

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES

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IN THE MATTER OF:

USA MEDICAL TRANSPORT and ISMAT FARHAN

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) was reached the 16th day of March 2023, by and among the State of New York (the “State”), acting through the Office of the Attorney General, Medicaid Fraud Control Unit (“MFCU”), and Ismat Farhan (“Farhan”) d/b/a USA Medical (“USA Medical”). The State, USA Medical, and Farhan shall be collectively referred to as the “Parties.”

WHEREAS, USA Medical, with a principal place of business located at 1814 State Street, Schenectady, New York, at all relevant times, was and is enrolled as a provider of transportation services in New York State’s Medical Assistance Program (“Medicaid Program” or “Medicaid”) with a provider identification number of 04075274, and as such, provides transportation services for Medicaid recipients traveling to or from medical services paid for by Medicaid;

WHEREAS, Farhan is the sole owner and operator of USA Medical and also serves as a driver for the company;

WHEREAS, USA Medical and Farhan submitted and caused to be submitted claims for reimbursement to Medicaid under 42 U.S.C §§ 1396 -1396w-5, and Medicaid relied on such claims to pay USA Medical for transportation services;

WHEREAS, MFCU conducted an investigation of USA Medical and Farhan and determined that between June 3, 2015 and February 2, 2020 (the “Relevant Period”), USA Medical and Farhan presented or caused to be presented to the State’s Medicaid Program false claims for

payment for transportation services to which it was not entitled, and Medicaid relied upon such claims to pay USA Medical;

WHEREAS, in connection with the above-described investigation, and under existing administrative claims withholding procedures, the New York State Department of Health (“DOH”) instituted a withhold of 25% of Medicaid payments to USA Medical, pursuant to 18 NYCRR §§ 504.8(d), 518.7; 42 C.F.R. § 455.23; NY Public Health Law §§ 31, 32; and NY Soc. Serv. Law § 363-a (“Withhold”), and the amount under Withhold (“Withhold Amount”) is being held in escrow by the New York State Office of the State Comptroller and DOH;

WHEREAS, the Parties understand that, as of February 24, 2023, the Withhold Amount totaled at least Eight Hundred and Seventy Seven Thousand and Sixty One dollars and Ninety One cents (\$877,061.91).

WHEREAS, pursuant to 18 NYCRR § 505.10 and the New York State Medicaid Program Transportation Manual Policy Guidelines (Version 2019-1), USA Medical and Farhan were only entitled to submit claims for reimbursement for: trips actually conducted; the actual amount of mileage traveled while transporting a Medicaid recipient; trips conducted by properly licensed drivers; the longest mileage traveled when transporting more than one Medicaid recipient; trips supported by contemporaneous and detailed documentation; and for tolls actually incurred in the course of providing transportation service to Medicaid recipients;

WHEREAS, the State has determined that USA Medical and Farhan engaged in the following conduct (the “Covered Conduct”) during the Relevant Period:

- A. USA Medical and Farhan submitted claims for transportation services that did not in fact occur;
- B. USA Medical and Farhan submitted claims for transportation services that were significantly shorter, in terms of mileage, than those to which they attested;

- C. USA Medical and Farhan submitted claims for payment for the transportation of multiple individuals, despite having conducted only a single trip (group ride) transporting those individuals together;
- D. USA Medical and Farhan submitted claims for transportation services that were provided by drivers, including Farhan, whose New York State driver's licenses were suspended;
- E. In violation of 18 NYCRR § 504.3(a) and 517.3(b), USA Medical and Farhan submitted claims for transportation services for which they did not maintain contemporaneous and detailed documentation;
- F. USA Medical and Farhan submitted claims to reimburse toll payments for tolls that USA Medical did not in fact incur; and
- G. As a result of the foregoing, USA Medical and Farhan received payments to which they were not entitled.

WHEREAS, the State alleges that as a result of the Covered Conduct, USA Medical and Farhan caused the State to suffer damages of at least the amount to be repaid under this Agreement.

