

HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (the "**Agreement**") is entered into by and between Heal 360, LLC, Intellikey, LLC (collectively, "**Business Associate**"), and North Monterey County Unified School District ("**Covered Entity**"), and adds to any current or future agreement(s) for services entered into between Business Associate and Covered Entity which involve the creation, use, receipt, or disclosure of PHI (the "**Agreement**").

Pursuant to the Agreement, Business Associate may perform functions or activities on behalf of Covered Entity involving the use and/or disclosure of protected health information received from, or created or received by, Business Associate on behalf of Covered Entity ("**PHI**"). Therefore, if Business Associate is functioning as a business associate to Covered Entity, Business Associate agrees to the following terms and conditions set forth in this Agreement.

1. **Definitions and Regulatory References.** For purposes of this Agreement, the terms used herein, whether or not capitalized, unless otherwise specifically defined, will have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996, and any amendments or implementing regulations ("**HIPAA**", inclusive of the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and 164), and the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), and any amendments or implementing regulations ("**HITECH**"). A reference in this Agreement to any provision of a law or regulation means the provision as then in effect, amended, or implemented via regulation.
2. **Compliance with Applicable Law.** The parties acknowledge and agree that Business Associate will comply with its obligations under this Agreement and with all obligations of a business associate under HIPAA, HITECH, and other related laws and regulations, as they exist at the time this Agreement is executed and as they are amended, for so long as this Agreement is in place. Pursuant to HITECH §§ 13401(a) and 13404(a) and the HIPAA implementing regulations, the provisions of HITECH that impose requirements and standards on covered entities with respect to security and privacy will also be applicable to Business Associate, and will be and by this reference hereby are incorporated into this Agreement. All other provisions of HITECH that are applicable to Business Associate, and its relationship with Covered Entity under this Agreement and the Agreement, will be and by this reference hereby are incorporated into this Agreement.
3. **General Limitation on Uses and Disclosures of PHI.** Business Associate will not, and will ensure that its directors, officers, employees, subcontractors and agents do not, use or disclose PHI in any manner that is not permitted or required by the Agreement, this Agreement, or required by law.

Business Associate may also not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 of HIPAA if done by Covered Entity. Business Associate's use/disclosure rights, if any, for its own management and administration and legal

purposes, for data aggregation purposes, and for de-identification purposes, are specifically allowed or prohibited in **Sections 5, 6 and 7** below.

Business Associate may not use or disclose PHI for marketing or sales purposes, unless such marketing and/or sale is approved in writing by Covered Entity and is otherwise conducted in compliance with HIPAA.

4. **Permissible Use and Disclosure of PHI.** Business Associate may only use and disclose PHI as is specifically and minimally necessary to carry out its duties to Covered Entity pursuant to the terms of the Agreement and as otherwise allowed by this Agreement.
5. **Uses and Disclosures for Management and Administration.** Business Associate **may** use PHI:
 - (i) for its own proper management and administration; and/or
 - (ii) to carry out its legal responsibilities. If Business Associate discloses PHI to a third party for either above reason, unless such disclosure is required by law, prior to making any such disclosure, Business Associate must obtain: (a) reasonable written assurances from the receiving party that such PHI will be held and remain confidential and be used and further disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (b) an agreement from such receiving party to immediately notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been compromised. Even in the event such disclosure is required by law, Business Associate will attempt to comply with the foregoing, and will give Covered Entity prompt notice and permit Covered Entity to seek a protective order or take other appropriate action.
6. **Data Aggregation Services.** Business Associate may provide data aggregation services related to the health care operations of Covered Entity.
7. **De-Identified Data.** Business Associate may not use PHI to de-identify the PHI in accordance with 45 C.F.R. §§ 164.502(d) and 164.514(a)-(c).
8. **Minimum Necessary.** All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the HIPAA Privacy Rules, and will be limited to the information contained in a limited data set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or as otherwise permitted in accordance with Section 13405(b) of HITECH and any implementing regulations.
9. **Required Safeguards To Protect PHI.** Business Associate agrees that it will implement appropriate safeguards in accordance with the HIPAA Privacy and Security Rules to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement. In doing so, without limitation, Business Associate will comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI.
10. **Reporting of Improper Uses and Disclosures of PHI and Security Incidents.** Business Associate will immediately report to Covered Entity any security incident, or any use or disclosure of PHI which is not provided for in this Agreement or is otherwise violative of HIPAA, of which it becomes aware. This provision applies regardless of whether such

unauthorized use or disclosure was by Business Associate, its officers, directors, employees, agents, subcontractors, or by any third party. For purposes of this Agreement, a "security incident" will not include a request-response utility used to determine whether a specific Internet Protocol [IP] address, or host, exists or is accessible (i.e., a "ping").

