

**Settlement Agreement  
Between  
The United States of America  
And  
Tufts Medical Center  
Under  
Title III of the Americans with Disabilities Act**

**A. BACKGROUND**

1. This matter is based upon a compliance review of the accessibility of Tufts Medical Center (“TMC”) facilities under Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 – 12189 (the “ADA”), and its implementing regulation, 28 C.F.R. Part 36, including the ADA’s accessibility standards, the 2010 Standards for Accessible Design (“2010 Standards”) and the 1991 Standards for Accessible Design (“1991 Standards”), as defined in 28 C.F.R. § 36.104.
2. TMC facilities are places of public accommodation because TMC is a hospital, and it contains professional offices of health care providers within the meaning of Title III, 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104. TMC is a public accommodation within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7)(F), and its implementing regulation, because it owns, operates, leases or leases to places of public accommodation. The ADA prohibits public accommodations, including TMC, from discriminating on the basis of disability in the full and equal enjoyment of its goods, services, facilities, privileges, advantages or accommodations. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).
3. The TMC campus is comprised of sixteen buildings owned or leased by TMC in Boston, Massachusetts, and a parking garage jointly owned by TMC and Tufts University.
4. To ensure that no individual with a disability is discriminated against on the basis of disability in the full and equal enjoyment of TMC’s services and facilities, this Agreement sets out TMC’s obligations to, among other things:
  - a. Remove architectural barriers in existing facilities where such removal is readily achievable, 42 U.S.C. §12182(b)(2)(A)(iv) and 28 C.F.R. §36.304;
  - b. Undertake alterations in a manner that ensures that the altered facilities are readily accessible to and usable by persons with disabilities to the maximum extent feasible, 42 U.S.C. §12183(a) and 28 C.F.R. §§36.402-403;
  - c. Ensure that all of its future newly constructed facilities are readily accessible to and usable by individuals with disabilities, 42 U.S.C. §12183(a) and 28 C.F.R. §§36.401, 406;
  - d. Ensure that each clinical service has a sufficient number of Accessible Patient Rooms with Accessible Beds, and Accessible Medical Equipment available to enable individuals with disabilities to have equal access to medical services, 42 U.S.C. §12182(b)(1)(A), (b)(2) and 28 C.F.R. §§ 36.202, 302, 406(g); and

- e. Provide “Patients” (as defined in paragraph 16 below) and Companions (as defined in paragraph 14 below) with appropriate Auxiliary Aids and Services to ensure effective communication, 42 U.S.C. §12182(b)(2)(A)(iii) and 28 C.F.R. §36.303.
5. The United States determined that TMC has made efforts to comply with the ADA. However, the United States’ compliance review identified aspects of TMC facilities and services that did not comply with Title III of the ADA.
6. TMC denies that it has violated the ADA. However, the parties agree that it is in their best interest, and the United States believes that it is in the public interest, to resolve this matter through this Agreement.

## **B. DEFINITIONS**

7. For the purposes of this Agreement, the parties agree that “Accessible Medical Equipment” means equipment that is accessible to and usable by persons with disabilities.
8. For the purposes of this Agreement, the parties agree that “Accessible Beds” means height-adjustable hospital beds that are accessible to and usable by persons with disabilities.
9. For purposes of this Agreement, the parties agree that “Accessible Patient Room” means a patient room that complies with the applicable alteration requirements of the 1991 or 2010 Standards, 28 C.F.R. Part 36.<sup>1</sup> In addition, all Accessible Patient Rooms must: (i) contain an accessible toilet room; (ii) contain or have access to an accessible shower, and (iii) contain or have access to an Accessible Bed.
10. For the purposes of this Agreement, the parties agree that “Accessible Scales” means scales within patient care and clinical areas that have a platform large enough to fit a wheelchair, and with a high weight capacity for weighing an individual while seated in his or her wheelchair. Other options may include a scale integrated into a patient lift, hospital bed, or exam table.
11. For purposes of this Agreement, the parties agree that “Active Members of the Hospital Medical Staff” means all affiliated physicians and/or other health care professionals who have medical staff privileges that permit them to see and/or treat patients at TMC.
12. For the purposes of this Agreement, the parties agree that “Ancillary Equipment” means equipment used with examination tables or chairs, and adapted to or adjustable for use by individuals with disabilities. Ancillary Equipment includes items such as leg supports for gynecological examinations, protective padding, positioning straps, and additional supports or rails needed to ensure the safety and comfort of patients with disabilities.
13. The term “Auxiliary Aids and Services” includes Qualified Interpreters either on-site or through Video Remote Interpreting (“VRI”) services; note takers; real-time computer-

