

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA BUSINESS ASSOCIATE AGREEMENT (“the Agreement”) is entered into as of August 15, 2021 by and between the COUNTY OF SULLIVAN, NEW YORK, licensed under Article 28 of the New York Public Health Law to operate a skilled nursing facility under New York State Department of Health Operating Certificate No. 522030IN as the Sullivan County Adult Care Center, also known as The Care Center at Sunset Lake, a 146 bed skilled nursing facility located at 256 Sunset Lake Road, Liberty, New York 12754 (the “Covered Entity”), and SUNSET LAKES CONSULTING LLC DBA INFINITE CARE, a Delaware limited liability company with offices located at 267 Broadway, Brooklyn, NY 11211 (“Business Associate”), The Business Associate and Covered Entity are referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

BACKGROUND

WHEREAS, Covered Entity is required by law to comply with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act of the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”) and their implementing regulations including, but not limited to, the Standards for Privacy of Individually Identifiable Health Information (“the Privacy Rule”), the Security Standards for the Protection of Electronic Health Information (“the Security Rule”), and the Data Breach Notification Rule (collectively, the “HIPAA Rules”); and

WHEREAS, Business Associate is required by law to comply with certain provisions of the HIPAA Rules; and

WHEREAS, Covered Entity and Business Associate are also required to comply with applicable state law and regulations governing the privacy and security and breach notification requirements related to personal information, as such may be amended from time to time including, but not limited to, the New York State Information Security Breach and Notification Act at New York General Business Law Section 899-aa (collectively, the “State Laws”); and

WHEREAS, the Parties wish to enter into or have entered into a Consulting Agreement (“the Services Agreement”), under which Business Associate will provide certain consulting services to, or on behalf of, Covered Entity; and

WHEREAS, as detailed in the Services Agreement, Business Associate will have or may have access to Covered Entity’s Protected Health Information created, received, maintained or transmitted by Business Associate on behalf of Covered Entity (“PHI”), which includes Electronic Protected Health Information (“Electronic PHI”); and

WHEREAS, in consideration of the Parties' obligations under the Services Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged;

NOW, THEREFORE, the Parties enter into this Agreement, as an addendum and part of the Services Agreement, and agree to the following:

DEFINITIONS UNDER THE HIPAA RULES. Except as otherwise defined in this Agreement, any and all capitalized and/or other terms and/or their derivatives used in this Agreement shall have the same meaning and definition as set forth in the HIPAA Rules. In the event of any inconsistency between the provisions of this Agreement, the Services Agreement, and the requirements of the HIPAA Rules, the HIPAA Rules shall control. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with the HIPAA Rules. All references to the HIPAA Rules are deemed to include all amendments to such Rules contained in the HITECH Act and its implementing regulations, and any subsequently adopted amendments or regulations, as are applicable to this Agreement.

A. BUSINESS ASSOCIATE OBLIGATIONS. Business Associate agrees as follows:

1. Business Associate will hold and maintain the PHI and Electronic PHI strictly confidential and not use or disclose PHI and Electronic PHI other than as permitted or required by this Agreement, the HIPAA Rules, applicable State Laws, or as Required by Law. The HIPAA Rules also limit the Use and Disclosure of PHI and Electronic PHI by the Covered Entity, and those restrictions also apply to the Business Associate as well as the Subcontractors of the Business Associate that create, receive, maintain or transmit PHI and Electronic PHI in order to perform a service or activity delegated by the Business Associate. This means that any Use and/or Disclosure must be related to the treatment of the Individual to whom the PHI and Electronic PHI relates, payment for the treatment of that Individual, or the Covered Entity's general Health Care Operations.

2. To implement appropriate Administrative, Physical and Technical Safeguards to prevent any Use or Disclosure of the PHI and Electronic PHI that is not permitted under the terms of this Agreement. In particular, Business Associate will implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI and Electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity. Furthermore, Business Associate shall comply with the additional Security Rule requirements as required by the HITECH Act and its implementing regulations under the HIPAA Rules that are also applicable to Business Associate. Business Associate shall comply with these Security Rule requirements which shall be incorporated into this Agreement.

