

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (“Agreement”) is entered into by the Medicaid Fraud and Residential Abuse Unit (“MFRAU”) of the Office of the Vermont Attorney General (“State”), and Upper Valley Services, Inc. (“UVS”), through their authorized representatives.

### II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

1. UVS is a private, nonprofit organization which provides or arranges services for individuals with developmental disabilities. It is headquartered in Randolph, Vermont, with offices in Moretown and Bradford, Vermont.

2. At all times relevant to this Agreement, UVS was an enrolled Vermont Medicaid provider. Pursuant to its Vermont Medicaid Provider Enrollment Agreements, UVS agreed to comply with applicable state and federal rules and regulations, including the Vermont False Claims Act, 32 V.S.A. § 631, *et. seq.*, governing the submission of claims to the Medicaid program (“Government Healthcare Program Requirements”), and the Vulnerable Adult Statutes, 13 V.S.A. § 1375, *et. seq.*

3. The State of Vermont, through the Department of Disabilities, Aging and Independent Living (“DAIL”), offers Medicaid-funded developmental disability services, including Developmental Disabilities Home and Community-Based Services (“HCBS”) to eligible individuals. HCBS are long term services designed to support individuals with developmental disabilities to live, work and participate in the community and include home supports (including home placements with shared living providers), community supports,

employment supports, service coordination, clinical services, respite, crisis services, and transportation.

4. DAIL designates a single Designated Agency (“DA”) in each county which is responsible for determining recipient eligibility, drafting of Individual Support Agreements (“ISA”) for individuals receiving services, and providing or arranging for the provision of HCBS services. At all times relevant to this Agreement, UVS was (and remains today) the DA for Orange County, Vermont, and UVS-Moretown (“UVS-M”) was (and remains) an additional program office for UVS operating in Washington County, Vermont.

5. DAIL enters a Master Agreement with each DA for the provision of developmental disability services. A Master Agreement between DAIL and UVS was in effect at all times relevant to this Agreement. Pursuant to those agreements, UVS agreed to administer HCBS services for eligible individuals within its service area, to provide or arrange, through contract with third parties, the necessary services and supports (including placement with a shared living provider), and to regularly monitor and provide quality oversight of the delivery of HCBS services.

6. Beginning in 2018, and continuing into 2020, MFRAU investigated two separate incidents involving UVS-M clients and a third incident involving an employee, after receiving referrals alleging potential neglect of vulnerable adults and the hiring of an individual who was listed on the Vermont Adult Abuse Registry. During these investigations, the State obtained evidence that it contends gives rise to certain civil claims against UVS for engaging in the conduct described in subparagraphs A through D below (“Covered Conduct”). Specifically, the State alleges:

- A. Client A was a vulnerable adult who received HCBS services through UVS-M. Among other things, UVS-M was responsible for assessing Client A's needs, developing his or her individual support agreement ("ISA"), placing him or her with a shared living provider ("SLP"), and providing or arranging for the provision and coordination of necessary services. Moreover, UVS-M was responsible for regularly monitoring Client A's HCBS services and providing quality oversight of the delivery of those services. In October 2018, Client A and SLP-1 (who was under contract with UVS) moved into a new home with a pond. UVS-M approved of this placement without knowing or learning whether Client A had the ability to swim, and without modifying Client A's ISA to address supervision and safety requirements. In April 2019, Client A was found unresponsive in the pond and later pronounced dead as a result of drowning.
- B. Client B was a vulnerable adult with significant needs who received HCBS services through UVS-M and lived with SLP-2 (who was under contract with UVS) for approximately twenty-five years. SLP-2, despite having become a widower and advancing in age, consistently declined respite assistance. In July 2019, investigators and UVS learned that SLP-2 maintained a basement room, which was locked from the outside, where he placed Client B when he/she needed a break from caregiving responsibilities for extended periods of time. Although SLP-2 alerted a former UVS case manager to the existence of the room (but not the outside lock) five years earlier, Client B's case manager in 2019 had not inspected it and was not aware of the purpose for which SLP-2 used it.

- C. UVS submitted claims for Medicaid-funded services provided to Client A and B, including services on the dates of these incidents.
- D. From 2017 through 2018, UVS employed a prohibited individual who was listed on the Vermont Adult Abuse Registry. UVS had actual knowledge that the employee was listed on the registry. In May 2017, when the employee produced a letter purporting to show that she would be removed from the registry, UVS proceeded with the hiring without taking any steps to verify the content of the letter or re-checking the registry.

7. The State contends that the Covered Conduct (paragraph 6, subparagraphs A through D) constitutes violations of UVS's Provider Enrollment agreements, State Program Requirements, including the Vermont False Claims Act 32 V.S.A. §630, *et seq.*, and the Vermont Vulnerable Adult Statutes, for which it could seek, or is seeking, remedy through administrative or civil action.

