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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Curtiss Sarikey, Chief of Staff

Meeting Date June 29, 2022

Subject Service Agreement and Data Sharing Agreement with Addiction Treatment Technologies, LLC DBA Care Solace

Ask of the Board Ratify Service Agreement and Data Sharing Agreement 2022-2023

Services Care Solace will connect Oakland Unified School District students, families, and staff and their family members to verified mental health providers and substance use treatment options 24 hours a day.

Term Start Date: July 1, 2022 End Date: June 30, 2023

Not-To-Exceed Amount \$99,100

Competitively Bid No

In-Kind Contributions N/A

Funding Source(s) Resource 3213/ESSR III, Site 901

Background Contracting with Care Solace prioritizes and emphasizes our commitment to student and staff wellness and mental health. Mental health remains a critical issue in our community and across the nation. This contract is to continue providing the Care Solace mental health awareness and navigation services for a second year. Initially, OUSD staff conducted due diligence regarding

references with multiple large school districts contracted with Care Solace, including a review of utilization and customer service data, all of which confirmed that the service was a positive experience and support for the health, wellness, and safety of their communities. A second year will allow this service to gain even greater familiarity and use among our students, staff, and their families.

Attachment(s)

- Service Agreement
- Data Sharing Agreement 2022-2023

SERVICE AGREEMENT

This Service Agreement (the “**Agreement**”) is dated the 1st of July, 2022 between Oakland Unified School District, a California public school district (“**OUSD**” or “**District**”), and Addiction Treatment Technologies, LLC DBA Care Solace, a Delaware limited liability company (“**Care Solace**”). District and Care Solace may be referred to individually as “**Party**,” or collectively as “**Parties**.”

RECITALS

WHEREAS, Care Solace provides a web-based navigation system to assist its school district clients and the districts’ students and parents in locating and connecting with mental health treatment providers (“**Services**”), and agrees to provide the Services to District on the terms and conditions set forth in this Agreement; and

WHEREAS, District desires for Care Solace to assist it in connecting students and families with mental health treatment providers.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Scope of Services

1. Care Solace shall provide the Services as follows:

1.1. Care Solace owns and operates a website located at the URL caresolace.com which provides information related to mental health treatment providers (“**Main Site**”). As part of this Agreement, Care Solace will manage and operate a version of the Main Site that is branded with District’s name (“**Branded Site**”). Care Solace will take all reasonable steps to ensure the Branded Site is live in September 2021. Care Solace will provide access to the Branded Site to users authorized by the District, including District staff, students, and family contacts, as directed by District (“**Authorized Users**”), on a Software-as-a-Service (“**SaaS**”) basis pursuant to the terms and conditions set forth in Paragraphs 25-33, *infra*.

1.2. Care Solace shall facilitate a process called the “**Warm Hand-Off**,” whereby District staff or third-party contractors, consultants, or other parties to whom District has outsourced institutional services (“**Independent Contractors**”) designated as school officials pursuant to 34 CFR § 99.31(a)(1)(i)(B) provide Care Solace with contact information of a student or family in need of mental health treatment providers (“**Treatment Providers**”). The family contact shall be a parent, legal guardian, or other adult primary contact as directed by District. Care Solace will then work directly with the primary contact to connect the student to Treatment Providers.

1.3. In addition to providing Authorized Users with access to the Branded Site, Care Solace will also provide Authorized Users with telephone and email access to a Care Concierge team. The Care Concierge team are care coordinators with experience in customer service, trained to navigate the mental health system and health insurance. The Care Concierge team are not licensed mental health professionals and do not diagnose, assess or evaluate. No provider-patient relationship is formed by provision of services by a Care Concierge team member to an Authorized User. The Care Concierge team are not a crisis response team. The Care Concierge team are available to work directly with students and families to connect them with Treatment Providers. Care Concierge team members are available 24 hours per day, 7 days per week.. Care Solace acknowledges that District is reasonably relying on these representations made by Care Solace.

1.4. Care Solace connects Authorized Users with Treatment Providers based on criteria such as geographic proximity, whether the provider accepts the Authorized User's insurance, and whether the provider is accepting new patients. Care Solace will have each Treatment Provider it refers to Authorized Users reviewed through Care Solace's verification process.

Care Solace is Not a Treatment Provider

2. Care Solace is not a mental health treatment provider or a provider network, and does not provide mental health treatment or other health care treatment to Authorized Users. Rather, Care Solace acts solely as a care coordinator by connecting Authorized Users to Treatment Providers. Care Solace does not represent, warrant or guarantee that Treatment Providers are of a particular quality. Care Solace shall not be liable for the quality of care provided by Treatment Providers.

Implementation Process

3. Care Solace will provide an onsite or virtual walk-through of the Services to District representatives designated by District in order to demonstrate the features and functionality of the Services.

4. Care Solace will conduct initial on-boarding training sessions with District staff designated by District in order to explain and demonstrate the Services.

5. Care Solace will provide training and on-going support concerning the use and functionality of the Services to key stakeholders of District as requested by District. Key stakeholders may include, but are not limited to: District's mental health team, psychologists, counselors, assistant principals, principals, human resources staff, district leadership, and parent-teacher associations.

6. Care Solace will assist in providing access to the Branded Site on District's website as well as individual school websites, as requested by District.

7. Care Solace will provide backpack mailer templates and email/text templates for District to deliver to students and family contacts quarterly, or four times per year, to remind them of the Services and provide the URL for the Branded Site.

8. District shall designate one of its employees as its principal contact for communicating with Care Solace regarding technical issues in the provision of the Services, and shall notify Care Solace of such designation in writing within fifteen (15) days of the execution of this Agreement. District may change its principal contact from time to time by providing written notice to Care Solace pursuant to Paragraph 53, *infra*.

Term of Agreement and Fees

9. This Agreement shall be effective as of 1st day of July, 2022 (“**Effective Date**”).

10. The initial term of this Agreement (“**Initial Term**”) will begin on July 1, 2022 and continue through June 30, 2023.

11. In exchange for the Services contemplated under this Agreement, District will pay \$99,100.00.

12. The fees set forth in Paragraph 11, *supra*, shall be earned by Care Solace when paid and shall not be subject to a prorated refund in the event of a termination without cause by District of this Agreement prior to the end of the Initial Term or any Renewal Term.

13. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (United States Dollars).

Termination of Agreement

14. District may terminate without cause an Initial Term or a Renewal Term pursuant to this Agreement at any time after providing Care Solace with sixty (60) days written notice, pursuant to Paragraph 53, *infra*. In the event of termination without cause of an Initial Term or a Renewal Term by District pursuant to this paragraph, the fees paid by District shall not be subject to a prorated refund.

15. In the event that Care Solace determines, in its sole and absolute discretion, to cease to offer the Services to new clients and to discontinue support of the Services for existing clients, Care Solace may terminate without cause an Initial Term or a Renewal Term pursuant to this Agreement by providing District with sixty (60) days written notice pursuant to Paragraph 53, *infra*. In the event of termination without cause of an Initial Term or a Renewal Term by Care Solace pursuant to this paragraph, the fees paid by District shall be subject to a prorated refund.

16. If either Party fails to comply with any of the material terms and conditions of this Agreement, including, without limitation, the payment of any fee to Care Solace, the non-

breaching Party may terminate this Agreement with cause upon thirty (30) days written notice to the breaching Party specifying the breach(es). Upon receiving written notice of a specified breach, the breaching Party shall have a thirty (30) day cure period to remedy the specified breaches. The written notice must be provided in accordance with Paragraph 53, *infra*.

16.1. Only in the event that a Party fails to remedy a specified breach within the thirty (30) day cure period shall such a breach be considered a “Dispute” subject to the dispute resolution provisions set forth in Paragraphs 42-49, *infra*.

16.2. The written notice to a breaching Party specifying any breach(es) of the material terms of this Agreement and the thirty (30) day cure period set forth in this Paragraph 16 are conditions precedent to any Party’s ability to provide the other Party with notice of a Dispute under Paragraph 41, *infra*.

Data and Information Privacy

17. Care Solace and District each agree to comply with all data privacy laws and requirements, state and federal, to which they are each subject, which may include, without limitation, the Student Online Personal Information Protection Act, Cal. Bus. & Prof. Code § 22584 (“**SOPIPA**”), the Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501-6506 (“**COPPA**”), and The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99 (hereinafter, “**FERPA**”).

18. The Branded Site will include links to a privacy policy and terms of use which will comply with applicable law.

19. The Parties expect that, in many instances, only education records constituting “directory information,” as that term is defined by FERPA at 20 U.S.C. § 1232g(a)(5)(A), would be conveyed to Care Solace by District. In order to ensure compliance and that Care Solace is able to perform the Services, District designates Care Solace a school official pursuant to 34 CFR § 99.31(a)(1)(i)(B) for the limited purposes of providing the Services.

20. The Parties expressly understand and agree that: (1) the Services are an institutional service or function that would otherwise be performed by employees of District, such as counselors or principals; (2) Care Solace is under the direct control of District with respect to the use and maintenance of “education records,” as that term is defined at 34 CFR § 99.3; (3) Care Solace shall comply with the obligations imposed by 34 CFR § 99.33(a) regarding the redisclosure of any information relating to students and families obtained in providing the Services; (4) District has determined that Care Solace has legitimate educational interests in any education records provided to it; and (5) District has provided parents and eligible students with the annual notice required by 34 C.F.R §99.7(a)(3)(iii) regarding its criteria for determining who is a school official and what constitutes a legitimate educational interest in education records.

21. District represents and warrants that any Independent Contractor that is provided with access to the Warm Hand-Off or is otherwise responsible for transmitting directory information or education records to Care Solace has also been designated as a school official

pursuant to 34 CFR § 99.31(a)(1)(i)(B) and that District has provided family contacts and eligible students with the annual notice required by 34 C.F.R §99.7(a)(3)(iii).

22. Care Solace reserves the right to internally monitor District's and Authorized Users' usage of the Branded Site and Services only in order to improve services.

23. Care Solace will provide access to District to the following non-personally identifiable information collected from Authorized Users: number of visitors, matches, and phone appointments. If District desires to obtain personally identifiable information from Care Solace related to a particular Authorized User's use of the Services, District shall obtain and deliver to Care Solace a duly executed written authorization from the Authorized User, or his or her legal guardian if applicable, in a form that complies with applicable law.

24. Care Solace shall ensure that: (i) all data and information provided by District is stored on files that are separate from those of other Care Solace clients, or (ii) all files containing data and information provided by District are partitioned from the information and data provided by other clients sufficient to protect the security and privacy of such information and data.

Software-as-a-Service Terms

25. Care Solace grants District a non-exclusive, non-transferable, limited, revocable and royalty-free license to provide a hypertext reference link ("**Link**") to the initial, top-level display of the Branded Site solely for the purpose of linking any website owned or controlled by District to the Branded Site.

26. District covenants and agrees that its use of the Services will be in a manner consistent with this Agreement and with all applicable laws and regulations, including trade secret, copyright, trademark, and export control laws. Without limiting the generality of the foregoing, District will not, directly or indirectly, do any of the following: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of or included in the Services or any software, documentation or data related to the Services ("**Software**"); modify, translate or create derivative works based on the Services or any Software; or copy (except for archival purposes), distribute, pledge, assign or otherwise transfer or encumber rights to the Services or any Software; use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

27. District and the Authorized Users shall be solely responsible for acquiring and maintaining technology and procedures for maintaining the security of their connections to the Internet. As part of the Services, Care Solace shall implement reasonable security procedures consistent with prevailing industry standards to protect information provided by District and Authorized Users from unauthorized access.

28. Care Solace will promptly report to District any unauthorized access to data or information provided by District upon discovery of such access by Care Solace, and Care Solace will use diligent efforts to promptly remedy any breach of security that permitted the unauthorized access to occur. In the event that Care Solace was solely responsible for the breach and to the extent that Care Solace has an obligation imposed by law or statute to notify any individuals whose information was provided to Care Solace by District, Care Solace shall be solely responsible for any and all such notifications at its expense. In the event the District was solely responsible for the breach, the District shall reimburse Care Solace for time and expenses incurred to assist District with any required notifications to affected individuals. In the event that Care Solace and District are jointly responsible for the breach, the Parties will attempt to reach an informal resolution as to expenses and, if unable to do so, it will be considered a "Dispute" subject to the dispute resolution provisions set forth in paragraphs 42-49, *infra*.