WHEREAS, USA Medical and Farhan wish to resolve their civil liability for the Covered Conduct;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. USA Medical and Farhan admit, acknowledge, and accept responsibility for the Covered Conduct.
2. As repayment to the State for the Covered Conduct and to resolve any claims related to the Covered Conduct, USA Medical and Farhan shall pay to the State a total of Eight Hundred and Sixty Two Thousand and Five Hundred Dollars (\$862,500.00) (the "Settlement Amount") which shall

be paid from the Withhold Amount. To effectuate said payment:

- (a) USA Medical and Farhan consent to the transfer and payment to the State of the total Settlement Amount from the Withhold Amount, and further waive any and all right, title, or interest that they have to the portion of the Withhold Amount used to satisfy the Settlement Amount;
- (b) MFCU will request that DOH transfer the portion of the Withhold Amount used to satisfy the Settlement Amount to MFCU as soon as practicable pursuant to this Agreement, and USA Medical and Farhan agree to cooperate with MFCU, Office of the Medicaid Inspector General (“OMIG”), and DOH and other representatives of the State in effectuating the transfer to the State of the portion of the Withhold Amount used to satisfy the Settlement Amount, including but not limited to, executing any documents necessary to effectuate the transfer;
- (c) All Withhold funds transferred and paid to the State shall be applied and credited toward USA Medical’s payment of the total Settlement Amount;
- (d) If any Withhold funds are transferred or paid by DOH directly to USA Medical before USA Medical’s and/or Farhan’s full payment of the total Settlement Amount, USA Medical and Farhan agree to notify the State immediately and to remit all Withhold funds (not to exceed the Settlement Amount) received by USA Medical and/or Farhan to MFCU by wire transfer or certified check within five (5) business days of the receipt of such funds. Once received by MFCU, these funds will be credited and applied toward payment of the total Settlement Amount;
- (e) After it receives the portion of the Withhold Amount used to satisfy the Settlement Amount, MFCU will provide written notice (the “Written Notice”) to USA Medical and Farhan of that the Agreement has been satisfied, by sending the Written Notice

via Overnight Mail to counsel for USA Medical and Farhan. Farhan and USA Medical shall thereafter be entitled to the balance of such Withhold amount.

3. Of the Settlement Amount, Four Hundred Thirty-One Thousand Two Hundred and Fifty dollars (\$431,250.00) is restitution.

RELEASES

4. Subject to the exceptions in Paragraph 5 below (concerning excluded claims) and Paragraph 10 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement) respectively, and conditioned upon the State's receipt of the total Settlement Amount, the State releases USA Medical and all of its predecessors, successors, members, assigns, and corporations under USA Medical, and Farhan, from any civil monetary causes of action that the State has for the Covered Conduct under the New York State False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*, Social Services Law § 145-b, New York Executive Law § 63(12), New York Executive Law § 63-c, and the common law theories of payment by unjust enrichment, fraud, and breach of contract.

5. Notwithstanding the release given in Paragraph 4 of this Agreement, or any other term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) Any civil, criminal, or administrative liability arising under State tax codes;
- (b) Any criminal liability;
- (c) Any administrative liability, including mandatory or permissive exclusion from the State's Medicaid Program;
- (d) Any civil or administrative liability that USA Medical and Farhan has or may have to the State or to individual consumers or State program payors under any statute, regulation, or rule not expressly covered by the releases given in Paragraph 4 above,

including but not limited to, any and all claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

- (e) Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- (f) Any liability for personal injury, patient abuse or neglect, arising from the Covered Conduct;
- (g) Any liability of individuals other than Farhan;
- (h) Any liability which may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid Program on a capitated basis, other than liability of USA Medical and Farhan to the State for the Covered Conduct; and
- (i) Any liability based upon obligations created by this Agreement.

6. USA Medical and Farhan waive and shall not assert any defenses they may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part upon a contention under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution and assent that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. USA Medical, including any and all predecessors, successors, and members, together with their current and former officers, directors, trustees, servants, employees, and assigns, and Farhan, fully and finally release the State, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that USA Medical and/or Farhan have asserted, could have asserted, or may assert in the future against the State, its agencies, officers, agents, employees, and servants, related to the Covered Conduct, and the State's investigation and prosecution thereof.

INTEGRITY OBLIGATIONS

8. The Parties acknowledge that a primary purpose of this Agreement is to promote compliance with the statutes, regulations, and written directives of the Medicaid Program. To further that objective, USA Medical and Farhan agree that USA Medical must utilize the New York State Department of Motor Vehicles License Event Notification System (“LENS”) to timely assess the driver’s licensure status and driving qualifications of all individuals who provide transportation services for USA Medical (“USA Drivers”).