3. As required by the HITECH Act and its implementing Regulations, to comply with all applicable requirements of the Privacy Rule which shall be incorporated into this Agreement. Business Associate may use and disclose PHI and Electronic PHI that Business Associate obtains

or creates only if such Use or Disclosure is in compliance with each applicable requirement of the HIPAA Rules relating to business associate agreements.

4. Except as permitted by this Agreement and the HIPAA Rules, to not directly or indirectly receive remuneration in exchange for any PHI or Electronic PHI of an Individual unless the Individual has provided a valid, HIPAA-compliant authorization, including a specification of whether the PHI or Electronic PHI can be further exchanged for remuneration by the receiving party.

5. Except as otherwise provided in the HIPAA Rules, Business Associate shall not directly or indirectly receive payment in exchange for making certain communications to Individuals about a product or service that encourages the recipient to purchase or use the product or service.

6. Unless Covered Entity agrees, in writing, that this requirement is not feasible with respect to particular PHI or Electronic PHI, Business Associate shall secure all PHI and Electronic PHI by utilizing a technology standard or methodology that renders PHI and Electronic PHI unusable, unreadable, or indecipherable to unauthorized individuals and is consistent with guidance, as further amended in the future, issued by the Secretary of the Department of Health and Human Services (the "Secretary") specifying the technologies and methodologies that render PHI and Electronic PHI unusable, unreadable, or indecipherable to unauthorized individuals.

7. To immediately report to Covered Entity any Use or Disclosure of PHI and Electronic PHI, of which it becomes aware, which is not in compliance with the terms of this Agreement, including, but not limited to, any Security Incident of which it becomes aware. Business Associate shall conduct and document a risk assessment as set forth in the HIPAA Rules of such Use or Disclosure of PHI and Electronic PHI which is not in compliance with the terms of this Agreement and provide Covered Entity with a copy of such written risk assessment.

8. To report to Covered Entity's Privacy Officer and/or Security Officer, within fifteen (15) business days, the discovery of any Breaches of Unsecured PHI or personal information as detailed under the HIPAA Rules, and to cooperate in the Covered Entity's Breach analysis procedures and risk assessment, if requested. Business Associate shall provide Covered Entity with a copy of Business Associate's written risk assessment regarding the Breach of Unsecured PHI or personal information. As required by the HIPAA Rules, in the event of a Breach of Unsecured PHI, Business Associate shall provide to Covered Entity the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, Used, acquired, or Disclosed during such Breach, as well as other information required under the HIPAA Rules. A Breach shall be treated as discovered by the Business Associate as of the first day on which such Breach is known to such Business Associate or its workforce (including any person, other than the individual committing the breach, that is

an employee, officer, or other agent of the Business Associate) or should reasonably have been known to the Business Associate or its workforce to have occurred.

9. To mitigate, to the extent practicable, the harmful effect caused by Business Associate's use or disclosure of PHI and Electronic PHI which is in violation of this Agreement or by any Breach of PHI and Electronic PHI by Business Associate, its employees, agents or subcontractors, and to provide notice to Covered Entity of such mitigation efforts.

10. To make its internal practices, books, and records relating to the Use and Disclosure of PHI, available to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules, and to make its procedures, policies, and documentation of Administrative, Physical, and Technical Safeguards available to the Secretary for purposes of demonstrating compliance with the Security Rule, all as designated by the Secretary. Business Associate will also comply with any periodic audit request initiated by the Secretary to ensure that Business Associate is complying with the HIPAA Rules. Additionally, Business Associate will also make its internal practices, books, and records relating to the Use and Disclosure of PHI and Electronic PHI as detailed under the Services Agreement available to the Covered Entity for purposes of determining compliance at the reasonable request of the Covered Entity and at a reasonable time and in a reasonable manner requested by the Covered Entity.

11. To ensure that its Subcontractors that create, receive, maintain, or transmit PHI and Electronic PHI on behalf of the Business Associate, will enter into a separate written Business Associate Agreement with Business Associate and agree to the same restrictions and conditions which apply to the Business Associate under the terms of this Agreement, and will agree to implement reasonable and appropriate safeguards to protect the PHI and Electronic PHI as detailed in the HIPAA Rules.

12. Business Associate will respond to a request for, changes in, or a revocation of, permission by an Individual to restrict the Business Associate's Use or Disclosure of PHI or Electronic PHI, in a timely manner in accordance with the HIPAA Rules, and to make changes to Business Associate's procedures to the extent that such request, if approved, may affect Business Associate's Use or Disclosure of PHI or Electronic PHI. Business Associate will monitor compliance with these requests for restrictions in accordance with the HIPAA Rules.