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<sup>1</sup> For purposes of this Agreement, “Accessible Patient Room” does not include rooms on the Intensive Care Units or other areas where patients are not permitted to self-ambulate or to independently use a toilet room or shower.

assisted transcription (“CART”) 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, including text telephones (“TTYs”), videophones, and captioned telephones, or equally effective telecommunication 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. 28 C.F.R. § 36.303(b)(1).

14. The term “Companion” means a person who is deaf or hard of hearing and is a family member, friend or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of TMC, who, along with such individual, is an appropriate person with whom TMC should communicate. 28 C.F.R. § 36.303(c)(1)(i).
15. For purposes of this Agreement, the parties agree that the term “Hospital Personnel” means all TMC employees, full-time and part-time, who have or are likely to have direct contact with patients or Companions as defined herein. It includes independent contractors who have or are likely to have direct contact with patients or Companions at TMC as defined herein, including, but not limited to, nurses, physicians, social workers, technicians, admitting personnel, receptionists, telephone operators, billing staff, security staff, counselors, therapists, and volunteers.
16. For purposes of this Agreement, the parties agree that the term “Patient” (with a capital P) includes any individual, who is deaf or hard of hearing, and who is seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of TMC, whether as an inpatient or outpatient, including consultations, treatment, scheduling of appointments, discussion of billing issues, attending health education classes, and other health care services. The term “patient” (with a lowercase p) is broader and includes any individual who is seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of TMC, whether as an inpatient or outpatient, including consultations, treatment, scheduling of appointments, discussion of billing issues, attending health education classes, and other health care services.
17. The term “Qualified Interpreter” means an interpreter who, via 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. 28 C.F.R. § 36.104. For purposes of this Agreement, a Qualified Interpreter must be knowledgeable in medical terminology.
18. The term “Video Remote Interpreting (“VRI”) Service” means real time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video or wireless connection that delivers high-quality video images; a sharply delineated, continuous image that is large enough to display the interpreter’s and the participating individual’s face, arms, hands, and fingers; and a clear, audible transmission of voices. 28 C.F.R. § 36.303(f).

### **C. CONSIDERATION**

19. In consideration of TMC's promises contained in Sections D and E and other terms of this Agreement, the Department of Justice, during the term of this Agreement, agrees to refrain from undertaking further investigation into or from filing civil suit on the issues specifically addressed in this Agreement, except as provided in Section F, below.

### **D. NEW CONSTRUCTION, ALTERATIONS, AND NEW EQUIPMENT PURCHASES AFTER THE EFFECTIVE DATE OF THIS AGREEMENT**

20. TMC will design and construct all new facilities, and parts thereof, in compliance with the ADA, 42 U.S.C. §12183(a)(1) and 28 C.F.R. §§ 36.401 & 406, including the 2010 Standards.
21. TMC will ensure that all alterations and modifications required by this Agreement to bring elements into ADA compliance will comply with the alterations requirements of the ADA, including the requirements with respect to path of travel. 42 U.S.C. §12183(a)(2) and 28 C.F.R. §§ 36.402–406.
22. To ensure that patients receive equal access to TMC facilities and services, TMC will take all reasonable steps to ensure that a sufficient number of newly purchased and/or leased examination and treatment equipment, and Ancillary Equipment, but no fewer than one of each type in each clinical service where such equipment is purchased or leased for each clinical service, is accessible to and usable by individuals with disabilities where such equipment is commercially available. Accessible and non-accessible equipment will be of equivalent quality. Tufts' ADA Compliance Officer (described in paragraph 47 below), or one of his or her representatives, will work with the TMC purchasing department to establish a protocol to review and coordinate proposed equipment purchases and leases to comply with the accessibility requirements of the ADA. TMC also agrees that, with respect to newly purchased or leased Ancillary Equipment (as defined in paragraph 12), it will have a sufficient number of each type of Ancillary Equipment that is adapted or adjustable for use by individuals with disabilities so that individuals with disabilities have equal access to medical services.