11. **Securing PHI and Reporting of Breaches of Unsecured PHI.**

- (a) Business Associate will encrypt PHI that it maintains and transmits such that it is rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under Section 13402(h)(2) of Public Law 111-5 (i.e., ensure that the PHI is not "Unsecured PHI" as defined in 45 C.F.R § 164.402).
- (b) Business Associate will immediately report to Covered Entity a Breach of Unsecured PHI, in accordance with 45 C.F.R. §§ 164.400-414. Business Associate will cooperate with Covered Entity's breach notification and mitigation activities, and will be responsible for all costs incurred by Covered Entity for those activities. At Covered Entity's express written election, and then subject to Covered Entity's direction, Business Associate will be responsible for fulfilling the Breach notification obligations set forth in 45 C.F.R. §§ 164.400-414.
 - (i) Business Associate acknowledges and agrees that the foregoing provision does not in any way limit Business Associate's requirements to immediately report security incidents and unauthorized uses/disclosures to Covered Entity in accordance with **Section 10** above. Further, Business Associate acknowledges that Covered Entity will make the final determination as to whether any particular acquisition, access, use, or disclosure of PHI in violation of the HIPAA privacy rules meets the definition of Breach at 45 C.F.R. § 164.402, or is excluded from the same pursuant to the enumerated Breach exclusions or a risk assessment, all in accordance with 45 C.F.R. § 164.402. Business Associate will **not** provide notices to patients and the government of Breaches of Unsecured PHI, unless directed to by Covered Entity in the manner set forth above, after Covered Entity has determined that the HIPAA regulatory definition of "Breach" has been met with respect to Unsecured PHI.

12. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of an unauthorized use or disclosure of PHI by Business Associate, its employees, agents, contractors, or subcontractors in violation of the requirements of this Agreement or HIPAA, including, but not limited to, compliance with any state law or contractual data breach requirements.

13. **Business Associate Agreements Required With Third Parties.** Business Associate will enter into a written agreement with any agent or subcontractor of Business Associate that will have access to PHI, or who will create, receive, maintain, or transmit PHI on behalf of Business Associate. Pursuant to such written agreement and 45 C.F.R. §§ 164.502(e)(1)(ii)

and 164.308(b)(2), the agent or subcontractor will agree to be bound by the same restrictions, terms, conditions, and requirements that apply to Business Associate under this Agreement with respect to such PHI.

14. **Access to Information.** Within five (5) days of a request by Covered Entity, Business Associate will make available PHI in a Designated Record Set, to Covered Entity (or, at Covered Entity's direction, to an individual or the individual's designee), as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate will within two (2) days forward such request to Covered Entity.
15. **Availability of PHI for Amendment.** Within five (5) days of receipt of a request from Covered Entity, Business Associate will make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate will within two (2) days forward such request to Covered Entity.
16. **Documentation and Accounting of Disclosures.** Business Associate will maintain, and make available within five (5) days of a request by Covered Entity, the information required to provide an accounting of disclosures, to Covered Entity (or, at Covered Entity's direction, to an individual or the individual's designee), as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528. In the event the request for an accounting is delivered directly to Business Associate, Business Associate will within two (2) days forward such request to Covered Entity.
17. **Business Associate Performing Covered Entity's Obligations (If Applicable).** To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
18. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Covered Entity will have the right to control Business Associate's response to such request. Business Associate will notify Covered Entity of the request as soon as reasonably practicable, but in any event within two (2) days of receipt of such request.
19. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with HIPAA.
20. **Term and Termination.** The Term of this Agreement will be effective as of the effective date of the underlying Agreement(s), and will terminate on the termination or expiration of the

last of the underlying Agreement(s), or on the date Covered Entity terminates for breach/cause as authorized below, whichever is sooner.

In addition to any other rights Covered Entity may have in the Agreement, this Agreement or by operation of law or in equity, Covered Entity may: (i) immediately terminate for cause the Agreement and this Agreement if Covered Entity determines that Business Associate has violated a material term of HIPAA or this Agreement; or (ii) at Covered Entity's option, Covered Entity may permit Business Associate to cure or end any such violation within the time specified by Covered Entity. Covered Entity's option to have cured a breach of this Agreement will not be construed as a waiver of any other rights Covered Entity has in the Agreement, this Agreement or by operation of law or in equity.

21. **Effect of Termination of Agreement.** Upon the termination or expiration of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, will do the following:

- (a) Return to Covered Entity (or Covered Entity's designee) or, at Covered Entity's direction destroy, all PHI that Business Associate maintains in any form, recorded on any medium, or stored in any storage system; and
- (b) Business Associate will retain no copies of the PHI.

The provisions of this Section will apply to PHI that is in the possession of agents or subcontractors of Business Associate.

Business Associate will remain bound by the provisions of this Agreement, which will survive even after termination or expiration of the Agreement or Agreement.