13. Business Associate will Use, Disclose, or request PHI or Electronic PHI, only if it limits such PHI or Electronic PHI, to the extent practicable, to the minimum necessary to accomplish the intended purposes of such Use, Disclosure, or request in accordance with the HIPAA Rules. In the case of the Disclosure of PHI or EPHI, Business Associate, in conjunction with the Covered Entity, shall determine what constitutes the minimum necessary to accomplish the intended purposes of such disclosure.

14. To the extent the Business Associate is to carry out one or more of Covered Entity's obligations under the HIPAA Rules, Business Associate shall comply with the requirements of the HIPAA Rules that apply to the Covered Entity in the performance of such obligations.

B. PROTECTED HEALTH INFORMATION ACCESS. Business Associate agrees as follows:

1. To make PHI and Electronic PHI available to the Covered Entity (or, at the direction of the Covered Entity, to the Individual) to the extent and in the manner necessary for Covered Entity to satisfy the access requirements under the HIPAA Rules. Such access will be provided at the request of the Covered Entity and at a time and in a manner directed by the Covered Entity.

2. If Business Associate maintains Electronic PHI, it agrees to make such Electronic PHI electronically available to the applicable Individual in the format required by the HIPAA Rules and as directed by the Covered Entity.

3. To make PHI and Electronic PHI available to the Covered Entity to the extent and in the manner necessary for Covered Entity to satisfy the amendment requirements under the HIPAA Rules. Such access will be provided at the request of the Covered Entity and at a time and in a manner directed by the Covered Entity. Business Associate will make any amendment to the PHI and Electronic PHI that is requested by the Covered Entity as a result of an Individual having requested such an amendment.

4. To document disclosures of PHI and Electronic PHI by Business Associate and maintain an accounting of such disclosures, as required under the HIPAA Rules, and in guidance provided by the federal Office for Civil Rights, and to provide such documentation and accounting to Covered Entity, upon Covered Entity's specific request, to permit Covered Entity to respond to a request by an Individual for an accounting of PHI and Electronic PHI disclosures, as required by the HIPAA Rules. Business Associate shall cooperate with Covered Entity in providing any accounting required at a time and in a manner directed by the Covered Entity.

5. To comply with any requests for restrictions on certain disclosures of PHI and Electronic PHI, to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity, or which are required by the HIPAA Rules.

C. COVERED ENTITY OBLIGATIONS

1. Covered Entity shall not request Business Associate to Use and/or Disclose PHI and Electronic PHI in any manner that would not be permissible under the HIPAA Rules.

2. Covered Entity shall provide Business Associate with its Notice of Privacy Practices and shall notify Business Associate of any limitations in its Notice of Privacy Practices if such limitation affects Business Associate's Use and Disclosure of PHI and Electronic PHI.

3. Covered Entity shall notify Business Associate of any material limitations or restrictions on the Use or Disclosure of PHI and Electronic PHI that Covered Entity has agreed to or is required to comply with under the HIPAA Rules, if such restriction affects Business Associate's Use and Disclosure of PHI and Electronic PHI.

4. Covered Entity shall notify Business Associate of any revisions to, or revocation of, the permission by an Individual to Use or Disclose his or her PHI and Electronic PHI, to the extent that such revisions affect Business Associate's Use and Disclosure of PHI and Electronic PHI.

D. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

1. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform the functions, activities or services for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if performed by Covered Entity.

2. Business Associate agrees to use and disclose the minimum necessary PHI in performing its obligations under the Services Agreement.

3. Business Associate may also Use and/or Disclose the PHI and Electronic PHI for the proper management and administration of the Business Associate, or to carry out the legal responsibilities of the Business Associate. However, such Use and/or Disclosure must be either Required by Law or, prior to making use of the PHI and Electronic PHI or disclosing the PHI and Electronic PHI, Business Associate must obtain reasonable assurance from the person to whom the PHI and Electronic PHI will be Disclosed that the PHI and Electronic PHI: (a) will be held confidentially and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed; and (b) the person to whom it is Disclosed agrees to notify the Business Associate of any instance of which it is aware in which the confidentiality of the PHI and Electronic PHI has been breached.