### **E. OTHER REMEDIAL ACTIONS**

23. The United States surveyed a representative selection of TMC's facilities and provided a report to TMC that identified architectural barriers to access and changes it contends are required to bring TMC into compliance with the ADA. The United States used the 1991 Standards to identify the architectural barriers to access, and the required remedies shall comply with the 2010 Standards. *See* 28 C.F.R. § 36.304(d)(2)(ii)(B). After receiving the report, TMC agreed to correct the identified ADA violations and/or deviations from the Standards, and to use the United States' report as a guide to conduct a survey of the remaining areas of its facilities. Appendix A contains a complete list of remedial actions to be taken based on the United States' survey, and, based on additional surveys of patient rooms completed, to date, by TMC.
24. Within four months of the Effective Date of this Agreement, TMC will complete its self-survey of its remaining Public and Common Use Facilities and medical equipment, and it

will develop a plan to bring the remainder of TMC's Public and Common Use Facilities into compliance with the ADA. This plan will ensure that TMC affords individuals with disabilities equal access to TMC's services and Accessible Medical Equipment as described below in paragraphs 29-30. TMC will provide a copy of its plan for Public and Common Use Facility accessibility to the United States for comment and discussion by six months after the Effective Date of the Agreement. The United States will review the proposed plan and provide comments to TMC and the Parties will mutually agree on a resulting plan which will bring those areas into compliance within thirty months of the Effective Date.

#### Accessible Parking

- 25.** Within six months of the Effective Date of this Agreement, TMC will ensure that at least 5% of the parking spaces at the 274 Tremont Street garage are accessible.

#### Public and Common Use Facilities

- 26.** Within twelve months of the Effective Date of this Agreement, TMC will remove or remediate the architectural barriers to its Public and Common Use Facilities that are identified in Appendix A.
- 27.** Within six months of the Effective Date of this Agreement, TMC will install at those public and common use toilet rooms that are not accessible directional signage indicating the location of the nearest accessible public or common use toilet room. Once the rooms are completed under the time frames set forth in the Agreement, TMC will install the international symbol of accessibility and signage at accessible facility entrances, patient rooms, and public and common use toilet and/or shower rooms. 2010 Standards § 703. TMC will provide notice at each nursing station, or other location visible to staff, patients, and visitors, of the availability of an accessible common use roll-in shower and/or toilet room.

#### Accessible Patient Rooms

- 28.** Within twenty-four months of the Effective Date of this Agreement, TMC will ensure that at least 10% of its patient sleeping rooms are accessible, as defined in paragraph 9.<sup>2</sup> TMC will ensure that these designated Accessible Patient Rooms are dispersed throughout TMC's facilities and clinical services in a manner that is proportionate, by type of medical specialty, to the maximum extent feasible. 28 C.F.R. §36.406(g). TMC will use its best efforts to provide Accessible Patient Rooms with accessible private toilet rooms and showers, if such rooms are otherwise available on that clinical service. The parties agree that TMC will be in compliance with the obligations stated in this paragraph, with respect to Accessible Patient rooms, upon its completion of the remedial actions listed in Appendix A.

#### Medical Equipment

- 29.** Within six months of the Effective Date, to ensure that patients receive equal access to TMC's facilities and services, TMC will take all reasonable steps to ensure that, where commercially available, a sufficient number of examination and treatment equipment, and Ancillary Equipment purchased or leased after the Effective Date of this Agreement, but no

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<sup>2</sup> TMC has advised the United States that as of the date of this Agreement, it has 243 non-ICU patient sleeping rooms in operation.

fewer than one of each type currently used in each clinical service, is accessible to and usable by individuals with disabilities (e.g., by providing height adjustable examination tables and equipment). TMC will also provide sufficient trained staff and/or lifting equipment to safely transfer patients who need such assistance to examination tables, chairs, imaging equipment etc., as appropriate to each clinical service that utilizes such equipment. Accessible medical equipment on to which an individual must transfer for examination or treatment purposes, including, but not limited to, examination tables and chairs, tables used for radiologic or other exams, stretchers, and accessible patient beds, must be capable of being locked or otherwise fixed into position so as to permit a safe transfer from a wheelchair or other mobility device without slipping; and have a protective padded surface, unless such a surface is inconsistent with the equipment's intended use.

