

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT (the "**Agreement**"), entered into as of this __ day of November, 2021 (the "**Execution Date**"), shall be effective as of December 1, 2021 (the "**Effective Date**"), by and between North Monterey County Unified School District, ("**Company**"), and _____Heal 360_____, a California limited liability company ("**Manager**").

RECITALS:

A. Company engages Manager licensed in California under its COVID-19 testing division (the "**Testing Division**") and Manager furnishes such services to students/staff/community of Company (the "**Testing Services**").

B. To enable Company to market and expand its Testing Services in the future, while also continuing to furnish its Testing Services in accordance with the status quo, Company has elected to engage Manager to provide Company with access and use of the Testing Infrastructure, together with a broad spectrum of management and administrative services relating to Testing Services and the clinical and test collection aspects of Testing Services (the "**Management/Administrative/clinical Services**") which, together with the Testing Infrastructure, shall be referred to herein as the "**Infrastructure and Management/Administrative Services**," as defined with greater particularity below) in connection with the conduct by Company of Testing Services.

C. Manager agrees to provide Company with such Infrastructure and Management/Administrative Services in accordance with the terms hereof.

D. The parties have elected to enter into this Agreement to memorialize their respective obligations with respect to Manager's provision of Infrastructure and Management/Administrative Services to Company, in addition to any other understandings as provided for herein.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Infrastructure and Management/Administrative Services by Manager.

(a) Pursuant to the arrangement memorialized in this Agreement, the following foundational principles shall continue to apply, as set forth with greater particularity herein.

(i) Company, at all times, shall retain full authority and control with respect to the Testing Services, except to the extent that any clinical/non-clinical/non-professional/test collection responsibilities are delegated to Manager pursuant to this Agreement. Notwithstanding the foregoing, Company shall require that it comply with all applicable state and federal requirements, including, without limitation, those under (i) applicable state healthcare and professional laws and regulations and (ii) federal fraud and abuse and "Stark" regulations.

(ii) Manager owns or otherwise controls the Testing Infrastructure in accordance with historical practice and, thus, Company's rights to occupancy or use of any elements of such Testing Infrastructure, on a going-forward basis, shall arise and be granted solely by operation of this Agreement and, upon expiration or termination of this Agreement, Company no longer shall have access or usage rights to any Testing Infrastructure.

TESTING INFRASTRUCTURE: The Testing Infrastructure comprises the Equipment, the Personnel, Supplies, the Leased Premises, and the Miscellaneous Expenses, as discussed in Sections 1(b)-(e) below (the expenses for which, for purposes of this Agreement, shall constitute "Reasonable Operating Expenses," defined below):

(b) Equipment. Company shall provide all required equipment.

(c) Personnel. Manager shall provide, for the benefit of Company and its clients and patients, all reasonably necessary professional and non-professional support personnel including, but not limited to, administrative personnel and/or other personnel as necessary, as reasonably determined by Manager in collaboration with Company (the "**Personnel**"), a list of whom, as of the Effective Date, are identified on **Schedule B** annexed hereto.

(d) Supplies. Manager shall provide Company with COVID-19 testing kits and such other office and testing supplies (collectively, the "**Supplies**") as are necessary for the provision of Testing Services.

(e) Miscellaneous Expenses. Any additional, reasonable expenses incurred by Manager on Company's behalf that arise following the Effective Date shall be deemed to constitute Reasonable Operating Expenses (collectively, the "**Miscellaneous Expenses**").

MANAGEMENT/ADMINISTRATIVE SERVICES. The Management/Administrative Services comprise those management and administrative services in connection with the Testing Services, as discussed in Sections 1(f)-(j) below:

(f) General Administration. Company shall engage Manager to serve as its exclusive provider of all professional, clinical, non-professional, non-clinical and business services required by Company for its conduct of the Testing Services (a general list of which services is set forth on **Schedule D**, annexed hereto), subject to matters expressly reserved for Company, and Manager shall have all necessary authority to perform such services and to conduct and administer the day-to-day administrative and non-professional operations of the Testing Services and shall carefully perform those functions pursuant to the terms of this Agreement and consistent with applicable laws, rules and regulations. The parties acknowledge and agree that Manager is not responsible for furnishing any services to Company to assist with Company's other divisions (i.e., other than the Testing Division). Company agrees that Manager's PC Physicians, and only Manager's PC Physicians, shall perform the professional testing functions of the Testing Services, consistent with common practice and applicable law. Company will have no authority, directly or indirectly, to perform or supervise, and will not perform or supervise, any professional testing function or clinical decision-making. The parties agree to reasonably cooperate in good faith and to provide reasonable information and assistance to each other to enable the Manager to perform its duties and to render the Testing Services.