4. Business Associate may also use the PHI and Electronic PHI to provide Data Aggregation services to the Covered Entity. Data aggregation means the combining of the PHI and Electronic PHI by the Business Associate with PHI received by the Business Associate in its capacity as a business associate of another health care provider to permit data analysis that relates to the Health Care Operations of the Covered Entity and the other health care provider.

E. TERM AND TERMINATION

1. Term. The Term of this Agreement shall be effective on the date set forth above, and shall remain in effect until the parties' Consulting Agreement terminates, unless this Agreement terminates earlier as provided for in this Agreement.

2. Termination. Upon Covered Entity becoming aware of a Violation of this Agreement by Business Associate, Covered Entity may, in Covered Entity's sole discretion, provide notice and

an opportunity for Business Associate to cure the violation, of a period of not less than ten (10) days, and terminate this Agreement and the Services Agreement if Business Associate does not cure within such time frame; or, if neither termination nor cure is a feasible remedy, Covered Entity may take such action as permitted or required by the HIPAA Rules.

3. Effect of Termination

a. Upon termination or expiration of this Agreement for any reason, Business Associate shall adhere to the following requirements:

(1) Retain only the PHI and Electronic PHI which is necessary in order for Business Associate to continue its proper management and administration or to carry out its legal responsibilities.

(2) Return to Covered Entity or, at Covered Entity's option, destroy all remaining PHI and Electronic PHI relating to the Services Agreement that the Business Associate still maintains in its possession in any form. Business Associate shall also insure compliance with this requirement by its Subcontractors, if any. Any such destruction shall comply with the applicable governmental guidance in effect at the time of such destruction and Business Associate shall provide to Covered Entity a certification attesting to such compliance.

(3) Continue to use appropriate Administrative, Physical, and Technical Safeguards and comply with the HIPAA Rules with respect to PHI and Electronic PHI to prevent the Use or Disclosure of PHI and Electronic PHI, other than as detailed in this Section, for as long as Business Associate retains the PHI and Electronic PHI.

(4) Not Use or Disclose PHI or Electronic PHI retained by the Business Associate other than for the purposes for which such PHI and Electronic PHI was retained and subject to the same conditions set forth in this Agreement which applied prior to expiration or termination of this Agreement.

(5) Return to Covered Entity or, if agreed to by the Covered Entity, destroy the PHI and Electronic PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities or, if such return or destruction is not feasible, Business Associate shall immediately notify Covered Entity in writing of the circumstances upon which it bases this conclusion and Business Associate shall extend the protections of this Agreement to such PHI and Electronic PHI, and shall limit its further Uses and Disclosures to those purposes that make the return or the destruction of the PHI and Electronic PHI not feasible.

b. The obligations of Business Associate under this provision shall survive the expiration or termination of this Agreement for any reason, shall continue for as long as Business Associate maintains the PHI and Electronic PHI, and shall continue to bind Business Associate,

its agents, contractors, successors and assigns, for however long the PHI and Electronic PHI is held by any of them.

F. ADDITIONAL PROVISIONS

1. Except as expressly stated in this Agreement or in the HIPAA Rules, the Parties do not intend to create any rights in any third parties. Covered Entity holds all right, title, and interest in and to the PHI and Electronic PHI, and Business Associate does not hold and will not acquire by virtue of providing services under this Agreement or the Services Agreement any right, title, or interest in or to the PHI or Electronic PHI or any portion thereof.

2. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of implementing the provisions of this Agreement and the Services Agreement.

3. The Business Associate will indemnify, defend, and hold harmless the Covered Entity and the Covered Entity's employees, officials, Subcontractors, agents, representatives, and/or members of its workforce (each referred to as an "Indemnified Party") during the term of this Agreement and subsequent to its expiration or termination, from and against all claims, damage, losses, liabilities, fines, penalties, costs or expenses including, but not limited to, expenses associated with State and/or Federal Breach notification requirements and reasonable attorneys' fees suffered by an Indemnified Party that arises from, or is connected with, any act or omission by the Business Associate or the Business Associate's employees, agents or representatives that constitutes or that is otherwise asserted by any regulatory agency or third party to be (a) a breach of any term or condition of this Agreement, (b) negligence or misconduct, (c) a Breach or Violation of any State Laws, and/or (d) a violation of the HIPAA Rules. The provisions of this paragraph shall survive the expiration or termination of this Agreement for any reason.