8. UVS acknowledges that the State has evidence that would be admissible at a trial or hearing as described in the Covered Conduct. However, UVS denies liability in general, and specifically denies that it violated its Provider Enrollment agreements, State Program Requirements, the Vermont False Claims Act, the Vermont Vulnerable Adult Statutes or any other state or federal law.

9. To avoid the delay, expense, inconvenience, and uncertainty of litigation, and in consideration of the mutual promises and obligations of this Agreement, the Parties have reached a full and final settlement related to the Covered Conduct, pursuant to the Terms and Conditions set forth below.

### **III. TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

10. UVS shall create a new permanent position, designated the “Director of Quality” (or a substantially similar title), and shall employ an individual to serve in this capacity.

The duties and responsibilities of the Director of Quality are described in Attachment A which is incorporated here by reference.

11. UVS agrees to establish a Clinical Review Committee, chaired by its Clinical Director. The committee shall review and approve recommended changes to the individual Safety Plans and Behavioral Support Plans described below and act as a proactive forum for problem-solving concerning care to ensure the dignity and personal safety of all recipients of benefit. The Director of Quality shall be a member of the Clinical Review Committee.

12. UVS must conduct an environmental risk assessment for any client moving into a new home or when there is a change in SLP. If environmental risks are identified, UVS shall prepare and the Clinical Review Committee shall review and approve recommended changes to the Safety Plan for each individual who receives home supports arranged or overseen by UVS and for whom an environmental risk assessment has identified environmental risks. Safety issues outside of the environmental risk are addressed through the individual’s Behavior Support Plan (BSP). Within 30 days of the Effective Date of this Agreement, UVS agrees to provide the State with an estimated timeline, which should not exceed six months, for the review of the applicable safety plans or behavior support plans. Thereafter, UVS will report progress to the State monthly until all plans have been completed.

13. UVS shall revise and the Clinical Review Committee shall review and approve individual ISA's with respect to safety provisions which also honor the human rights of each individual who receives services provided, arranged or overseen by UVS, as described below. Within thirty days of the Effective Date of this Agreement, UVS will provide a status report of completed revised ISAs and the number of ISAs to still be reviewed to the State. Thereafter, UVS will report its progress to the State every sixty days until all ISAs have been reviewed and revised.

14. UVS shall revise its ISA policies and documents to include clear statements of:
- a. The *behavioral interventions* that are necessary for an individual's care, describe UVS's expectations of SLPs and other providers, and allow UVS to evaluate compliance with those expectations.
  - b. The *level of supervision* necessary for an individual's care and which the SLP agrees to provide. UVS will ensure that all persons involved in a recipient's care, including SLPs, their employees and UVS employees, are aware of and understand the required level of supervision. Moreover, on a monthly basis, UVS case managers shall confirm and make a written notation that SLPs are providing the appropriate level of supervision.
  - c. An SLP's reporting requirements and UVS's plan of supervision in the event that an SLP proposes to take a recipient of benefits out of Vermont for an extended period of time.

15. Working in cooperation with DAIL, UVS shall develop a standard Home Visit form which its service coordinators will complete on each visit to a recipient's home. At a minimum, the form should collect information about, and document the service coordinator's

inspection of, locations where the recipient sleeps, eats, toilets and relaxes, and any features inside or outside the residence that pose potential danger. UVS agrees to develop and provide the State with a draft of its Home Visit Form within 60 days of the Effective Date of this Agreement.

16. UVS agrees to develop and adopt the policies described below. UVS further agrees to provide a written draft of each policy to the State within 60 days of the Effective Date of this Agreement. Specifically, UVS agrees to develop and adopt a:

- a. Transition Policy requiring a reassessment of a client's needs and safety, including his or her ISA and care plan, following a move to a new home, a new SLP, or other significant change in living environment. This policy shall also provide for a risk assessment of any new residence and a mechanism to ensure the transfer of all relevant information from a previous to a successor SLP.
- b. Respite Review Policy requiring UVS to regularly review the use of respite and community support hours for each of its clients.
- c. New Hire Policy designed to ensure that it will not use Medicaid monies to employ an excluded individual. This policy shall describe each step and procedure that is required to determine a candidate's eligibility before UVS makes an employment offer.

17. UVS agrees to implement employee-training improvements. Specifically, UVS will form a Training and Development Committee, chaired by the Director of Quality, to ensure that UVS's employees are appropriately and consistently trained, and to develop support and

monitoring standards for case managers. Employee training shall include education on mandated reporting of abuse, neglect, and exploitation, among other things.