29. Ownership of any and all rights, whether registered or unregistered, in and with respect to patents, copyrights, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, confidential and proprietary information protected under contract or otherwise under law, trade names, domain names, trade dress, logos, animated characters, trademarks, service marks, and other similar rights or interests in intellectual or industrial property ("**Proprietary Rights**") embodied in the Branded Site, the Services, and the computer hardware, software and other tangible equipment and intangible computer code necessary to deploy and serve the Services ("**Technology**") shall remain exclusively vested in and be the sole and exclusive property of Care Solace and its licensors. In addition, Care Solace retains the Proprietary Rights including as to any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the District personnel relating to the Branded Site, the Services, or the Technology.

30. The Parties desire to establish terms governing the use and protection of certain confidential information one Party ("**Owner**") may disclose to the other Party ("**Recipient**"). For purposes of this Agreement, the term "Confidential Information" means (i) the terms and conditions of this Agreement, subject to a valid request under the applicable state's open records act (ii) non-public aspects of the Branded Site and the operation thereof, the Technology, the Services, and Care Solace's business and technical information and data, and (iii) District's information or other data processed, stored or transmitted by, in or through the Services ("**District Data**"). In addition, Confidential Information includes information which, although not related to the Services or this Agreement, is nevertheless disclosed hereunder and which is disclosed by an Owner or an affiliate to a Recipient in documentary or other tangible form bearing an appropriate label indicating that it is confidential or proprietary in nature, or which, if initially disclosed orally or visually is identified as confidential at the time of disclosure and a written summary hereof, also marked with such a label, is provided to Recipient within fifteen (15) days of the initial disclosure. Recipient may use Confidential Information of Owner only for the purposes of fulfilling the obligations contemplated in this Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but in any case using no less than a reasonable degree of care. Recipient may disclose Confidential Information received hereunder

only as reasonably required to perform its obligations under this Agreement and only to its employees who have a need to know for such purposes and who are bound by signed, written agreements to protect the received Confidential Information from unauthorized use and disclosure. The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that: (i) is in the possession or control of Recipient at the time of its disclosure hereunder; (ii) is, or becomes publicly known, through no wrongful act of Recipient; (iii) is received by Recipient from a third party free to disclose it without obligation to Owner, (iv) is independently developed by a Party as evidenced by its written and dated records and without any breach of this Agreement; or (v) is the subject of a written permission to disclose provided by Owner. The Recipient may disclose Confidential Information of Owner pursuant to the requirements of a governmental agency or by operation of law, provided that such Recipient gives Owner written notice thereof as soon as practicable to allow sufficient time for Owner to object to disclosure of such Confidential Information.

31. Notwithstanding anything to the contrary in this Agreement, District agrees that Care Solace is not prohibited from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including information publicly known or available or that could reasonably be acquired in similar work performed for another client of Care Solace.

32. District agrees that Care Solace may (a) publicize District's name, the fact of the Branded Site, and District's use of the Services; and (b) brand the Branded Site with a "powered by Caresolace.com" or similar legend and/or copyright notice.

33. If any Party is enjoined from using the Technology, or if Care Solace believes that the Technology may become the subject of a claim of intellectual property infringement, Care Solace, at its own option and expense, may: (i) procure the right for District to continue to use the Services; (ii) replace or modify the Technology so as to make it non-infringing; or (iii) terminate this Agreement, in which case Care Solace shall provide a prorated refund to District of any and all fees paid in advance for the Initial Term or any Renewal Term by District for those Services not provided by Care Solace. This Paragraph and the preceding Paragraph set forth the entire liability of Care Solace to District for any infringement by the Technology or Services of any intellectual property right of any third party.

Representations and Warranties

34. District represents and warrants that: (a) any information it provides to Care Solace does not and will not infringe, misappropriate, or otherwise violate any intellectual property right or right of privacy or publicity of any third party; (b) District has provided parents with the notice required by 34 CFR § 99.7(a)(3)(iii) regarding the criteria used to determine who constitutes a school official and what constitutes a legitimate educational interest; and (c) the performance of its obligations as set forth in this Agreement and the use of the Services by District and its Authorized Users will not (i) violate any applicable laws or regulations, or (ii) cause a breach of any agreements with any third parties. In the event of any breach by District of any of the foregoing representations and warranties set forth in this Paragraph 34, in addition to any

other remedies available at law or in equity, Care Solace will have the right to suspend immediately any Services if deemed reasonably necessary by Care Solace to prevent any harm to Care Solace and its business. Care Solace will provide written notice of any breach of the foregoing representations and warranties to District in accordance with Paragraph 53, *infra*, and a reasonable time period to cure, if practicable, depending on the nature of the breach.

35. Care Solace represents and warrants that it will comply with all state and federal healthcare referral and anti-kickback statutes, and that it does not have an ownership interest in any of the Treatment Providers to whom it refers Authorized Users. In the event of any breach by Care Solace of the foregoing representations and warranties set forth in this Paragraph 35, District will provide written notice of the breach to Care Solace in accordance with Paragraph 53, *infra*, and a reasonable time period to cure, if practicable, depending on the nature of the breach.

36. Except as expressly set forth herein, the Services are provided on an "as is" and "as available" basis, and without warranties of any kind either express or implied. Care Solace hereby disclaims all warranties, express or implied. Care Solace does not warrant that the services will be uninterrupted or error free or that defects will be corrected. Care Solace does not offer a warranty or make any representation regarding the results or the use of the Services in terms of their correctness, accuracy, reliability, risk of injury to District's or any Authorized User's computer, network, market, or customer base or commercial advantage.

Insurance and Indemnification

37. During the term of this Agreement, Care Solace shall obtain and maintain commercial general liability insurance and workers' compensation insurance (in conformance with the laws of the State of California, including, but not limited to, Labor Code section 3700, and Federal laws when applicable).with policy limits for each type of insurance having minimum coverage of \$1,000,000 per occurrence, which can be met through an umbrella or standard policy or any combination thereof. The insurance shall be evidenced by a Certificate of Insurance reflecting the minimum coverage limits.