(g) Management Services. Manager shall: assist with recruitment of and training for all Personnel; oversee and manage the use, maintenance and adequacy of the Equipment; develop and manage the infrastructure necessary for Company to provide the Testing Services.

(h) Payroll Services. Manager shall administer payroll functions for the PC Physicians and the Personnel for services furnished under the Testing Division, it being acknowledged that PC Physicians and Personnel shall be employed/engaged directly via the Manager.

(i) Contracting Authority and Business Decision-Making. Manager shall have authority to cause Company to enter into contracts to further its Testing Division, in addition to having the authority for Testing Division-related decision-making as required from time to time. The authority furnished to Manager hereunder shall be referred to herein as Manager's "**Contracting Authority and Business Decision-Making.**"

(j) Marketing Services. On behalf of the Testing Division, Manager shall furnish marketing and advertising services that are appropriate and permitted under applicable law to promote the use of Company's Testing Services. All marketing materials, including websites, programs, source codes, content, documentation, designs, files, databases, data compilations, technical data, domain names, tools, layouts, methods and processes, and any and all derivations, variations or embodiments of the foregoing, created for or on behalf of the Company (collectively, the "**Marketing Materials**") will be the exclusive property of, and be solely owned by, the Manager. Upon termination of this Agreement, Company will have no rights whatsoever in or to the Marketing Materials developed by the Manager.

2. Exclusive License. Subject to the terms and conditions contained herein, and during the Term (defined below), Manager hereby grants to Company an exclusive license to use the intellectual property developed by Manager (i.e., comprising unique expertise in the development and oversight of diagnostic testing service lines within physician practices) in the Testing Division (the "**License**") in the State of California.

3. Term. *The term of this Agreement (the "**Term**") shall commence as of the Effective Date hereof and shall continue in effect thereafter for the 2021-22 academic year (the "**Initial Term**"). Following the conclusion of the Initial Term, this Agreement may be renewed by mutual written consent for additional successive academic year (10) month terms (each, a "**Renewal Term**"), unless terminated only for "**Good Cause**," as hereinafter defined, by either party. "**Good Cause**" means a substantial breach of a primary obligation under this Agreement without a prompt cure or the institution of efforts to cure such breach not capable of immediate cure and the diligent prosecution of such effort to completion. In the event the CDC, Federal or State COVID testing and vaccination guidelines no longer require the level of services provided within this agreement, the agreement may be terminated with 90 calendar days written notice.*

4. Billing and Payment.

(a) As compensation for the provision of Management/Administrative Services, Manager will bill applicable insurance/Cares Act Program to offer NO-Cost Testing solution to the Company.

5. Company's Representations and Obligations. Company hereby makes the following representations, warranties and covenants to Manager, each of which is material and is being relied upon by Manager, and each of which shall be true as of the date hereof and shall continue to be true during the term of this Agreement: (i) Manager and each PC Physician employed or engaged by Manager to provide Testing Services shall: (A) be duly licensed to practice furnish the medical services hereunder, and (B) maintain professional liability insurance in minimum amounts of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate; (ii) except as provided in this Agreement, Company shall have no interest in, rights to, or title to, the Equipment, Supplies, the Marketing Materials, or any other property provided by Manager hereunder. Subject to any occurrence or omission not resulting from the actual knowledge or reckless disregard by Company for which Company will not be held responsible, Company agrees not to take any action which would adversely affect or encumber Manager's title and/or interest in the Equipment, Supplies, Marketing Materials, or