18. UVS will develop a *Learning Community* which will create learning opportunities for Shared Living Providers, families, respite care, staff, and individuals supported through UVS. The learning opportunities will include virtual and in-person access to resources, training, national leaders, best practice methodologies, information, and practical support.

19. UVS agrees to report on the implementation of paragraphs 10-18 of this section to MFRAU for a three-year term (“Settlement Period”). Specifically, the Director of Quality shall provide written Performance Evaluations to MFRAU, as described in Attachment B, 6-months, 12-months, 24-months, and 36-months following the Effective Date. Attachment B is incorporated here by reference. Based on these evaluations, the State, in its sole discretion, may reduce the Settlement Period by up to 12 months.

20. UVS shall pay to the State \$194,231.46 (“Settlement Amount”). The Settlement Amount includes damages under the Vermont Vulnerable Adult Statutes, and damages and penalties under the Vermont False Claims Act. UVS shall pay the Settlement Amount by electronic funds transfer pursuant to written instructions provided by the Vermont Attorney General’s Office. The payments will be made in the following installments:

- a. Within fourteen days of the Effective Date of this Settlement Agreement, UVS shall pay \$56,000.
- b. Within twelve months of the Effective Date of this Settlement Agreement, UVS shall pay \$56,000.
- c. Payment of the remaining \$82,231.46 balance of the Settlement Amount shall be suspended unless the State determines there has been a material breach of



the Settlement Agreement. In that event, the suspension shall be revoked and UVS shall pay \$82,231.46 to the State within six months of the date of the material breach.

21. Subject to the exceptions in Paragraph 23 (concerning reserved claims) below, in consideration of the obligations of the UVS set forth in this Agreement, and conditioned upon the UVS's payment in full of the Settlement Amount, and compliance with any other material obligations, including the engagement of, and good-faith cooperation with, the Director of Quality (described in Paragraphs 10 – 18 above), the State (on behalf of itself, its officers, agents, agencies, and departments) releases the UVS from any civil or administrative claim the State has or may have for the Covered Conduct.

22. In consideration of the obligations of the State set forth in this Agreement, the UVS, their current and former parents, divisions, subsidiaries, successors, transferees, heirs, assigns, direct or indirect affiliates, current and former owners, shareholders, principals, members, directors, officers, employees, representatives, servants, agents and consultants, release the State, its agencies, political subdivisions, employees, servants, and agents, from any claims that UVS have asserted, could have asserted, or may assert in the future against the State, related to the Covered Conduct and the State's investigation thereof.

23. Notwithstanding any terms of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following:

- a. Any liability arising under Vermont state tax codes, Vermont tax laws or Vermont tax regulations;

- b. Any criminal, civil or administrative liability to the State for conduct other than the Covered Conduct;
- c. Any claims and/or actions related to: any professional license; business license; the unlicensed practice of a profession; or the unlicensed operation of a business;
- d. Any liability based upon obligations created by this Agreement;
- e. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
- f. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

24. UVS shall be deemed in default of this Agreement if the State, in its sole discretion, determines that a Default Event, described in subparagraph a and b below, has occurred, after following the procedure described in Paragraph 24 below:

- a. UVS fails to make any installment payment of the Settlement Amount as provided for in Section III, Paragraph 20 of this Agreement; or
- b. UVS fails to satisfy any other material obligations undertaken in this Agreement.

25. In the event the State determines that a Default Event has occurred, the State shall provide written notice (“Notice of Default”) and allow UVS an opportunity to cure the Default Event within ten (10) business days of receipt of the written notice. Notice of Default will be sent by certified first class mail to: Counsel for UVS, Scott McGee, Hershenson Carter Scott & McGee at P.O. Box 909, Norwich, Vermont 05055.

26. If UVS does not cure the Default Event to the State's reasonable satisfaction within ten (10) business days of receipt of the Notice of Default, the Vermont Attorney General's Office may declare UVS in default of this Agreement ("Declaration of Default").

27. Upon a Declaration of Default, the State may exercise, at its sole option, one or more of the following rights, as applicable:

- a. retain any payments previously made,
- b. rescind this Agreement and proceed against UVS for any claims, including those to be released by this Agreement, in which case UVS may contest whether a Default has occurred in court;
- c. Exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity.

28. The Parties represent that this Agreement is freely and voluntarily entered into with the advice of counsel without any degree of duress or compulsion whatsoever.

29. Each party to this Agreement shall bear his, her or its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

30. The laws of the State of Vermont govern this Agreement. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the Vermont Superior Court, Washington County, unless otherwise agreed in writing by the State and UVS.

31. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

32. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the Settlement Amount for the purposes of the state or federal tax laws. UVS will rely on its own counsel or experts regarding the effect of this Agreement under any state or federal tax laws.