30. Within three months of the Effective Date of this Agreement, to ensure that it provides equal access to services that require medical equipment, TMC will create a database of equipment to be used in the care of patients and that can be potentially modified, supplemented, or replaced to improve access to care for patients with disabilities. This includes all equipment to which a patient is required to transfer (e.g. examination tables, imaging equipment, and ophthalmology equipment). In this database, TMC will also identify what, if any, additional equipment (e.g., examination tables and chairs, lifts, accessible scales, or adaptive technology, such as accessible call buttons) could or will be purchased or modified to ensure that individuals with disabilities receive equal access to medical services. Where TMC is unable to identify equipment that would ensure that individuals with disabilities receive equal access to particular medical services, TMC will identify alternative measures that could ensure such access. TMC will provide this information to the United States in its annual report, as described in paragraph 60 of this Agreement.

### **Auxiliary Aids and Services for Individuals who are Deaf or Hard of Hearing**

#### Nondiscrimination

31. TMC shall provide appropriate auxiliary aids and services, including Qualified Interpreters, where such auxiliary aids and services are necessary to ensure effective communication with Patients and Companions. TMC shall also provide Patients and Companions with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of the hospital as required by this Agreement and the ADA.
32. Consistent with 42 U.S.C. § 12182(b)(2)(A)(iii), TMC will provide Patients and Companions with any appropriate auxiliary aids and services that are necessary for effective communication after making the assessment(s) described in paragraphs 33-35 of this Agreement. Appropriate auxiliary aids and services will be provided as soon as practicable (without compromising patient care), except that the provision of on-site interpreters must be within the timeframe described in paragraph 38 of this Agreement. TMC will advise Patients and Companions who require auxiliary aids or services, in writing, that these are available throughout the Patient's stay.

#### Assessment of Appropriate Auxiliary Aids and Services

33. TMC will consult with the individual who is deaf or hard of hearing to determine appropriate Auxiliary Aids and Services, and the timing, duration, and frequency with which they may be

needed. The assessment will consider the individual's communication skills and the nature and complexity of the issues being discussed.

- 34.** To guide the assessment, TMC will provide all Patients and Companions with a notice of Auxiliary Aids and Services and a communication assessment form. TMC will use a communication assessment form substantially similar to the example that is attached to this Agreement as Appendix B. TMC shall provide assistance in completing the Form at the Patient's or Companion's request. TMC will keep completed forms in the Patient's medical chart. If a patient identifies a Companion who is not presently at TMC, but is expected during the patient's stay, TMC Personnel shall provide the patient with the contact information of TMC Personnel who can assist the Companion in completing the Form. TMC will make a determination of which appropriate auxiliary aids and services are necessary, and the timing, duration, and frequency with which they will be provided, at the earliest reasonable time after TMC learns that a Patient or Companion will be using its services or on the arrival of the Patient or Companion at TMC, whichever is earlier.
- 35.** In the event that the initial form of communication is not effective, or circumstances change, TMC will reassess which appropriate Auxiliary Aids and Services are necessary, in consultation with the Patient and/or Companion, and, where possible, provide Auxiliary Aids and Services based on the reassessment, and amend the Patient's medical chart to reflect this.

#### Qualified Interpreters

- 36.** Depending on the complexity and nature of the communication, a Qualified Interpreter may be necessary to ensure effective communication for Patients and Companions. When an interpreter is needed, TMC shall provide qualified sign language interpreters to Patients and Companions whose primary means of communication is sign language, and qualified oral interpreters to such Patients and Companions who rely primarily on lip reading as necessary for effective communication. Examples of circumstances when the communication may be sufficiently lengthy or complex so as to require an interpreter include the following:
  - a. Discussing a Patient's symptoms for diagnostic purposes, and discussing medical conditions, medications, and medical history;
  - b. Explaining treatment options, tests, medications, surgery, and other procedures;
  - c. Providing a diagnosis or recommendation for treatment;
  - d. Communications immediately preceding, during, and immediately after surgery or other procedures, and during physician rounds;
  - e. Obtaining informed consent for treatment;
  - f. Providing instructions for medications, post-treatment care and activities, and follow-up treatments;
  - g. Providing mental health services, including group or individual counseling for Patients and family members, grief counseling, and crisis management;
  - h. Providing information about blood or organ donations;
  - i. Discussing powers of attorney, health care proxies, do not resuscitate/do not intubate orders, and living wills;
  - j. During educational presentations, such as birthing or new parent classes, nutrition and weight management programs, and CPR and first-aid training;

- k. Labor, delivery, and discussions of pre-natal and post-natal care;
- l. Discussing complex billing and insurance matters.

