resolved. FDC will exercise reasonable efforts to resolve any problems or deficiencies with VRS or VRI service as soon as practicable after these inspections.

## **IX. VIOLATION OF SETTLEMENT AGREEMENT**

73. **Procedures for Allegations of Significant Breach of this Agreement.** The Parties agree that this Agreement represents a written contract binding under state law and

enforceable as a contract in state court; however, the Parties have agreed that the sole remedy should a breach of contract action be filed would be specific performance. Before any alleged violation of this Agreement is brought in state court, the Parties shall attempt to resolve the problem among themselves as follows:

Any time after eighteen (18) months following the Effective Date, if DRF believes that FDC has significantly breached this Agreement, the following Notice and Cure Procedures apply:

A. **Notice of Significant Breach.** DRF shall provide a written Notice of Significant Breach to counsel for FDC alleging that FDC has significantly breached this Agreement and containing sufficient detail for FDC to understand the nature and scope of the significant breach, to investigate it, and to take necessary corrective action.

B. **Response to Notice of Significant Breach.** FDC shall promptly investigate and take corrective action to remedy the significant breach, and shall provide a written response to DRF as soon as practicable but not to exceed sixty (60) days after receiving the Notice of Significant Breach. FDC's written response shall contain an outline of the steps FDC took to investigate the problem, the results of the investigation and a specific corrective action plan for addressing the stated problem. If FDC's response includes a corrective action plan, FDC will provide to DRF a written update on the status of the results of the corrective action plan every thirty (30) days until either party deems the problem to be resolved or DRF seeks to enforce this Agreement. If no corrective action is anticipated, or if FDC denies a significant breach, FDC's response shall include the reason and any statutes, regulations or other bases upon which FDC is relying.

C. **Reply Regarding Significant Breach.** The purpose of the Notice and Response described in the two preceding paragraphs is to enable the Parties to work to avoid DRF taking further action to enforce this Agreement. To this end, DRF agrees to promptly advise FDC within fourteen (14) days of receipt of FDC's response whether DRF continues to assert that FDC has significantly breached this Agreement. Adherence to the notice and cure provisions described in paragraphs 73.A to 73.C shall be a condition precedent to further action to enforce this Agreement as described below.

74. **DRF's Remedy for FDC's Alleged Significant Breach.** If, after completing the Notice and Cure Procedures described in paragraphs 73.A to 73.C above, DRF, in its sole discretion, believes that FDC has still significantly breached this Agreement, DRF may file a breach of contract action in state court asserting a significant breach, in which event the sole remedy will be for specific performance. To the extent that DRF brings such a breach of contract seeking specific performance as the sole remedy, FDC will not assert sovereign immunity as a defense. FDC agrees to pay DRF's reasonable attorneys' fees and expenses if a state court finds FDC significantly breached this Agreement. If FDC takes an appeal and loses the appeal, FDC also agrees to pay DRF's reasonable attorneys' fees and expenses for the appeal. If DRF has not filed a breach of contract action, this Agreement will terminate on July 6, 2021. If a breach of contract action is pending as of July 6, 2021, the termination of the specific terms of the Agreement referenced in the breach of contract action shall be tolled.

75. **Effect of DRF's Inaction or Action With Respect To A Suit To Enforce.** Failure by the DRF to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein shall not be construed as a waiver of the DRF's right to enforce other deadlines and provisions of this Agreement provided DRF complies with the

Notice and Cure Provisions in paragraph 73 above. Moreover, if DRF seeks to enforce certain provisions in this Agreement by bringing a breach of contract action, and not seeking enforcement of other provisions at the same time, seeking enforcement of select provisions of this Agreement does not void the unchallenged terms of the Agreement and it remain in full force and effect throughout the entire term of this Agreement. Furthermore, DRF is not prohibited from bringing multiple breach of contract actions against the FDC should it be necessary.

## **X. OTHER PROVISIONS**

76. **Authentication of Documents.** If DRF files a breach of contract action, the Parties agree that any documents or reports provided by either Party pursuant to this Agreement shall be deemed to be authenticated.

77. **Attorney's Fees and Costs.** Within thirty (30) days after the Effective Date, FDC shall pay to DRF the sum of two million U.S. dollars (\$ 2,000,000), in full payment of attorneys' fees and costs accrued through the Effective Date, via check made payable to Disability Rights Florida, Inc. This payment shall be nonrefundable. DRF hereby releases and discharges FDC of and from any claims or causes of action arising out of payment of attorneys' fees and costs accrued through the Effective Date.

78. **Modification of the Manner in Which FDC Provides Accommodations to Covered Inmates.** FDC specifically reserves the right to change, alter, amend, or rescind the manner in which it treats Covered Inmates, to the extent that such amendments, alterations, or changes are required by federal law in order to retain or obtain federal funding or to avoid federal sanctions. If DRF believes FDC has violated any constitutional, statutory, regulatory, or other legal provision in a manner that is not covered by this Agreement, DRF specifically

reserves the right to bring a separate action against the official capacity agency head of FDC for such alleged violation and FDC agrees to not raise the defense of collateral estoppel or res judicata in an action for prospective declaratory and injunctive relief.

79. **Modification of Agreement.** Should the Parties in the future jointly determine to modify any provision of this Agreement, any modifications must be reduced to writing and signed by both Parties. No modification shall take effect unless it is reduced to writing and signed by both Parties. These actions must receive the prior written approval of both Parties, which approval shall not be unreasonably withheld or delayed.