OTHER PROVISIONS

9. In exchange for valuable consideration provided in this Agreement, USA Medical and Farhan acknowledge the following:

- (a) USA Medical and Farhan warrant that they have reviewed USA Medical’s financial situation and that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following its payment to the State of the Settlement Amount.
- (b) In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to USA Medical and/or Farhan, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such contemporaneous exchange.
- (c) The mutual promises, covenants, and obligations set forth herein are intended by the Parties to and do, in fact, represent a reasonably equivalent exchange of value.
- (d) The Parties do not intend to hinder, delay, or defraud any entity to which USA Medical and/or Farhan was or became indebted to on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

10. If within ninety-one (91) days of the date of this Agreement or any payment made under this Agreement, USA Medical and/or Farhan commences any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors or a third party commences any case, action, or other proceeding under any law related to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of USA Medical and/or Farhan's debts, or seeking to adjudicate USA Medical or Farhan as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for all or part of any of USA Medical and Farhan's, USA Medical and Farhan agree as follows:

- (a) The obligations of USA Medical and Farhan under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and they shall not argue or otherwise take the position in any such case, action, or proceeding that (i) their obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) they were insolvent at the time this Agreement was entered into, or became insolvent as a result of payments made to the State pursuant to this Agreement; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to USA Medical and Farhan.
- (b) If the obligations of USA Medical and Farhan under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against USA Medical and Farhan for the claims that would otherwise be covered by the releases in Paragraph 4 above. USA Medical and Farhan agree that (i) any such claim, action, or proceeding brought by the State would not be subject to an "automatic stay" pursuant to 11 U.S.C. § 362 (a) as a result of the case, action, or

proceeding described in the first sentence of this Paragraph, and USA Medical and Farhan shall not argue or otherwise contend that the State's claim, action, or proceeding is subject to an automatic stay; (ii) USA Medical and Farhan shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the State within 60 calendar days of written notification to USA Medical and Farhan that the releases have been rescinded pursuant to this Paragraph; and (iii) the State has a valid, noncontingent claim against USA Medical and Farhan in the amount of One Million Two Hundred Ninety Three Thousand, Seven Hundred Fifty Dollars (\$1,293,750.00) and the State may pursue its claim in the case, action, or proceeding described in the first sentence of this Paragraph, as well as in any other case, action, or proceeding.

- (c) USA Medical and Farhan acknowledge that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

11. USA Medical and Farhan agree to the following:

- (a) Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of USA Medical or any of its present or former officers, directors, trustees, employees, shareholders, and agents in connection with:
 - i. the matters covered by this Agreement;
 - ii. the State's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;

- iii. USA Medical's and Farhan's investigation, defense, and corrective actions undertaken in response to the State's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
 - iv. the negotiation and performance of this Agreement; and
 - v. the payments USA Medical and Farhan make relating to this Agreement including costs and attorney's fees, implementation of the integrity obligations, are unallowable costs for government contracting purposes and under the Medicaid Program (hereinafter referred to as "Unallowable Costs").
- (b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by USA Medical, and USA Medical shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any Consolidated Fiscal Report ("CFR"), cost report, cost statement, information statement, or payment request submitted by USA Medical or affiliates to the Medicaid Program.
- (c) Treatment of Unallowable Costs Previously Submitted for Payment: USA Medical and Farhan further agree that within ninety (90) days of the Effective Date of this Agreement it shall endeavor in good faith to identify to applicable Medicaid fiscal agents, any Unallowable Costs (as defined in Paragraph 11(a)) included in payments previously sought from any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by USA Medical or any affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment

requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. USA Medical and Farhan agree that the State, at a minimum, shall be entitled to recoup from USA Medical any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, appeals, or requests for payment. Any payments due after the adjustments have been made shall be paid to the State. The State reserves its rights to disagree with any calculations submitted by USA Medical or any of its affiliates on the effect of inclusion of Unallowable Costs (as defined in Paragraph 11(a)) on USA Medical's or any of their affiliates' CFRs, cost reports, cost statements, or information reports, appeals, or other payment requests. If the State does disagree with any calculations submitted by USA Medical or its affiliates as outlined above, then the State and USA Medical and Farhan shall confer in good faith in an effort to come to a resolution regarding such calculations. In the event that a resolution cannot be reached, the State reserves its rights to take any action it deems appropriate.