### Ensuring Availability of Qualified Interpreters

**37.** TMC advised that it has relied upon the Massachusetts Commission for the Deaf and Hard of Hearing (“MCDHH”) as a source for ASL interpreters, but that MCDHH is not always able to provide an interpreter when one is requested and/or determined to be necessary for effective communication. Accordingly, TMC has entered into a contract with interpreter services to serve alongside MCDHH as a source of Qualified Interpreters for individuals who are deaf or hard of hearing, or deaf-blind. The interpreter service must be able to schedule and confirm interpreter services within a reasonable time under the circumstances. All of TMC’s requests for interpreters, including the time, date, and location, will be confirmed in writing at the time of the request. If the hospital receives verbal confirmation or speaks with the vendor regarding the hospital’s request for an interpreter, this information will be documented in the Interpreter’s Log.

### **38. Provision of Interpreters in a Timely Manner**

- a. Non-scheduled Interpreter Requests: A “non-scheduled interpreter request” means a request for an interpreter made by a Patient or Companion with less than two (2) hours advance notice. For such requests, TMC Personnel will complete the assessment described in paragraphs 33-35 above as soon as reasonably possible. TMC will take all reasonable steps to provide the interpreter no more than (a) two hours from the time TMC completes the assessment if a live interpreter is needed, or (b) 30 minutes from the time TMC completes the assessment if the interpreter is provided through a Video Remote Interpreting service as described in paragraph 39 below. Deviations from this response time will be addressed with the interpreting service provider, and TMC will document those interactions in its Auxiliary Aid and Service Log, described in paragraph 45. If no interpreter can be located, TMC Personnel will take the following additional steps:
  - i. TMC Personnel will exert reasonable efforts (which shall be deemed to require no fewer than four (4) telephone inquiries and/or emails and/or text messages unless exceptional circumstances intervene) to contact any interpreters or interpreting agencies already contracted with TMC and request their services;
  - ii. Inform the Effective Communication Coordinator, described in paragraph 49 below, of the efforts made to locate an interpreter and solicit assistance in locating an interpreter;
  - iii. Inform the Patient or Companion of the efforts taken to secure a Qualified Interpreter and that the efforts have failed, and follow up on reasonable suggestions for alternate sources of Qualified Interpreters; and
  - iv. Document all of the above efforts.



- b. **Scheduled Interpreter Requests.** A “scheduled interpreter request” is a request for an interpreter made two (2) or more hours before the services of the interpreter are required. For scheduled interpreter requests, TMC will complete the assessment described in paragraphs 33-35 above in advance, and, when an interpreter is appropriate, TMC will make a Qualified Interpreter available at the time of the scheduled appointment. If an interpreter fails to arrive for the scheduled appointment, TMC will immediately call an interpreter service for another Qualified Interpreter.
- 39. Video Remote Interpreting (VRI).** VRI can provide immediate and effective access to interpreting services in a variety of situations, including emergencies and unplanned incidents. When using VRI services, TMC shall ensure that it provides: (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; and (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. 28 C.F.R. § 36.303(f). VRI shall not be used when it is not effective due to, for example, a Patient’s limited ability to move his or her head, hands, or arms; vision or cognitive issues; significant pain; or due to space limitations in the room. If, based on the circumstances, VRI is not providing effective communication after it has been provided, an on-site interpreter shall be provided in accordance with the timetable set forth above. Further, if the VRI device is not functioning properly and TMC’s staff is unable to get the VRI device to function properly within 30 minutes of when it started to malfunction, TMC will call for an on-site interpreter.
- 40.** TMC will document and investigate, per the grievance process identified in paragraph 58 below, any complaints by Patients or Companions regarding the quality and/or effectiveness of services provided by the interpreter services.
- 41.** As soon as Hospital Personnel have determined that a Qualified Interpreter is necessary for effective communication with a Patient or Companion, TMC will inform the Patient or Companion of the status of efforts to secure a Qualified Interpreter. TMC will provide additional updates to the Patient or Companion as necessary until an interpreter is secured.
- 42.** Between the time an interpreter is requested and an interpreter is provided, Hospital Personnel will continue to attempt to communicate with the Patient or Companion for the same purposes and to the same extent as they would have communicated with the person but for the disability, using all available methods of communication, for example, using sign language pictograms, flashcards or other similar methods. This provision in no way lessens TMC’s obligation to provide Qualified Interpreters in a timely manner as required by paragraph 38 of this Agreement.

