

## SERVICE AGREEMENT

This Service Agreement (the “**Agreement**”) is dated the 9th of May, 2023 between Azusa Unified School District, a California Public school district (hereinafter “**School District**”), and Care Solace, Inc., a Delaware corporation (hereinafter “**Care Solace**”). School 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 (hereinafter the “**Services**”), and agrees to provide the Services to School District on the terms and conditions set forth in this Agreement; and

**WHEREAS**, School 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.org](https://caresolace.org) which provides information related to mental health treatment providers (hereinafter the “**Main Site**”). As part of this Agreement, Care Solace will manage and operate a version of the Main Site that is branded with School District’s name (hereinafter the “**Branded Site**”). Care Solace will take all reasonable steps to ensure the Branded Site is live in July 2023. Care Solace will provide access to the Branded Site to users authorized by the School District, including School District staff, students, and parents (hereinafter the “**Authorized Users**”), on a Software-as-a-Service (“**SaaS**”) basis pursuant to the terms and conditions set forth in Paragraphs 26-34, *infra*.

1.2 Care Solace shall facilitate a process called the “**Warm Handoff®**,” whereby School District staff or third-party contractors, consultants, or other parties to whom School District has outsourced institutional services (hereinafter “**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 (hereinafter the “**Treatment Providers**”). The family contact shall be a parent, legal guardian, or other adult primary contact as directed by School 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 Companion™. The Care Companions are care

coordinators with experience in customer service, trained to navigate the mental health system and health insurance. The Care Companions 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 Companion to an Authorized User. The Care Companions are not a crisis response team. The Care Companions are available to work directly with students and families to connect them with Treatment Providers. Care Companions are available 24 hours per day, 7 days per week.

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 use reasonable efforts to have each Treatment Provider it refers to Authorized Users reviewed through Care Solace's verification process. The information available on Treatment Providers through the verification process may vary significantly.

### **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 School District representatives designated by School District in order to demonstrate the features and functionality of the Services.

4. Care Solace will conduct initial on-boarding training sessions with School District staff designated by School 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 School District as requested by School District. Key stakeholders may include, but are not limited to: School 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 School District's website as well as individual school websites, as requested by School District.

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

8. School 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. School District may change its principal contact from time to time by providing written notice to Care Solace pursuant to Paragraph 54, *infra*.

### **Term of Agreement and Fees**

9. This Agreement shall be effective as of 05-09-2023 (hereinafter the “Effective Date”).

10. The initial term of this Agreement (hereinafter the “Initial Term”) will begin on July 1, 2023 and continue through June 30, 2026. This Agreement may be renewed for one-year terms (hereinafter, “Renewal Term”) on July 1st of each year following the Initial Term (hereinafter the “Renewal Date”). In California, the maximum term of this Agreement is five years per Cal. Educ. Code § 17596.

11. In exchange for the Services contemplated under this Agreement, School District will compensate Care Solace as follows:

11.1. For the Initial Term, July 1, 2023 to June 30, 2026, School District will pay \$14,000 each year to Care Solace (based on a student enrollment of 7,000) with the first year paid upon execution of this Agreement, and subsequent years paid on July 1, 2024 and July 1, 2025, respectively.

11.2. In the event that School District wishes to renew this Agreement for any Renewal Term, pricing will be determined and agreed to by the Parties at or around the time of renewal on a price-per-student basis and then-current enrollment figures.

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 School District of this Agreement prior to the end of the Initial Term or any Renewal Term.

12.1 Payment Terms. School District agrees to pay the amounts set forth in Paragraph 11, *supra*, within thirty (30) calendar days of receipt of an invoice. If Care Solace does not receive payment in full on an invoice within thirty (30) days, a finance charge on the unpaid amount of any invoice will be charged at a rate of 3.75% annually, beginning thirty (30) days after School District receives the invoice. Payments by the School District will thereafter be applied first to accrued interest and then to the principal unpaid balance. School District agrees to pay all costs, including reasonable attorneys’ fees, incurred by Care Solace in the collection of any delinquent accounts. For the purposes of this Paragraph 12.1, an invoice shall be deemed to be received upon delivery, if delivered personally or by email, or three (3) days after mailing by U.S. mail.

13. To ensure continuity of the Services, Care Solace will continue to provide the Services for a grace period of ninety (90) days after expiration of the Initial Term or any Renewal Term to allow for negotiation of a subsequent Renewal Term or new Agreement. During this grace period, all terms of the Agreement shall remain in full force and effect, and any Renewal Term or new Agreement beginning after this grace period shall be retroactive to the expiration date.

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

### **Termination of Agreement**

15. School 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 54, *infra*. In the event of termination without cause of an Initial Term or a Renewal Term by School District pursuant to this paragraph, the fees paid by School District shall not be subject to a prorated refund.

16. 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 School District with sixty (60) days written notice pursuant to Paragraph 54, *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 School District shall be subject to a prorated refund.

17. 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 54, *infra*.

17.1. 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 42-50, *infra*.

17.2. 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 17 are conditions precedent to any Party’s ability to provide the other Party with notice of a Dispute under Paragraph 43, *infra*.

### **Data and Information Privacy**

18. Care Solace and School 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 (hereinafter “SOPIPA”), the Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501-6506 (hereinafter “COPPA”), and The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99 (hereinafter, “FERPA”).

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

20. 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 School District. In order to ensure compliance and that Care Solace is able to perform the Services, School 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.

21. The Parties expressly understand and agree that: (1) the Services are an institutional service or function that would otherwise be performed by employees of School District, such as counselors or principals; (2) Care Solace is under the direct control of School 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) School District has determined that Care Solace has legitimate educational interests in any education records provided to it; and (5) School 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.