38. Care Solace or its insurer shall defend and indemnify District and its officers, agents, employees and volunteers (collectively "**District Parties**") against any and all claims, demands, liability, judgments, awards, losses, damages, expenses or costs of any kind or character (collectively referred to as "**Claims**"), to the extent arising out of any act, error, omission, negligence, or willful misconduct of Care Solace or its officers, employees, agents, contractors, licensees, or servants connected to the Services covered by this Agreement. Care Solace or its insurer shall have no obligation, however, to defend or indemnify District Parties from a Claim if it is determined that such Claim was caused by the sole negligence or willful misconduct of District Parties.

39. A District seeking defense and/or indemnification hereunder shall promptly notify Care Solace in writing of the Claim in accordance with Paragraph 53, *infra*, and shall cooperate with Care Solace or its insurer at Care Solace's or its insurer's sole cost and expense.

Care Solace or its insurer shall control the defense and investigation of the Claim and shall employ counsel of its choice to handle and defend the same, at Care Solace's or its insurer's sole cost and expense. The obligations and responsibilities set forth in this Paragraph 39 shall apply only in the event that Care Solace or its insurer agree to provide a defense and/or indemnification.

40. If requested by District, Care Solace may cause District to be named as an additional insured under the liability policy obtained and maintained as set forth in Paragraph 37. Naming a District as an additional insured does not alter the limitations, obligations and conditions set forth in paragraphs 38 and 39 and in no circumstances will District be entitled to coverage beyond the contracted for amount of \$1,000,000 per occurrence contained in Paragraph 37.

Dispute Resolution

41. Any and all disputes, controversies, or Claims arising out of or relating to this Agreement or a breach thereof, including without limitation Claims based on contract, tort, or statute (a "**Dispute**"), shall be determined by binding arbitration as set forth in this section, consisting of Paragraphs 42-49, *infra* ("**Arbitration Agreement**").

42. An aggrieved Party shall notify the other Party of a Dispute within fifteen (15) days of being made aware of the Dispute; however, no Party may provide notification of a Dispute prior to the termination of the thirty day cure period described in Paragraph 16, *supra*. Notice shall be provided in accordance with the requirements of Paragraph 53, *infra*. The date that notice is received by the opposing Party shall hereinafter be referred to as the "**Notification Date.**"

43. If the Parties are unable to informally resolve the Dispute within thirty (30) days of the Notification Date, the Parties agree to engage in mediation in good faith. The requirement to engage in mediation is a condition precedent to the initiation of arbitration pursuant to this Arbitration Agreement. Mediation must occur within 120 days of the Notification Date. The 120-day deadline may be waived by mutual agreement of the Parties. Mediation shall be conducted according to the following terms:

43.1. Mediation shall be conducted by a single mediator from JAMS, or another mediation service agreed to by the Parties ("**Mediation Service**").

43.2. The Parties will cooperate with the Mediation Service and one another in selecting a mediator from the Mediation Service's panel of neutrals and in scheduling mediation proceedings. In the event that the Parties are unable to agree upon the selection of a mediator, the Parties shall request that the Mediation Service assign a mediator from its panel of neutrals with experience as a state or federal court judge.

43.3. The Parties agree that they will participate in the mediation in good faith and that they will share equally in the costs of mediation.

44. If the Parties are unable to resolve the Dispute through mediation, the Parties shall submit the Dispute to binding arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (“**FAA**”). Notwithstanding any other provisions of this Agreement regarding applicable law, the Parties agree that the substantive and procedural provisions of the FAA will apply to this Arbitration Agreement, to the exclusion of any state-specific substantive and procedural law regarding arbitration.

45. Arbitration shall be initiated by the aggrieved Party within thirty (30) days of the conclusion of mediation. In no event shall arbitration be demanded after the date the Claim would be barred by the applicable statute of limitations. Arbitration shall be conducted in accordance with the following terms:

45.1. Arbitration shall be conducted by a single neutral arbitrator from the National Roster of Arbitrators and administered according to the American Arbitration Association’s (“**AAA’s**”) Commercial Arbitration Rules and Mediation Procedures then in effect, except as modified by this Agreement or as otherwise agreed to in writing by the Parties. A copy of the AAA’s current Commercial Arbitration Rules and Mediation Procedures may be viewed at this link: <https://home.caresolace.com/contracts/AAA-Commercial-Arbitration-Rules-and-Mediation-Procedures-020121.pdf>.

45.2. In rendering the award, the arbitrator will determine the rights and obligations of the parties in accordance with the substantive law of the State of California, subject to the limitations on damages set forth in Paragraphs 46-49, *infra*.

45.3. The arbitrator shall award the prevailing Party the costs of mediation and arbitration.

45.4. This Arbitration Agreement is intended to be binding on and to inure to the benefit of the Parties, their principals, successors, assigns, affiliates, partners, employees, parent or subsidiary entities, and to any other persons or entities whose claims or defenses may arise out of or relate to this agreement, including third party beneficiaries.

45.5. In the event a Dispute involves a third-party beneficiary of this Agreement, the third-party beneficiary shall be excused from compliance with the notice and opportunity to cure requirements of Paragraphs 16 and 42, *supra* and shall also be excused from the mediation required under Paragraph 43, *supra*. The costs of any arbitration involving a Party and a third-party beneficiary of this Agreement shall be borne solely by the Party involved in the Dispute, unless such Dispute involves both Parties, in which case the Parties shall share equally in the costs of arbitration. In no event shall a third-party beneficiary be responsible for the costs of arbitration pursuant to this Arbitration Agreement.

45.6. Any arbitration award shall be binding on the Parties and on any third-party beneficiaries. This binding Arbitration will not be subject to appeal.

Limitation on Damages

46. As a result of any Dispute, no Party shall be liable to the other Party or to any third-party beneficiary for any indirect, incidental, or consequential damages under any theory, even

if the Party allegedly causing such damages has been advised of the possibility of such damages. The Parties waive any right to recover such damages.

47. As a result of any Dispute, in no event shall any Party be liable to the other Party or to any third-party beneficiary for punitive or exemplary damages, unless specifically provided by statute. The Parties waive any right to recover such damages unless specifically provided by statute.