Limited Exceptions for Use of Family or Friends to Interpret

- 43.** TMC will not rely on an adult friend or family member of the Patient or Companion to interpret except:

- a. In an emergency involving an imminent threat to the safety of an individual or the public where there is no interpreter available;
  - b. Where the Patient or Companion specifically requests that the adult friend or adult family member interpret, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances; and
  - c. Where necessary to convey TMC's ongoing efforts to obtain a Qualified Interpreter on-site.
44. TMC will not rely on a minor child or patient to interpret except in an emergency involving an imminent threat to the safety of an individual or the public where there is no interpreter available.

#### Auxiliary Aid and Service Log

45. Within three months of the Effective Date of this Agreement, TMC will maintain a log documenting requests for Auxiliary Aids and Services by individuals who are deaf or hard of hearing. The log will contain:
- a. The name of the Patient or Companion for whom the request was made, and the name of the TMC employee who received the request;
  - b. The time and date the request was made, and the time and date it was made for, i.e., for immediate use, or for a scheduled appointment (stating the date and time of the appointment);
  - c. The nature of the Auxiliary Aid or Service requested;
  - d. If an interpreter was requested, from what source Hospital Personnel sought services;
  - e. The time and date Hospital Personnel acted to secure the Auxiliary Aid or Service, and the name of the person making the request;
  - f. The time and date the request was fulfilled; and
  - g. The nature of the Auxiliary Aid or Service provided.
46. In any instance where TMC fails to provide the requested Auxiliary Aid or Service, or the Auxiliary Aid or Service was provided outside the time periods specified in this Agreement, the log will contain a full statement of the reason for any delay or limitations to the Patient's treatment resulting from the failure. TMC will maintain this log for the duration of the Agreement, and the log will be incorporated into the Compliance Reports as described in paragraph 60 of this Agreement.

#### **ADA Compliance Officer – Designation and Training**

47. Within one month after the Effective Date of this Agreement, TMC will designate an "ADA Compliance Officer" who will have the primary authority and responsibility for ensuring that TMC complies with all terms of this Agreement and of the ADA. In addition, the ADA Compliance Officer will be responsible for overseeing physical accessibility modifications required by this Agreement, and plans for future barrier removal or alterations at TMC. TMC will ensure that the position of ADA Compliance Officer will have sufficient authority and resources to implement changes and effectuate this Agreement.

48. Within three months of the Effective Date of this Agreement, the ADA Compliance Officer, will undergo training on the ADA's accessibility requirements. The training will be of sufficient quality and duration to enable this individual to understand the requirements of this Agreement and the applicable accessibility requirements of Title III of the ADA, including the 2010 ADA Standards.

### **Effective Communication Coordinator – Designation and Training**

49. Within one month of the Effective Date of this Agreement, TMC will designate the ADA Compliance Officer or an appropriate designee to be the Effective Communication Coordinator. The Effective Communication Coordinator, or his or her designee(s), will be available to TMC staff, Patients, and Companions twenty-four hours a day, seven days a week, to answer questions and provide appropriate assistance regarding Auxiliary Aids and Services, including Qualified Interpreters.

50. Within three months of the Effective Date of this Agreement, the Effective Communication Coordinator, and his or her designee(s), will undergo training that is sufficient in duration and content to enable these individuals to understand the requirements of this Agreement and the requirements of Title III of the ADA, including the provision of Auxiliary Aids and Services, 42 U.S.C. §12182(b)(2)(A)(iii), and 28 C.F.R. §36.303.