33. UVS represent and warrant that the representative(s) designated below are authorized to execute this Agreement on their behalf, and that UVS have not assigned any claims, rights, or liabilities subject to this Agreement to any other person. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

34. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

35. All Parties consent to the disclosure by the State of this agreement and information about this Agreement, to the public.

36. This Agreement constitutes the complete agreement among the State and UVS with respect to this matter and shall not be amended except by written consent of the Parties.

37. 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.

38. This Agreement is effective on the date of the signature of the last signatory to the Agreement (“Effective Date”). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**STATE OF VERMONT**

SUSANNE R. YOUNG  
VERMONT ATTORNEY GENERAL

DATED: 12/14/2022 \_\_\_\_\_

DocuSigned by:  
*Elizabeth L. Anderson*  
BY: \_\_\_\_\_  
0269CD3E3AAB47E...  
Elizabeth L. Anderson  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
(802) 828-5511  
Elizabeth.Anderson@vermont.gov

**UPPER VALLEY SERVICES, INC.**

DATED: 12/11/2022 \_\_\_\_\_

DocuSigned by:  
*Gloria Quinn*  
BY: \_\_\_\_\_  
DE32AC58729D465...  
Gloria M. Quinn, Executive Director

Acknowledged

**COUNSEL FOR UVS, INC.**

DATED: 12/14/2022 \_\_\_\_\_

DocuSigned by:  
*Scott McGee*  
BY: \_\_\_\_\_  
01A798C8250940E...  
Scott McGee, Esq.

## Attachment A

1. As a material obligation of the Settlement Agreement, UVS agrees to create a new permanent position designated the “Director of Quality” (or a substantially similar title), and to employ an individual or Co-Directors of Quality (collectively referred to as Director of Quality) to serve in this capacity.

2. The Director of Quality is intended to ensure consistent practices in case management, monitoring of recipient services, and the provision of supports, as well as employee hiring, training and supervision, in all programs for which UVS provides, arranges or oversees care, including Developmental Services, Choices for Care, and the Adult Family Care program (“Comforts of Home”).

3. The Director of Quality shall report to the UVS Agency Director.

4. The Director of Quality shall be responsible for, among other things:

- a. Reviewing and approving Personal Safety and Behavioral Support plans in collaboration with the Clinical Review Committee;
- b. Designing and implementing changes in to UVS’s Individual Service Agreements, including the following:
  - i. Ensure new standards are met for ISAs, including but not limited to defining behavioral interventions, level of supervision, and long-term out of State travel plan, outlined in the Agreement;
- c. Ensure standards of support and practice are established and met for SLPs as overseen by the Program Director for each office. The Director of Quality will regularly review the respite and community support hours being utilized by its clients in an SLP setting;

- d. Ensure case management standards and practices met, including ensuring optimal and consistent training for all staff, as well as support and monitoring standards for case managers;
- e. Oversee employee training while working with UVS's Training and Development Committee and will ensure optimal and consistent training for all agency staff, and support and monitoring standards and practices for Case Managers.

5. UVS agrees to work in good-faith cooperation with the State through MFRAU, and the Director of Quality to identify additional areas of authority and responsibility that may be required and to determine how the Director of Quality will exercise authority and perform his or her job functions.

6. UVS shall be responsible for hiring the Director of Quality within thirty days after the Effective Date of the Settlement Agreement. The UVS's Quality Team, including the Quality Director, shall meet with the State through MFRAU within the first sixty days of the Effective Date of the Settlement Agreement.

7. The Director of Quality shall have reporting duties to the State through MFRAU. The Director of Quality shall make written reports to the State through MFRAU describing their work, areas of progress and remaining challenges, according to the agreed upon settlement.

## Attachment B

1. MFRAU, through its Civil Investigator or other designee, will review UVS' performance as reflected in a 6-month, 12-month, 24-month, and 36 months (as applicable) Performance Evaluations. UVS agrees to provide MFRAU with all documents and information in any form reasonably necessary to complete the review of the implementation of progress of the policies and procedures described above in Paragraphs 10 - 18 in the Settlement Agreement. This shall include the review of materials and potentially interviews of UVS employees.

2. UVS understands and agrees that MFRAU may review as part of the Performance Evaluation, but is not limited to, the following:

- a. Work of the Director of Quality services;
- b. New Personal Safety Plans for each of the individuals whose care is overseen by UVS;
- c. Individual Service Agreements ("ISA") for UVS clients;
- d. UVS standardized Home Visit form;
- e. UVS Client assessments following a transition to a new living situation;
- f. The respite and community support hours being utilized by UVS clients; and
- g. Materials related to the *Institute a Training and Development Committee*, the *Learning Community*, and the work of the of *Clinical Review Committee*.