48. In the event that Care Solace is found liable to District or any third-party beneficiary as the result of a Dispute, or in the event that District is found liable to any third-party beneficiary, liability shall not exceed the total general liability insurance amount in Care Solace's certificate of insurance pursuant to this Agreement. In no event shall Care Solace be held liable for the sole negligence of any other Party, including District.

49. The prevailing Party in any Dispute will be entitled to recover, in addition to costs and any other damages or award, all reasonable attorneys' fees associated with the action.

Miscellaneous Terms

50. Care Solace represents that there is no on-site campus interaction between Care Solace employees or contractors and students or student families in performing the Scope of Services, *supra*. Care Solace also represents that its employees or contractors primarily interact with school counselors, teachers, administration, and/or other school staff for the purposes set forth in the Scope of Services, *supra*, and will provide information to a family contact such as a parent, legal guardian, or other adult primary contact as directed by the District in order to connect them with Treatment Providers. Care Solace represents that its employees or contractors will have very limited to no direct interaction with students who have not reached the age of majority.

51. The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect and each Party will use its best efforts to ensure that Authorized Users are made aware of the Services and their ability to access the Branded Site.

52. This Agreement shall be governed by and construed in accordance with the laws of California without giving effect to any choice or conflict of law provision or rule (whether of California or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the California. The sole exception to this Paragraph is that the Arbitration Agreement set forth in Paragraphs 42-49, *supra*, shall be governed by the procedural and substantive provisions of the FAA.

53. Arbitration conducted as set forth in Paragraphs 42-49, *supra*, shall take place in Alameda County.

54. All notices, requests, demands or other communications required by this Agreement between Care Solace and District shall be in writing and shall be deemed given and served upon delivery, if delivered personally or by email, or three (3) days after mailing by U.S. mail as follows:

If to District: Oakland Unified School District
1000 Broadway, Suite 440, Oakland, CA 94607
Attention: Office of General Counsel
Email: ousdlegal@ousd.org

If to Care Solace: Addiction Treatment Technologies, LLC DBA: Care Solace
~~669 2nd Street~~ 237 A St. PMB 94660 CAC
~~Encinitas, CA 92024~~ San Diego CA 92101-4003
Attention: Chad A. Castruita
Email: chad@caresolace.org

Any Party may change the address or persons to which notice is to be provided by giving written notice of the change of address or persons to the other Party in the manner provided for giving notice in this paragraph.

55. The Parties agree that this Agreement is intended to benefit Authorized Users as third-party beneficiaries. The Parties expressly agree that it is their intention by this Agreement that all Claims, as that term is defined in Paragraph 38, *supra*, brought by third-party beneficiaries including, but not limited to Authorized Users, shall be subject to the Arbitration Agreement set forth in Paragraphs 42-49, *supra*.

56. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any subsequent breach of the same or any other provision of this Agreement.

57. The following obligations shall survive the expiration or termination of this Agreement: (i) any and all warranty disclaimers, limitations of liability and indemnities granted by either Party herein; (iv) any covenant granted herein for the purpose of determining ownership of, or protecting, the Proprietary Rights, including without limitation, the Confidential Information of either Party, or any remedy for breach thereof; and (v) the payment of any money due to Care Solace.

58. Neither Party shall be liable for damages for any delay or failure to perform any obligation imposed by this Agreement if such delay or failure arises out of causes beyond the Party's reasonable control and without their fault or negligence, including, but not limited to, acts of God, acts of civil or military authority, fires, riots, wars, national or regional emergencies, pandemics, embargoes, Internet disruptions, hacker attacks, any action taken by a governmental authority, or telecommunications failures. A Party whose performance is affected by any of the foregoing shall give written notice to the other Party stating the period of time the occurrence is

expected to continue, and shall use diligent efforts to end the failure or delay and minimize the effects of such delay. Notwithstanding anything to the contrary contained herein, if either Party is unable to perform hereunder for a period of thirty (30) consecutive days, then the other Party may terminate this Agreement immediately by providing ten (10) days written notice. Should the application of this Paragraph 57 become the source of a Dispute between the Parties, then either Party may immediately initiate the dispute resolution process outlined in the Arbitration Agreement, Paragraphs 42-49, *supra*, without first providing notice and an opportunity to cure as set forth in Paragraphs 16 and 42, *supra*. Any written notice under this Paragraph 57 must comply with the written notice requirements of Paragraph 53, *supra*.

59. Any amendment or modification of this Agreement will only be binding if evidenced in writing and signed by each Party or an authorized representative of each Party with authority to bind the Party. Any amendment or modification must comply with the notice requirements of Paragraph 53, *supra*.

60. Care Solace will not assign or otherwise transfer its obligations under this Agreement without the written consent of District.

61. This Agreement contains the entire agreement with respect to the subject matter hereof and supersedes all prior negotiations, understandings, or agreements, written or oral. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

62. Titles and Headings are utilized in this Agreement for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

63. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

64. This Agreement may be executed in counterparts which, taken together, shall constitute one original document.

65. Each individual signing this Agreement warrants and represents that he or she has been authorized to enter into this Agreement on behalf of the Party.

SIGNATURES ON NEXT PAGE – REMAINDER OF PAGE INTENTIONALLY BLANK

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first set forth above.

CARE SOLACE

Name: Chad Castruita

Signature: 

Position: CEO

Date: June 10, 2022

DISTRICT

Name: Curtiss Sarikey

Signature: 

Position: Chief of Staff

Date: 6/15/2022

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell

Signature: 

Position: Secretary, Board of Education

Date: 6/30/2022

Approved as to form by OUSD Office of the General Counsel.