4. If the Business Associate fails in the due performance of any of its obligations under the terms of this Agreement, the Covered Entity will have the right, at its election, to sue for damages for such Breach and to seek such legal and equitable remedies as may be available to it, including the right to recover all reasonable expenses, which shall include reasonable legal fees and court costs, incurred: (a) to sue for damages; (b) to seek such other legal and equitable remedies; and (c) to collect any damages and enforce any court order or settlement agreement. Nothing contained herein shall be construed to restrict or impair the rights of either Party to exercise this election. All rights and remedies herein provided or existing at law or in equity shall be cumulative of each other and may be enforceable concurrently therewith or from time to time.

5. Business Associate recognizes that civil and criminal penalties for a Violation of the HIPAA Rules, as such Violation is detailed in this Agreement, shall apply to the Business

Associate with respect to such Violation in the same manner as such penalties apply to the Covered Entity.

6. This Agreement may be amended or modified only in a writing signed by the Parties. The Parties intend, however, that this Agreement comply with all applicable laws and regulations and that the requirement of any new or amended law or regulation affecting this Agreement be incorporated herein at such time as it becomes effective. Notwithstanding the foregoing, the Parties agree to take such action to amend this Agreement from time to time as is necessary for either Party to comply with any requirement of the HIPAA Rules or other Federal or State Laws or regulations, or any amendments thereto. Any ambiguity or inconsistency in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

7. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity acknowledges that Business Associates may engage Subcontractors to assist it in discharging its obligations under the Service Agreement. If these Subcontractors create, receive, maintain, or transmit PHI and Electronic PHI on behalf of the Business Associate, they will enter into a separate written Business Associate Agreement with Business Associate and agree to the same restrictions and conditions which apply to the Business Associate under the terms of this Agreement, and will agree to implement reasonable and appropriate safeguards to protect the PHI and Electronic PHI as detailed in the HIPAA Rules.

8. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of any continuing or other liabilities or obligations, nor shall they prohibit enforcement of any liabilities or obligations on any other occasions.

9. Any notice required or permitted under this Agreement shall be given in writing and delivered by hand, via overnight delivery service, or via registered or certified mail, return receipt requested, to the addresses set forth in this Agreement, and any change in address shall be designated by notice. Notices may be signed and given by the attorney for the Party sending the notice. Any notice which is mailed shall be deemed to have been given on the second business day after the day of mailing (not counting the day mailed), regardless of the date of receipt.

10. This Agreement shall be governed by the laws of the State of New York without regard to principles of conflicts of law, and the venue and exclusive jurisdiction over any legal disputes between the Parties arising under this Agreement shall be in the State and Federal courts of the State of New York.

11. Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will continue in full force and effect.

12. This Agreement is the entire agreement of the Parties related to its subject matter and supersedes all prior agreements, both written and oral, between the Parties, related thereto. In this regard, Covered Entity and Business Associate may have previously entered into a Business

Associate Agreement or other agreement for the purpose of detailing Business Associate's Use and Disclosure of PHI and Electronic PHI as required by the HIPAA Rules. This Agreement supersedes and replaces any such previously executed Business Associate Agreement, but this Agreement shall not change or modify any rights or obligations of Covered Entity or Business Associate that may have accrued under a pre-existing Business Associate Agreement while such agreement was in effect.

13. The paragraph headings contained in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation of any provision of this Agreement. Several copies of this Agreement may be executed by the Parties, each of which shall be deemed an original for all purposes, and all of which together shall constitute but one and the same instrument. This Agreement shall be binding upon and will inure to the benefit of the parties, their heirs, distributees, legal representatives, transferees, successors and assigns.


14. Any provisions of this Agreement which by their terms are intended to survive the termination or expiration of this Agreement shall so survive.

[Signatures appear on the next page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.


COVERED ENTITY:

COUNTY OF SULLIVAN, NEW YORK

By: 
Title: County Manager
Joshua Potasek

BUSINESS ASSOCIATE:

SUNSET LAKES CONSULTING LLC
DBA INFINITE CARE


Name: Solomon Klein
Title: Authorized Representative