22. **Data Transition.** Notwithstanding any provision to the contrary, on termination or expiration of either this Agreement or the Agreement for any reason, Business Associate will, at no cost to Covered Entity:

- (a) Provide for the export of all of Covered Entity's data (including, without limitation, PHI and medical information) in a nonproprietary (standard, interoperable) electronic format that is accessible and usable by Covered Entity through commercially available hardware and software;
- (b) Cooperate with and assist Covered Entity to achieve a timely and orderly transition of any of Covered Entity's data, regardless of where it resides (including, without limitation, data on Business Associate's systems, whether in backup and/or archival facilities or in sub-contracted systems or systems controlled by Business Associate, or data on any system of Covered Entity's (Business Associate will also do the same for any system controlled by Covered Entity (or a third party designee), if data resides therein in a format or software or the like controlled by Business Associate); and

- (c) Expressly grant to Covered Entity all rights necessary to transition its data to alternative formats.
23. **Injunctive Relief.** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Agreement would cause irreparable harm to Covered Entity, and in such event, Covered Entity will be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
24. **Indemnification.** Business Associate will indemnify and hold harmless Covered Entity and its officers, trustees, employees, and agents from any and all claims, penalties, fines, expenses, losses, costs, liabilities or damages, including but not limited to reasonable attorney fees (collectively, "**Damages**"), arising from Business Associate or its employees', agents', contractors', or subcontractors': (i) violation of their obligations under this Agreement or HIPAA or any other law regarding information privacy; (ii) their use or disclosure of PHI; or (iii) any unauthorized use or disclosure of PHI which is or has been in their possession or control (including, without limitation, any Breach of Unsecured PHI).
25. **Exclusion from Limitation of Liability.** To the extent that Business Associate has limited its liability under the terms of the Agreement, whether with a maximum recovery for direct damages, a disclaimer against consequential, indirect or punitive damages, or a disclaimer of warranties or liabilities, or any other type of limitation whatsoever, any and all limitations will exclude any and all Damages, including but not limited to reasonable attorney fees, arising from or covered by this Agreement and/or its indemnification obligations.
26. **Owner of PHI.** Under no circumstances will Business Associate be deemed in any respect to be the owner of any PHI used or disclosed by or to Business Associate by Covered Entity.
27. **Business Associate's Compliance.** In order to allow Covered Entity to certify its compliance with the HIPAA Regulations, Business Associate will permit Covered Entity, at Covered Entity's expense and on five (5) days prior notice, to audit Business Associate's systems and services, with specific emphasis on Business Associate's compliance with the provisions of this Agreement. Such audit, which may be conducted by Covered Entity's personnel under obligations of confidentiality or by an independent auditing firm, will not interfere unreasonably with Business Associate's business activities, and will be conducted no more than once per calendar year, unless Covered Entity has received a request from the Secretary, or unless a previous audit has disclosed a material issue indicating non-conformance to the provisions of this Agreement. Covered Entity will use information received during an audit solely for the purposes of this Agreement and will otherwise maintain the confidentiality of such information.
28. **Third Party Rights.** The terms of this Agreement do not grant any rights to any parties other than Business Associate and Covered Entity.

29. **Independent Contractor Status.** For the purposed of this Agreement, Business Associate is an independent contractor of Covered Entity, and will not be considered an agent of Covered Entity..

30. **Changes in the Law.** The parties agree that, with no further action required by the parties, this Agreement will be deemed automatically amended to include and incorporate amendments or revisions to HIPAA and/or HITECH, so that the parties remain in compliance with such amendments or revisions. All references to regulations or provisions of HIPAA and/or HITECH herein will be deemed to also refer to any amendment or revision thereto and/or to any successor regulation.

Additionally, at its election, Covered Entity may send an amendment to this Agreement to Business Associate, as is necessary to amend/replace this Agreement to conform to any new or revised legislation, rules and regulations to which Covered Entity is subject now or in the future including, without limitation, HIPAA, HITECH, the HIPAA Privacy Rule, the HIPAA Security Rule, or the HIPAA Transactions Rule. Business Associate agrees to the terms of any such amendment/replacement of this Agreement, and such amendment/replacement will be binding upon Covered Entity and Business Associate upon Business Associate's receipt of the same.

31. **Enforceability.** In the event any provision of this Agreement or portion thereof is found to be wholly or partially invalid, illegal, or unenforceable in any proceeding, then such provision will be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or will be deemed excised from this Agreement, as the case may require, and this Agreement will be construed and enforced to the maximum extent permitted by law, as if such provision had been originally incorporated herein as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be.
32. **Survival.** Subcontractor agrees that certain obligations under this Agreement that by their nature should survive termination/expiration will survive the termination or expiration of this Agreement.
33. **Interpretation and Conflicts.** Any ambiguity in this Agreement will be interpreted to permit compliance with HIPAA and HITECH. If there is any direct conflict between the Agreement and this Agreement, the terms and conditions of this Agreement will control.

COVERED ENTITY:

**North Monterey County Unified School
District**

By: Mary E. Dawson

Name: Mary E. Dawson, JD

Title: Associate Superintendent,

Business Services

North Monterey County USD

BUSINESS ASSOCIATE:

Heal 360, LLC

Intellikey, LLC

By: _____

Name: Mohammed Mohiuddin, M.D.

Title: Managing Member

By: _____

Name: Osman Mohammed

Title: Managing Member