DATA SHARING AGREEMENT

This Data Sharing Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity(ies) or individual(s) (“RECIPIENT,” together with OUSD, “PARTIES”): **Care Solace**

The PARTIES hereby agree as follows:

1. **Limited Purpose of Agreement.** This Agreement pertains only to OUSD’s transmission of data to RECIPIENT, and RECIPIENT’s protection of such data. To the extent that OUSD seeks to impose any other legal obligations on RECIPIENT (e.g., RECIPIENT’s provision of services to OUSD), or RECIPIENT seeks to impose any other legal obligations on OUSD (e.g., OUSD payment of compensation to RECIPIENT), such obligations shall be set forth in a separate agreement. If such an agreement exists at the time of execution of this Agreement, the Parties shall identify it in **Exhibit A**. It is the intent of the Parties that this Data Sharing Agreement shall apply only to issues or claims related to data sharing. Any issues and/or claims not related to data sharing shall be determined in accordance with the terms set forth in the Service Agreement.
2. **Data to be Provided.** The Parties shall list the categories of data to be provided in the Schedule of Data, attached hereto as **Exhibit B**. The data categories listed in **Exhibit B**, and any portion thereof (including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in that data), shall be referred to hereinafter as OUSD Data.
3. **Term.**
 - a. This Agreement shall start on the below date (“Start Date”): July 1, 2022
 - b. The work shall be completed no later than the below date (“End Date”): June 30, 2023
4. **Family Educational Rights and Privacy Act.** Check any of the following that apply:
 - OUSD Data is limited to student directory information, as defined in 34 C.F.R. § 99.31(a)(11), for those students who have not opted out of disclosure of directory information.
 - OUSD Data is limited to de-identified student information, as defined in 34 C.F.R. § 99.31(b).
 - OUSD Data includes personally identifiable information from a student record other than directory information. RECIPIENT is responsible for obtaining parental consent, as defined in 34 C.F.R. § 99.30, and presenting evidence thereof to OUSD.

OUSD Data includes personally identifiable information from a student record, and:

RECIPIENT is a contractor, consultant, volunteer, or other party to whom OUSD has outsourced institutional services or functions, and RECIPIENT performs an institutional service or function for which the agency or institution would otherwise use employees; is under the direct control of the agency or institution with respect to the use and maintenance of education records; and is subject to the requirements of § 99.31(a) governing the use and redisclosure of personally identifiable information from education records. (See 34 C.F.R. § 99.31(a)(1)(i)(B).)

RECIPIENT is another school, school system, or institution of postsecondary education where an OUSD student seeks or intends to enroll, or where the student is already enrolled, and the disclosure is for purposes related to the student's enrollment or transfer. (See 34 C.F.R. § 99.31(a)(2).)

RECIPIENT is an authorized representatives of the Comptroller General of the United States; the Attorney General of the United States; the Secretary of Education; or State and local educational authorities. (See 34 C.F.R. § 99.31(a)(3).)

RECIPIENT requires the data in order to determine an OUSD student's eligibility for financial aid; amount of aid; conditions for aid; or to enforce the terms and conditions of the aid. (See 34 C.F.R. § 99.31(a)(4).)

RECIPIENT is an organization conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. (See 34 C.F.R. § 99.31(a)(6).) Any RECIPIENT receiving OUSD Data pursuant to this subsection must first submit a research application pursuant to OUSD's Department of Research, Assessment, and Data protocols, and such application shall be incorporated into this Agreement by reference.

The disclosure is in connection with a health or safety emergency. (See 34 C.F.R. §§ 99.31(a)(10) & 99.36.)

5. **Privacy Compliance.** RECIPIENT shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including the Family Educational Rights and Privacy Act, the Children's Online Privacy Protection Act, the Protection of Pupil Rights Amendment, the Student Online Personal Information Protection Act, AB 1584, and all other California privacy statutes.

6. **Authorized Use.** OUSD Data, including persistent unique identifiers, shall be used for no purpose other than as agreed herein and/or otherwise legally authorized. RECIPIENT shall not make any re-disclosure of any OUSD Data without the express written consent of OUSD.
7. **Advertising Prohibition.** RECIPIENT is prohibited from using or selling OUSD Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by RECIPIENT; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to OUSD; or (d) use the OUSD Data for the development of commercial products or services.
8. **OUSD Data Property of OUSD.** All OUSD Data transmitted to the RECIPIENT pursuant to this Agreement is and will continue to be the property of and under the control of OUSD. RECIPIENT acknowledges and agrees that all copies of such OUSD Data transmitted to the RECIPIENT, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original OUSD Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to OUSD Data shall remain the exclusive property of OUSD.
9. **Correction of Records.** OUSD shall establish reasonable procedures by which a parent, guardian, or eligible student may review OUSD Data in the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. RECIPIENT shall respond in a timely manner to OUSD's request for OUSD Data in a pupil's records held by RECIPIENT to view or correct as necessary.
10. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact RECIPIENT with a request for data held by RECIPIENT pursuant to the Services, RECIPIENT shall redirect the Third Party to request the data directly from OUSD. RECIPIENT shall notify OUSD in advance of a compelled disclosure to a Third Party.
11. **Employee Obligation.** RECIPIENT shall require all employees and agents who have access to OUSD Data to comply with all applicable provisions of this Agreement with respect to the data shared under the Agreement.
12. **Subprocessors.** RECIPIENT shall enter into written agreements with all Subprocessors performing functions pursuant to this Agreement or any other Agreement identified in **Exhibit A**, whereby the Subprocessors agree to protect OUSD Data in manner consistent with the terms of this Agreement.
13. **No Re-Identification or Re-Disclosure.** RECIPIENT agrees not to attempt to re-identify de-identified OUSD Data and not to transfer de-identified OUSD Data to any party unless (a)

that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to OUSD who has provided prior written consent for such transfer. RECIPIENT shall not copy, reproduce or transmit any data obtained except as necessary to fulfill the Agreement

14. **Disposition of Data.** RECIPIENT shall dispose or delete all OUSD Data upon written request by OUSD or when it is no longer needed for the purpose for which it was obtained. Disposition shall include (1) the shredding of any hard copies of any OUSD Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in this Agreement authorizes RECIPIENT to maintain OUSD Data beyond the time period reasonably needed to complete the disposition. RECIPIENT shall provide written notification to OUSD when the OUSD Data has been disposed.
15. **Data Security.** RECIPIENT agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect OUSD Data from unauthorized disclosure or acquisition by an unauthorized person.
16. **Data Breach.** In the event that OUSD Data is accessed or obtained by an unauthorized individual, RECIPIENT shall provide notification to OUSD within a reasonable amount of time of the incident, and not exceeding forty-eight (48) hours. RECIPIENT shall follow the following process:
 - a. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.
 - b. The security breach notification described above shall include, at a minimum, the following information:
 - (i) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - (ii) If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - (iii) Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
 - (iv) A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