80. **Force Majeure Clause.** Should a war, riot, fire, flood, hurricane, typhoon, earthquake, lightning, explosion, strike, lockout, pandemic, or prolonged shortage of energy supplies substantially impede FDC in its compliance with any of the terms of this Agreement, or substantially impede FDC's timely compliance with any of the terms of this Agreement, the Parties agree that the failure to comply or comply timely shall be excused and shall not be considered a failure to meet the terms of the General Plan of Compliance. Should any of the events in this paragraph occur and substantially impede compliance, FDC shall make reasonable efforts to restore or alternatively achieve compliance as soon as it is possible to do so.

81. **Agreement Binding on Successors.** It is the intent of the Parties that this Agreement shall be binding upon the Parties, and their successors, assigns, employees, contractors and agents.

82. **Agreement Constitutes Entire Agreement.** This Agreement, including any attachments, constitutes the entire Agreement of the Parties with respect to its subject matter and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or written, regarding the subject covered in this Agreement. The

Parties acknowledge that no representations, inducements, promises, or statements related to this settlement or the subjects covered in this Agreement, oral or written, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference in this Agreement, and further agree that no other agreement, covenant, representation, inducement, promise, or statement relating to this settlement or the subjects covered in this Agreement not set forth in writing in this Agreement have been made by any Party.

83. **Effective Date of Agreement.** This Agreement shall become effective on the last date on which it is executed (the “Effective Date”). It may be executed by the Parties in multiple counterparts and shall constitute one final Agreement which shall be binding upon each party hereto, notwithstanding the fact that all of the signatures required to effectuate this Agreement do not appear on the same page. An electronic signature shall have the same force and effect as an original signature.

84. **Agreement Subject to Legislative Appropriations.** The Parties recognize that the Plan of Compliance includes plans for activities extending beyond the current fiscal year, and fiscal year 2017-2018. The Parties recognize that the continued implementation of the Plan of Compliance past July 1, 2018 is dependent upon legislative appropriation. FDC will exercise reasonable efforts to secure the legislative appropriations necessary to meet the terms of the Plan of Compliance. The inability to perform any act required under the Plan of Compliance due to non-appropriation of funds, so long as those funds are necessary to implement or support the Plan of Compliance, shall not be deemed to be a significant breach by FDC so long as FDC exercises reasonable efforts to secure the appropriations at issue. If FDC does not receive appropriations in subsequent years, DRF may file a separate lawsuit with respect to those issues



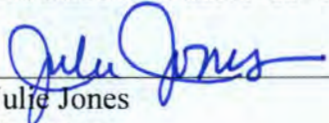
which it contends amount to systemic violations of federal law and the official capacity agency head of FDC will not raise the defense of collateral estoppel or res judicata in an action for prospective declaratory and injunctive relief.


85. **Release.** Contingent on FDC meeting its obligations under the General Plan of Compliance, DRF hereby releases and discharges FDC, including its successors and assigns, of and from any claims or causes of action arising out of the matters described in the Complaint (DE-1).

86. **Compliance with Section 45.062.** Each of the signatories to this Settlement Agreement on behalf of FDC represents that they will take all necessary steps to comply with the requirements of Florida Statute § 45.062 (2000).

IN WITNESS WHEREOF, the Parties to this Settlement Agreement have executed the same as of the 7 day of July, 2017.

FLORIDA DEPARTMENT OF CORRECTIONS

By:   
Julie Jones  
Secretary  
Defendant

By:   
Albert J. Bowden, Esq.

Albert J. Bowden  
Special Counsel  
Florida Bar No.: 0802190  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399-1050  
(850) 414-3300  
(850)488-4872 (Fax)  
al.bowden@myfloridalegal.com

Attorney for Defendant

DISABILITY RIGHTS FLORIDA, INC.

By: 

Maryellen McDonald  
Executive Director  
Plaintiff

By: 

Randall C. Berg, Jr., Esq.

Randall C. Berg, Jr., Esq.

Fla. Bar No. 318371

*[RBerg@FloridaJusticeInstitute.org](mailto:RBerg@FloridaJusticeInstitute.org)*

Dante P. Trevisani, Esq.

Fla. Bar No. 72912

*[DTrevisani@FloridaJusticeInstitute.org](mailto:DTrevisani@FloridaJusticeInstitute.org)*

Erica A. Selig, Esq.

Fla. Bar No. 0120581

*[ESelig@FloridaJusticeInstitute.org](mailto:ESelig@FloridaJusticeInstitute.org)*

FLORIDA JUSTICE INSTITUTE, INC.

3750 Miami Tower

100 S.E. Second Street

Miami, Florida 33131-2309

305.358.2081

305.358.0910 (Fax)

Molly Paris, Esq.

Fla. Bar. No. 90486

*[Mollyp@disabilityrightsflorida.org](mailto:Mollyp@disabilityrightsflorida.org)*

David Boyer, Esq.

Fla. Bar No. 90917

*[Davidbh@disabilityrightsflorida.org](mailto:Davidbh@disabilityrightsflorida.org)*

DISABILITY RIGHTS FLORIDA, INC.

1930 Harrison St., Ste. 104

Hollywood, FL 33020-7850

850.488.9071

850.488.8640 (Fax)

Sharon Caserta, Esq.

Fla. Bar No. 0023117

*scaserta@forthepeople.com*

MORGAN AND MORGAN, P.A.  
Deaf/Disability Rights Unit  
76 South Laura Street, Suite 1100  
Jacksonville, Florida 32202  
904.361.0078  
904.245.1121 (Videophone)  
904.361.4305 (Fax)

Attorneys for the Plaintiff