- (d) Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine the books and records of USA Medical to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

12. This Agreement shall be binding on all successors, transferees, heirs, and assigns of Farhan and USA Medical.

13. This Agreement constitutes the complete and full between the Parties with respect to this matter, and it may not be changed in any respect, except by a writing duly executed by the Parties or their authorized representatives.

14. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. This Agreement is intended for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 16 (waiver for beneficiaries).

16. USA Medical agrees that it waives and shall not seek payment for any of the billings based upon claims defined as Covered Conduct from any individual health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

17. USA Medical and Farhan agree not to submit any further claim or to resubmit to any state payor any previously denied claims, or cause any further claim or adjustment to be submitted or resubmitted, related to the Covered Conduct, and agree not to appeal any such denials of claims.

18. USA Medical and Farhan waive any claim for any tax rebate or refund, or other governmental payment, from the State, until the Settlement Amount is satisfied. In the State's sole discretion, the State may recoup or offset any such payment without further notice to USA Medical and/or Farhan for credit toward the Settlement Amount.

19. USA Medical and Farhan agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this Paragraph affects USA Medical's and/or Farhan's (a) testimonial obligations or (b) right to take contrary legal or factual positions in defense of litigation or other proceedings to which the Attorney General is not a party.

20. All payments due to the State hereunder shall be made by certified check, bank check, money order, or wire transfer payable to the "New York State Medicaid Fraud Control Unit Restitution Fund." All non-electronic payments shall be delivered to the Medicaid Fraud Control

Unit, Finance Department, 13th Floor, 28 Liberty Street, New York, New York 10005.

21. Any notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier and/or email followed by postage prepaid first-class mail, and addressed as follows:

TO THE STATE:

New York State Office of the Attorney General
Medicaid Fraud Control Unit
The Capitol
Albany, NY 12224
Telephone: (518) 533-6011
MFCUNotices@ag.ny.gov

TO USA MEDICAL and FARHAN:

Jennie L. Shufelt, Esq.
Hinman Straub, PC
121 State Street
Albany, NY 12207
Telephone: (518) 689-7284
JShufelt@hinmanstraub.com

22. The effective date of this Agreement shall be the date of the signature of the last signatory to this Agreement ("Effective Date").

23. This Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

24. USA Medical and Farhan acknowledge that they have entered this Agreement freely, voluntarily, and upon due deliberation, with the advice of counsel and without coercion or duress.

25. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles. The Parties consent to the jurisdiction of the Supreme Court of the State of New York, Albany County, and

any other county in which USA Medical conducts business, in any action to enforce or interpret this Agreement.

26. Any failure by the State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

27. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

28. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

WHEREFORE, the Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their signature.

THE STATE OF NEW YORK

LETITIA JAMES
Attorney General of the State of New York

By: Emily Auletta
Emily L. Auletta
Special Assistant Attorney General
Medicaid Fraud Control Unit
The Capitol
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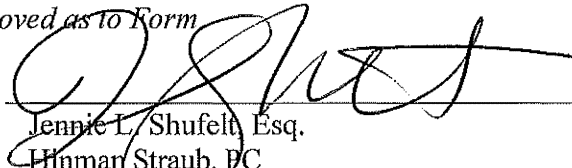
Dated: March 16, 2023

ISMAT FARHAN, individually and d/b/a as USA Medical Transport

By: 
Ismat Farhan

Dated: 3-16-23

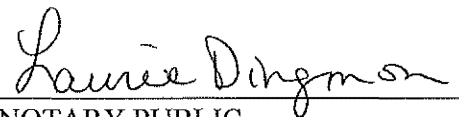
Approved as to Form

By: 
Jennie L. Shufelt, Esq.
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Albany, New York 12207
jshufelt@hinmanstraub.com
Counsel for Ismat Farhan, individually, and USA Medical Transport

Dated: 3/16/23

State of New York)
)ss:
County of Albany)

On this 16th day of March, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Ismat Farhan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same both individually and in his capacity as owner of USA Medical Transport, and that by his signature on the instrument, both Ismat Farhan and USA Medical Transport, upon behalf of which the Ismat Farhan acted, executed the instrument.


NOTARY PUBLIC

LAURIE DINGMON
Notary Public, State of New York
No. 01DI 4795637
Qualified in Saratoga County
Commission Expires November 30, 2025