- c. RECIPIENT agrees to adhere to all requirements in applicable State and in federal law with respect to a data breach related to the OUSD Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
 - d. RECIPIENT further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of OUSD Data or any portion thereof, including personally identifiable information and agrees to provide OUSD, upon request, with a copy of said written incident response plan.
 - e. RECIPIENT is prohibited from directly contacting parent, legal guardian or eligible pupil regarding any data sharing breach and/or claim unless expressly requested by OUSD. If OUSD requests RECIPIENT's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to RECIPIENT, RECIPIENT shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed above. If requested by OUSD, RECIPIENT shall reimburse OUSD for costs incurred to notify parents/families of a breach not originating from OUSD's use of the Service.
17. **Equipment and Materials.** RECIPIENT shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
18. **Termination.**
- a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to RECIPIENT. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or thirty (30) days after the notice was provided, whichever is later.
 - b. Due to COVID-19. Notwithstanding any other language of this Agreement, if a shelter-in-place (or similar) order due to COVID-19 is issued or is in effect during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of RECIPIENT to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to RECIPIENT. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.

- c. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.
- d. Upon termination, RECIPIENT shall provide OUSD with all materials produced, maintained, or collected by RECIPIENT pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

19. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

OUSD

Name: Joshua R. Daniels
Site/Dept: Office of General Counsel
Address: 1000 Broadway, Suite 300
City, ST Zip: Oakland, CA 94607
Phone: 510-879-8535
Email: ousdlegal@ousd.org

RECIPIENT

Name: Chad Castruita
Title: CEO
Address: 237 A St. PMB 94660
City, ST Zip: San Diego CA 92101-4003
Phone: 818-437-5609
Email: chad@caresolace.org

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

20. **Status.**

- a. This is not an employment contract. RECIPIENT, in the performance of this Agreement, shall be and act as an independent contractor. RECIPIENT understands and agrees that it and any and all of its employees shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. RECIPIENT shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to RECIPIENT's employees.

- b. If RECIPIENT is a natural person, RECIPIENT verifies all of the following:
 - (i) RECIPIENT is free from the control and direction of OUSD in connection with RECIPIENT's work;
 - (ii) RECIPIENT's work is outside the usual course of OUSD's business; and
 - (iii) RECIPIENT is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.

- c. If RECIPIENT is a business entity, RECIPIENT verifies all of the following:
 - (i) RECIPIENT is free from the control and direction of OUSD in connection with the performance of the work;
 - (ii) RECIPIENT is providing services directly to OUSD and to students and their families rather than to customers of OUSD;
 - (iii) the contract between OUSD and RECIPIENT is in writing;
 - (iv) RECIPIENT has the required business license or business tax registration, if the work is performed in a jurisdiction that requires RECIPIENT to have a business license or business tax registration;
 - (v) RECIPIENT maintains a business location that is separate from the business or work location of OUSD;
 - (vi) RECIPIENT is customarily engaged in an independently established business of the same nature as that involved in the work performed;
 - (vii) RECIPIENT actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
 - (viii) RECIPIENT advertises and holds itself out to the public as available to provide the same or similar services;
 - (ix) RECIPIENT provides its own tools, vehicles, and equipment to perform the services;
 - (x) RECIPIENT can negotiate its own rates;
 - (xi) RECIPIENT can set its own hours and location of work; and
 - (xii) RECIPIENT is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and

Professions Code.

21. **Certificates/ Permits/ Licenses/ Registration.** RECIPIENT's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.
22. **Coronavirus/COVID-19.**
 - a. Through its execution of this Agreement, RECIPIENT declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
 - b. Consistent with the requirements of the paragraph titled Incident/Accident/Mandated Reporting, RECIPIENT agrees to notify OUSD, via email pursuant to the paragraph titled Legal Notices, within twelve (12) hours if RECIPIENT or any employee, subcontractor, agent, or representative of RECIPIENT tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to RECIPIENT possible COVID-19 exposure.
 - c. RECIPIENT agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to RECIPIENT or any employee, subcontractor, agent, or representative of RECIPIENT and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.
 - d. RECIPIENT shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
23. **Assignment.** The obligations of RECIPIENT under this Agreement shall not be assigned by RECIPIENT without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
24. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, RECIPIENT agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, RECIPIENT agrees to require like compliance by all its subcontractor (s). RECIPIENT shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age,

marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

25. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, RECIPIENTS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
26. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this Agreement.
27. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party regarding any issues/and or claims related to data sharing except as expressly provided herein.
28. **Conflict of Interest.**
 - a. RECIPIENT shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. RECIPIENT shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.
 - b. RECIPIENT affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between RECIPIENT's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
 - c. Through its execution of this Agreement, RECIPIENT acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event RECIPIENT receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, RECIPIENT agrees it shall notify OUSD in writing.
29. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, RECIPIENT certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

30. **Limitation of OUSD Liability.** OUSD shall have no financial obligations under this Agreement other than as provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement.
31. **Indemnification.**
- a. To the furthest extent permitted by California law, RECIPIENT shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“OUSD Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of RECIPIENT’S performance of this Agreement. RECIPIENT also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, RECIPIENT, or subcontractor furnishing work, services, or materials to RECIPIENT arising out of the performance of this Agreement. RECIPIENT shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at RECIPIENT’S own expense, including attorneys’ fees and costs, and OUSD shall have the right to accept or reject any legal representation that RECIPIENT proposes to defend OUSD Indemnified Parties.
 - b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless RECIPIENT, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“RECIPIENT Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD’S performance of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend RECIPIENT Indemnified Parties at OUSD’S own expense, including attorneys’ fees and costs.
32. **Audit.** RECIPIENT shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of RECIPIENT transacted under this Agreement. RECIPIENT shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. RECIPIENT shall permit OUSD, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all records and other data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to RECIPIENT and shall conduct audit(s) during RECIPIENT’S normal business hours, unless RECIPIENT otherwise

consents.