any other property provided by Manager hereunder; (iii) Manager shall continue to be, and shall remain fully responsible for, all Testing Services provided during the Term of this Agreement. In no event shall Company be deemed, in any manner, to be involved in the practice of medicine on behalf of Manager nor shall Company engage in the practice of Testing or take actions to interfere with the exercise of independent professional and/or clinical judgment by PC Physicians with respect to any matters within the province of medical judgment; (iv) this Agreement has been duly authorized, executed and delivered by Company and is binding upon it; (v) Company has the capacity and authority to fulfill the obligations required of it hereunder and, to the best of Company's knowledge and belief, nothing prohibits or restricts the right or ability of Company to carry out the terms hereof; (vi) neither Company nor any agreement, document or instrument executed or to be executed by Company in connection with this Agreement, or anything provided in or contemplated by this Agreement, does or will to the best of Company's knowledge and belief violate any applicable law, rule or regulation or breach, invalidate, cancel, make inoperative or interfere with, or result in acceleration of maturity of, any contract or agreement to which Company is bound which would affect Manager's rights hereunder; (vii) neither Manager, nor any of the PC Physicians or Personnel, has ever been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a) (i.e., any conviction relating to the Medicare or Medicaid program, patient abuse, felony conviction relating to health care fraud or felony conviction relating to controlled substances), or excluded, debarred or suspended from participating in the Federal health care programs or in Federal procurement or non-procurement programs; (viii) Company has all necessary consents and approvals to enter into, and carry out the terms of, this Agreement; (ix) Manager, including PC Physicians and Personnel, shall, at all times during the Term, exercise best efforts to comply with all applicable laws, rules, and regulations governing Manager and/or the provision of Testing Services hereunder; and (x) Company acknowledges and agrees that it shall enable Manager to exercise its Contracting Authority and Business Decision-Making.

6. Manager's Representations. Manager hereby makes the following representations, warranties, and covenants to Company, each of which is material and is relied upon by Company, and each of which shall be true as of the date hereof and shall continue to be true during the Term of this Agreement: (i) this Agreement has been duly authorized, executed and delivered by Manager and is binding upon it; (ii) Manager is duly formed and organized under the laws of the State of California and authorized and qualified to do all things required of it under this Agreement; (iii) Manager has the capacity and authority to fulfill the obligations required of it hereunder and, to the best of Manager's knowledge and belief, nothing prohibits or restricts the right or ability of Manager to carry out the terms hereof; (iv) neither Manager nor any agreement, document or instrument executed or to be executed in connection with this Agreement, or anything provided in or contemplated by this Agreement, does or will, to the best of Manager's knowledge and belief, violate any applicable law, rule or regulation or breach, invalidate, cancel, make inoperative or interfere with, or result in acceleration of maturity of, any contract or agreement to which Manager is bound which would affect Company's rights hereunder; (v) Company shall not, directly or indirectly, engage in the practice of medicine or Testing Services; (vi) neither Manager nor any of its members, managers or officers has ever been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a) (i.e., any conviction relating to the Medicare or Medicaid program, patient abuse, felony conviction relating to health care fraud or felony conviction relating to controlled substances), or excluded, debarred or suspended from participating in the Federal health care programs or in Federal procurement or non-procurement programs; (vii) Manager has all necessary consents and approvals to enter into and carry out the terms of this Agreement, including, without limitation, any such consents and approvals required under any equipment leases with third parties, if applicable; (viii) Manager, its employees, and contractors (if any) shall, at all times during the Term, exercise best efforts to comply with all applicable laws, rules, and regulations governing Manager and/or the provision of Infrastructure and Management/Administrative Services hereunder; and (ix) Manager has (or has access to)

the financial resources to carry out all of its obligations under this Agreement in accordance with its terms.

7. Assignment. Neither party shall assign, mortgage or encumber this Agreement, or sublet or license the Equipment, Supplies, License, Marketing Materials, or any other property provided by Manager hereunder, or permit its use by others for any purpose without the other party's prior written consent, which consent may be withheld.

8. Relationship of the Parties.

(a) This Agreement is by and between Manager and Company and is not intended, and shall not be construed, to create an employment relationship, partnership or other such association as between the parties. Manager, throughout the Term, shall remain an independent contractor of Company.

(b) Neither Manager nor its employees or agents shall look to Company for vacation pay, sick leave, retirement benefits, Social Security, worker's compensation, disability or unemployment insurance benefits, or other employee benefits; nor shall Company or its employees (Personnel) or agents look to Manager for the same.

(c) In performing the Testing Services required hereunder, Manager and the PC Physicians, Medical Personal shall exercise independent professional judgment. Company shall not exercise any control over matters of Manager's involving the exercise of professional judgment. Manager shall be solely responsible for the quality of Testing Services furnished by Manager.

(d) In the event that a governmental agency, at any time, questions or challenges the independent contractor status of either party, the party who received notice of same shall promptly notify the other party and afford the other party the opportunity to participate in any discussion or negotiation with such governmental agency, irrespective of by whom such discussions or negotiations are initiated. The other party shall participate in any such discussions or negotiations to the extent permitted by the other governmental agency.