51. Following training, the Effective Communication Coordinator and his or her designee(s) will be able to:

- a. Along with relevant clinical staff, promptly identify communication needs of Patients and Companions, including when an on-site qualified ASL or Tactile ASL ("TASL") interpreter, a Certified Deaf Interpreter ("CDI") and/or a CART Service is necessary to provide effective communication;
- b. Secure Qualified Interpreter services and VRI services as quickly as practicable;
- c. Use, when appropriate, flash cards and/or pictograms (in conjunction with any other available means of communication that will augment the effectiveness of the communication);
- d. Know where the appropriate auxiliary aids are stored, including VRI machines, know how to operate them, and be responsible for their distribution, maintenance and replacement;
- e. Use VRI services, and train clinical staff on how to use VRI services;
- f. Maintain the Auxiliary Aid and Service Log as described in paragraph 45.

### **Dissemination of Information**

52. Within six months of the Effective Date of this Agreement, TMC will take the steps outlined in paragraphs 53-56 below to ensure, among other things, that members of the public and Hospital Personnel can easily identify and contact TMC's ADA Compliance Officer and Effective Communication Coordinator, request Auxiliary Aids and Services or Reasonable Modifications, or request other related information.

#### To the Public

53. By no later than six months after the Effective Date of this Agreement, TMC will display, in a prominent location on its website, information to assist individuals with disabilities, their families and companions, including:

- a. A copy of the same or a substantially similar policy statement as the sample in Appendix C will appear on TMC's home page;
- b. How to make requests for effective communication by phone or email, including the email address, phone number, text phone number, and TTY telephone number, by which the Effective Communication Coordinator can be contacted;
- c. How to (alternatively or additionally) request Auxiliary Aids and Services by using an on-line link to the Communication Assessment form, identified in Appendix B, that can be submitted to TMC's Effective Communication Coordinator electronically;
- d. How to make requests for reasonable modifications under the ADA, including the email address, phone number, text phone number, and TTY telephone number by which the ADA Coordinator may be contacted;
- e. How to identify accessible parking areas, accessible entrances to buildings, accessible routes through TMC facilities, etc. TMC will regularly update its website to reflect newly added accessible features as they become available.

**54.** Within three months of the Effective Date of this Agreement, TMC will post and maintain signs of conspicuous size and text clarity wherever a patient's Bill of Rights is required by law to be posted, with substantially similar language to that provided in the sample posting attached as Appendix C notifying the public of the availability of Auxiliary Aids and Services, Reasonable Modifications, and related rights. These signs will include the international symbol for interpreter.

**55.** TMC will include in all future printings of its patient handbook (or equivalent) and all similar publications, a copy of Appendix B and C.

#### To Hospital Personnel

**56.** Within three months of the Effective Date of this Agreement, TMC will post on its intranet:

- a. Detailed contact information for how Hospital Personnel, who are providing services to individuals who are deaf or hard of hearing, may contact the Effective Communication Coordinator, or for other disability related issues, the ADA Coordinator;
- b. A policy statement regarding effective communication with persons who are deaf or hard of hearing that includes, but is not limited to the following:

If you recognize or have any reason to believe that a patient, or companion of a patient, is deaf or hard of hearing, or deaf-blind, you must advise the person that appropriate Auxiliary Aids and Services, such as sign language, tactile and oral interpreters, Video Remote Interpreting services, CART services, TTYs, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with captioning or closed captioning decoders, and open and closed captioning of most hospital programs, will be provided free of charge to the patient or companion. If you are the

responsible health care provider, you must ensure that such aids and services are provided when appropriate.

- c. A listing, to be updated regularly by the ADA Coordinator, of the location of Accessible Patient Rooms, Accessible Equipment, and Accessible Public and Common Use toilet and/or shower rooms.

### **Hospital Personnel Training**

57. Within one year of the Effective Date of this Agreement, TMC will provide training to all Hospital Personnel who have contact with patients as to TMC's obligations under this Agreement and the ADA. In addition, TMC will provide such training within one year of the hire date of a new hire. In addition, within six months of the Effective Date, TMC will provide written notification to all Active Members of the Hospital Medical Staff of its policies, practices, and procedures for providing auxiliary aids and services to Patients and Companions who are deaf or hard of hearing.