33. **Litigation.** This Agreement relating to data sharing claims and/or issues shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement as it relates to data sharing claims and/or issues.
34. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. RECIPIENT agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.
35. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES regarding data sharing and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.
36. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
37. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
38. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
39. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified and "hours" refers to hours regardless of whether it is a work day, weekend, or holiday.
40. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the

receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

41. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
42. **Signature Authority.**
 - a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
 - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel have been delegated the authority to sign contracts for OUSD and only under limited circumstances, which require ratification by the OUSD Governing Board. RECIPIENT agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.
 - c. Notwithstanding Paragraph 18, if this Agreement is executed by the signature of the Superintendent, Chiefs, Deputy Chiefs, or General Counsel under their delegated authority, and the Board thereafter declines to ratify the Agreement, the Agreement shall automatically terminate on the date that the Board declines to ratify it.
43. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to RECIPIENT absent such formal approval or valid and proper execution.

REST OF PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first set forth above.

RECIPIENT

Name: Chad Castruita

Signature: 

Position: CEO

Date: June 10, 2022

DISTRICT

Name: Curtiss Sarikey

Signature: 

Position: Chief of Staff

Date: June 15, 2022

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell

Signature: 

Position: Secretary, Board of Education

Date: 6/30/2022

Approved as to form by OUSD Office of the General Counsel.

EXHIBIT A

1) Anticipated Use of Data: *Describe the purpose for which the Recipient seeks access to the OUSD Data identified in Exhibit B.*

Care Solace utilizes the OUSD data identified in Exhibit B to enable Care Solace to provide services to OUSD and its students and families as set forth in the Service Agreement and to improve the services Care Solace provides.

2) Description of Existing Agreements between OUSD and Recipient: *To the extent that OUSD and Recipient have entered separate agreements imposing legal obligations in addition to data sharing, list their date, Enactment Number (if applicable), and a brief summary below. Include research applications in this list.*

Care Solace and OUSD have entered into a Service Agreement dated July 1, 2022 for provision of services to OUSD and its students and their families. Under the terms of the Service Agreement, Care Solace assists OUSD students and families in locating and connecting with mental health treatment providers. Care Solace acts as a care coordinator by connecting OUSD students and their families to treatment providers. While Care Solace coordinates care, it does not provide mental health services and does not diagnose, assess, or evaluate treatment.

3) Site/Department to Provide Data (e.g., Research, Assessment, & Data Department, Tech Services Department, specific school site):

Care Solace will receive OUSD Data (as defined in Paragraph 2 of the Data Sharing Agreement and Exhibit B thereto) through the secure care Loop platform either from school guidance counselors or other OUSD agents or employees.

EXHIBIT B

Please indicate each data element requested below.

Category	Elements	Check if Requested
Application Technology Metadata	IP Addresses of users, use of cookies, etc.	<input checked="" type="checkbox"/>
	Other application technology metadata - please specify	<input type="checkbox"/> [Specify here]
Application Use Statistics	Metadata on user interaction with application	<input checked="" type="checkbox"/>
Assessment	SBAC results	<input type="checkbox"/>
	ELPAC results	<input type="checkbox"/>
	IAB Results	<input type="checkbox"/>
	Local benchmark assessment results	<input type="checkbox"/>
Attendance	Attendance rate	<input type="checkbox"/>
	Number of absences	<input type="checkbox"/>
Communications	Online communications that are captured (emails, blog entries)	<input checked="" type="checkbox"/>
Conduct	Number of Suspensions	<input checked="" type="checkbox"/>
	Days suspended	<input type="checkbox"/>
Demographics	Gender	<input checked="" type="checkbox"/>
	Race/Ethnicity	<input checked="" type="checkbox"/>
	Special ed. flag	<input type="checkbox"/>

	Home language	<input checked="" type="checkbox"/>
	Language proficiency	<input checked="" type="checkbox"/>
	Birth country	<input type="checkbox"/>
Enrollment	School	<input checked="" type="checkbox"/>
	Grade level	<input type="checkbox"/>
	Other - please specify	<input checked="" type="checkbox"/> Guidance Counselor Name [Specify here]
Parent/Guardian Contact Information	Name	<input checked="" type="checkbox"/>
	Address	<input checked="" type="checkbox"/> Zip Code Only
	Email	<input checked="" type="checkbox"/>
	Phone	<input checked="" type="checkbox"/>
Schedule	Student scheduled courses	<input type="checkbox"/>
	Teacher names	<input type="checkbox"/>
Special Indicator	English language learner	<input type="checkbox"/>
	Low-income status (only available if data requested is de-identified; if this box is checked but the request is <u>not</u> for de-identified data, this checked box will be disregarded, and low-income status will not be shared)	<input type="checkbox"/>
	Title 1 flag (schoolwide)	<input type="checkbox"/>

	Other - please specify	<input type="checkbox"/> [Specify here]
Student Contact Information	Name	<input checked="" type="checkbox"/>
	Address	<input checked="" type="checkbox"/> Zip Code Only
	Email	<input checked="" type="checkbox"/>
	Phone	<input checked="" type="checkbox"/>
Local Identifiers	Local student ID number	<input type="checkbox"/>
	Teacher ID number	<input type="checkbox"/>
	State student ID number	<input type="checkbox"/>
	Provider/App assigned student ID number	<input type="checkbox"/>
	Student app username	<input type="checkbox"/>
	Student app password(s)	<input type="checkbox"/>
	Dummy identifiers (please check here if data requested are de-identified)	<input type="checkbox"/>
Student In App Performance	Program/application performance (typing program - student types 60wpm, reading program - student reads below grade level) - Please specify	<input type="checkbox"/> [Specify here]
Student Work	Student generated content; writing, pictures etc.	<input type="checkbox"/>
	Other - please specify	<input type="checkbox"/> [Specify here]

Transcript	Student course grades	<input type="checkbox"/>
	Current year GPA	<input type="checkbox"/>
	Cumulative GPA	<input type="checkbox"/>
Transportation	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>
	Student bus card ID number	<input type="checkbox"/>
	Other - Please specify	<input type="checkbox"/> [Specify here]
Other	Please list each additional data element used, stored, or collected	<input type="checkbox"/> [List additional data here]