9. Mutual Confidentiality.

(a) The parties covenant and agree that all information which is of a confidential or proprietary nature, whether disclosed orally or in writing (and whether or not marked confidential) ("**Confidential Information**"), are confidential trade secrets and proprietary information of, and are of great value to, the respective parties. This confidential and proprietary information includes, without limitation, that concerning or relating to know-how, trade secrets, protocols, procedures, forms, marketing (including the Marketing Materials), lists, data, reports, information concerning the other's business, practice, costs, fees, agreements, financial arrangements, business plans, surveys, professional relationships and arrangements, and information concerning operations, strategy and financial condition (including books and records).

(b) The parties agree not to disclose to any third parties any Confidential Information of the other or its affiliate, without the other's express prior written consent in each instance. A party shall not have any obligation with respect to any information which is generally available to the public (through no fault of a party) or any Confidential Information that a party is legally obligated to disclose to a third party; provided that prior to making any such legally required disclosure, the party shall give prompt written notice to the other party, and to the extent

the disclosure is legally mandated, limit the extent of the disclosure to the minimum amount necessary to comply with legal requirements.

(c) Mutual Non-Disparagement. At all times during the term of this Agreement and following its expiration or termination for any reason, the parties agree to not, directly or indirectly, in public or private, whether in oral, written, electronic or other format, disparage, deprecate, impugn or otherwise make any statements or remarks that would tend to or be construed to defame or slander the personal or professional reputations, professional qualifications, services and/or business of the other party, its owner(s), affiliates and/or its/his/her/their independent contractors, employees, agents and/or successors, nor shall such party in any manner assist or encourage any third party in doing so. The terms of this Section shall not be applicable with respect to any disclosures required to be made by law or in connection with any legal proceedings between the parties.

(d) The provisions of this Section shall survive any termination, expiration or non-renewal of this Agreement.

10. Responsibilities of Company. Notwithstanding any provision contained in this Agreement, Company continues to retain the ultimate authority and responsibility for the operation of its practice, including, without limitation, for the following:

(a) final adoption or approval of Company's compliance and operating policies, protocols and procedures and independent adoption of policies affecting the delivery and quality of services.

(b) authority over the disposition of assets (if applicable) and authority to incur liabilities not normally associated with Company's day-to-day operations, subject to the reasonable discretion of Manager with respect to the Testing Division;

(c) approval of Company's contracts; and

(d) approval of settlements of administrative proceedings or litigation to which Company is a party to the extent applicable to Company.

Manager shall be available to Company for consultation with respect to the foregoing where relevant to its duties and services hereunder, provided that such duties and services relate to the Testing Division.

11. Indemnification by Manager. To the extent that, following the Effective Date, a third-party payor attempts to recoup any amounts from Company as a proximate result of Manager's negligence, then Manager acknowledges and agrees that it shall assume such obligation to refund the third-party payor and pay such amount as a Reasonable Operating Expense from Testing Services Revenues and, further, Manager agrees to indemnify and hold Company (and its owners, employees, contractors, affiliates, agents, etc.) harmless from such liability. By way of illustration, and not limitation, in the event that a third-party payor identifies a basis for recoupment which falls within the scope of an obligation that Manager failed to satisfy then, in such case, by operation of this Section, Manager shall be responsible for assuming the obligation of funding the entire amount of such recoupment.

12. Protected Health Information. The parties agree that, in accordance with the requirements of the Federal Health Insurance Portability and Accountability Act of 1996, they shall each execute simultaneously with the execution of this Agreement a Business Associate Agreement with each other in form and substance as set forth in **Exhibit G** annexed hereto.

13. Non-Solicitation. During the Term of this Agreement and for a two (2) year period following the termination or expiration thereof, Company shall be precluded from, directly or indirectly, soliciting any sources, individuals, or entities (e.g., Manager's independent contractors, employees, agents, successors, vendors, etc.) introduced to Practice by Manager through the parties' relationship under this Agreement.