### **Grievance Resolution**

58. TMC will continue to maintain a grievance resolution mechanism for the investigation of complaints regarding accessible services, facilities, privileges, advantages, or accommodations for individuals with disabilities, and/or with respect to effective communication. Information about this mechanism will be included on TMC's website. In particular:

- a. TMC will maintain records of all grievances regarding accessibility for individuals with disabilities and complaints with respect to effective communication made to TMC, and actions taken with respect thereto;
- b. At the time TMC completes its assessment described in paragraphs 33-35 and advises the Patient and/or Companion of its determination of which appropriate Auxiliary Aids and Services are necessary, TMC will notify the Patient and/or Companion of its grievance resolution mechanism, to whom complaints should be made, and of the right to receive a written response to the grievance;
- c. Written response to any grievance filed will be provided within thirty days of receipt of the grievance;
- d. Copies of all grievances and supporting documents related to this paragraph will be maintained for the duration of this Agreement.

### **F. ENFORCEMENT AND REPORTING**

59. At any time during the term of this Agreement, the United States reserves the right to inspect, with reasonable notice to counsel, the TMC facilities; to access records; and to obtain documentation of compliance with this Agreement.

60. Commencing on the one-year anniversary of the Effective Date of this Agreement, and throughout the term of this Agreement, TMC will provide the United States with an annual Compliance Report that contains the following:

- a. A detailed written report, including digital photographs, architectural drawings, and copies of policies and procedures, that demonstrates compliance with the provisions of this Agreement;
  - b. The information required in the accessible medical equipment database described in Paragraph 30;
  - c. The information required in the Auxiliary Aid and Service Log described in paragraph 45;
  - d. A report on trainings of Hospital Personnel as described in paragraphs 48, 50, and 57;
  - e. The information maintained in the grievance records described in paragraph 58, including the number of complaints or grievances received by TMC from patients and Companions and the resolution of such grievances, including any supporting documents.
- 61.** TMC will maintain records to support the information underlying the Compliance Reports and will make them available, upon request, to the United States. The United States will use its best efforts to, in a reasonably prompt manner, advise TMC of any ADA violations that are apparent from the materials provided by TMC pursuant to this paragraph.
- 62.** If, during the implementation of this Agreement, TMC determines that, due to reasons beyond its control (e.g., substantial and unexpected change in its financial situation, etc.), TMC cannot complete work by the dates set forth in this Agreement, TMC may seek a reasonable extension of time to complete the work, which shall not be unreasonably denied by the United States.
- 63.** By no later than three months after the date all work is due to be completed under this Agreement, TMC will provide the United States with a detailed final written report, including digital photographs, architectural drawings, and copies of policies and procedures, that demonstrates compliance with the provisions of this Agreement. The report need not address items for which TMC has previously produced reports. In addition, TMC will maintain the written evaluations and reports required by this Agreement for the duration of this Agreement, and will provide copies of any report(s) to the United States within thirty days of a request.
- 64.** If, based on the reports provided by TMC pursuant to this Agreement or other information, the United States finds that TMC has failed to comply with the Agreement, the United States agrees to notify TMC in writing of the alleged noncompliance and attempt to seek a resolution of the matter with TMC. If the parties are unable to reach a resolution within ninety days of the date of the United States' written notification, the United States may seek enforcement of the terms of this Agreement in the United States District Court for the District of Massachusetts, or take any other action to enforce Title III of the ADA.
- 65.** Nothing in this Agreement waives the right of the United States to bring a civil action to enforce this Agreement or any provision thereof.
- 66.** This Agreement constitutes the entire agreement between the parties relating to the United States' Title III compliance review referenced in paragraph 1 above, and the Department of Justice matter number 202-36-280, and no other statement, promise, or agreement, either

written or oral, made by any party or agents of any party that is not contained in this Agreement, including its attachments, will be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect TMC's continuing responsibility to comply with all aspects of the ADA.

- 67.** Failure by the United States to enforce this entire Agreement, or any provision thereof with regard to any deadline or provision herein, will not be construed as a waiver of the United States' right to enforce any deadline or provision of this Agreement.
- 68.** If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement will nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights and obligations of the parties, the United States and TMC will engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
- 69.** This Agreement will be binding on TMC, its agents, its employees, and any successors or assigns. In the event that TMC seeks to transfer or assign a facility owned by it as of the date of this Agreement, and the successor or assign intends to continue in the same or similar use of the facility, as a condition of sale TMC will obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.
- 70.** This Agreement is effective on the date of the last signature below and expires three years after the Effective Date.

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Dated: 2/28/2020

/s/ Zachery Redmond  
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Dated: 2/27/2020