14. Miscellaneous.

(a) All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing, and shall be deemed duly given: (i) when personally delivered; (ii) one (1) business day after deposit with a nationally recognized overnight courier, specifying "next business day delivery"; or (iii) three (3) days after being sent by registered or certified mail, postage prepaid, return receipt requested. Any notice, demand or other communication given by a party in connection with this Agreement shall be sent to the following address:

If to Manager:

Heal 360, LLC & Intellikey, LLC

Attn: Mohammed Mohiuddin, M.D. and Osman Mohammed

Or

If to Company:

North Monterey County Unified School District

(b) This Agreement constitutes the entire agreement among the parties concerning the subject matter hereof and supersedes all prior agreements, understandings, memoranda or other such communication, whether written or oral, concerning such subject matter.

(c) If any provision of this Agreement or the application of any provision hereof to any person or circumstances is held to be legally invalid, inoperative or unenforceable, the remainder of this Agreement shall not be affected unless the invalid provision substantially impairs the benefits of the remaining portions of this Agreement to the parties.

(d) Any delay or failure to exercise any remedy or right under this Agreement (whether a default exists or not) shall not be construed as a waiver of such remedy or right, or an acquiescence in such default, nor shall it affect any subsequent default of the same or a different nature.

(e) All headings and captions in this Agreement are for convenience of reference only. They shall not be deemed part of this Agreement and shall in no way define, limit, extend or describe the scope or intent of any provisions hereof.

(f) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

(g) This Agreement may be executed in counterparts and such counterparts, when taken together, shall constitute a single and binding agreement.

(h) This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to conflict of law rules.

(i) Each party to this Agreement hereby agrees and consents that any legal action or proceedings with respect to this Agreement shall only be brought in the courts of the State of California. By execution and delivery of this Agreement, each such party hereby: (i) accepts the jurisdiction of the aforesaid court; (ii) waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the venue set forth above; and (iii) further waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(j) In the event any state or federal laws or regulations, now existing or enacted or promulgated after the date hereof, are interpreted by judicial decision, a regulatory agency or legal counsel in such a manner as to indicate that this Agreement or any provision hereof may be in violation of such laws or regulations, the parties shall seek, by the provision of written notice by one party hereto to the other, to amend, in good faith, this Agreement as necessary to preserve the underlying economic and financial arrangements between the parties and without substantial economic detriment to either party. Should the parties be unable to so amend this Agreement within sixty (60) days after the provision of such notice, either party shall have the right to terminate this Agreement immediately.

[Signature Page Follows]

[Signature Page to Management Services Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above, to be effective as of the Effective Date.

“Company”

North Monterey County Unified School
District



By: Mary E. Dawson
Its: Associate Superintendent, Business
Services

“Manager”

Heal 360 & Intellikey, LLC

By: Osman Mohammed
Its: Managing Member

By: Mohammed Mohiuddin, M.D.
Its: Managing Member

SCHEDULE A

EQUIPMENT PROVIDED BY MANAGER

As of the Effective Date, N/A, it being acknowledged that any Equipment provided by Manager shall be deemed to be automatically added to this Schedule.

EXHIBIT A(1)
GENERALLY APPLICABLE EQUIPMENT LEASE OR FINANCING TERMS

Any Equipment lease or financing arrangement entered into by Manager with any third party shall provide that such lease or financing arrangement and this MSA and Company's rights hereunder shall not be terminated, modified or disturbed by such third party as long as Company, after reasonable notice of Manager's default, substantially performs all of Manager's obligations hereunder and that such third party shall accept the payments which otherwise have been payable by Manager hereunder, subject to the terms and conditions hereof, in lieu of Manager's payment and/or performance, as the case may be.

SCHEDULE B

PERSONNEL

[TO BE ADDED]

SCHEDULE C

REGISTRATION OF THE COMPANY **N/A** (SEE SCHEDULE D)

1. Name of the company: [Illegible]
2. Date of incorporation: [Illegible]
3. Registered office: [Illegible]

4. Nature of business: [Illegible]

5. Particulars of shares: [Illegible]

6. Particulars of directors: [Illegible]

SCHEDULE D

MANAGEMENT/ADMINISTRATIVE SERVICES TO BE PROVIDED

Manager shall provide the following items and services which, collectively, comprise the Infrastructure and Management/Administrative Services (it being acknowledged that certain of the following are discussed with greater particularity in the Agreement):

1. Payroll services
2. Marketing services
3. General practice administration

4. Testing/Clinical Services

SCHEDULE E

TESTING LOCATIONS

[TO BE ADDED]

SCHEDULE F

REASONABLE OPERATING EXPENSES

N/A

EXHIBIT G

BUSINESS ASSOCIATE AGREEMENT

[ATTACHED]