22. School District represents and warrants that any Independent Contractor that is provided with access to the Warm Handoff 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 School District has provided parents and eligible students with the annual notice required by 34 C.F.R §99.7(a)(3)(iii)

23. Care Solace reserves the right to internally monitor School District's and Authorized Users' usage of the Branded Site and Services.

24. Care Solace will provide access to School District to the following non-personally identifiable information collected from Authorized Users: number of visitors, matches, and phone appointments. If School District desires to obtain personally identifiable information from Care Solace related to a particular Authorized User's use of the Services, School 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.

25. Care Solace shall ensure that: (i) all data and information provided by School 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 School 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**

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

27. Use Restrictions. School 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, School 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 (hereinafter “**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.

28. Security. School 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 School District and Authorized Users from unauthorized access. The Parties agree that Care Solace shall not, under any circumstances, be held responsible or liable for situations in which: (i) data or transmissions are accessed by third parties through illegal or illicit means, or (ii) the data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to Care Solace at the time, provided Care Solace complies with its obligations in this paragraph.

29. Unauthorized Access. Care Solace will promptly report to School District any unauthorized access to data or information provided by School 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 School District, Care Solace shall be solely responsible for any and all such notifications at its expense. In the event the School District was solely responsible for the breach, the School District shall reimburse Care Solace for time and expenses incurred to assist School District with any required notifications to affected individuals. In the event that Care Solace and School 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*.

30. Ownership of Proprietary Rights. 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 (hereinafter “**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 (hereinafter the “**Technology**”) shall remain exclusively vested in and be the sole and exclusive property of Care Solace and its licensors. In addition School District hereby transfers and assigns to Care Solace any rights School District may have to any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by School District personnel relating to the Branded Site, the Services, or the Technology.

31. Mutual Exchange of Confidential Information. The Parties desire to establish terms governing the use and protection of certain confidential information one Party (hereinafter “**Owner**”) may disclose to the other Party (hereinafter “**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) School District's information or other data processed, stored or transmitted by, in or through the Services (hereinafter "**School 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.

32. General Skills and Knowledge. Notwithstanding anything to the contrary in this Agreement, School 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.

33. Publicity and Branding. School District agrees that Care Solace may (a) publicize School District's name, the fact of the Branded Site, and School 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.

34. Options for Infringement Claims. 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 School 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 School District of any and all fees paid in advance for the Initial Term by School District for those Services not provided by Care Solace. This Paragraph and the preceding Paragraph set forth the entire liability of Care

Solace to School District for any infringement by the Technology or Services of any intellectual property right of any third party.

### **Representations and Warranties**

35. School 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) School 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 School 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 School District of any of the foregoing representations and warranties set forth in this Paragraph 35, 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 School District in accordance with Paragraph 54, *infra*, and a reasonable time period to cure, if practicable, depending on the nature of the breach.

36. 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 36, School District will provide written notice of the breach to Care Solace in accordance with Paragraph 54, *infra*, and a reasonable time period to cure, if practicable, depending on the nature of the breach.

37. 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 School District's or any Authorized User's computer, network, market, or customer base or commercial advantage.

### **Insurance and Indemnification**

38. **Insurance**. During the term of this Agreement, Care Solace shall obtain and maintain liability insurance with policy limits having minimum coverage of \$2,000,000 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.

39. **Defense and Indemnity**. Care Solace or its insurer shall defend and indemnify School District and its officers, agents, employees and volunteers (collectively "**School District Parties**") against any and all claims, demands, liability, judgments, awards, losses, damages, expenses or costs of any kind or character (hereinafter 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 School District Parties from a Claim if it is determined that such Claim was caused by the sole negligence or willful misconduct of School District Parties.

39.1 Additional Insured. Care Solace shall cause School District to be named as an “Additional Insured” under the liability insurance policy obtained and maintained as set forth in Paragraph 38, *supra*. Notwithstanding School District’s coverage as an Additional Insured, in no event shall Care Solace or its insurer be held liable for School District’s sole negligence or willful misconduct. Under no circumstances is any Additional Insured entitled to any coverage beyond the contractual indemnification provisions in Paragraph 39, *infra*.

40. A School District seeking defense and/or indemnification hereunder shall promptly notify Care Solace in writing of the Claim in accordance with Paragraph 54, *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 40 shall apply only in the event that Care Solace or its insurer agree to provide a defense and/or indemnification.

41. Naming a School District as an additional insured does not alter the limitations, obligations and conditions set forth in paragraphs 39-40 and in no circumstances will School District be entitled to coverage beyond the contracted for amount of \$2,000,000 per occurrence contained in Paragraph 38.

### **Dispute Resolution**

42. 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 (hereinafter a “**Dispute**”), shall be determined by binding arbitration as set forth in this section, consisting of Paragraphs 42-50 herein (hereinafter the “**Arbitration Agreement**”).

43. 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 17, *supra*. Notice shall be provided in accordance with the requirements of Paragraph 54, *infra*. The date that notice is received by the opposing Party shall hereinafter be referred to as the “**Notification Date**.”

44. 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:

44.1 Mediation shall be conducted by a single mediator from JAMS, or another mediation service agreed to by the Parties (hereinafter “Mediation Service”).

44.2 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.

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

45. 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.* (hereinafter the "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.

46. 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:

46.1. 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>

46.2. 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 47-50, *infra*.

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

46.4. 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.

46.5. 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 17 and 43, *supra* and shall also be excused from the mediation required under Paragraph 44, *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.

46.6. 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**

47. 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.

48. 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.

49. In the event that Care Solace is found liable to School District or any third-party beneficiary as the result of a Dispute, or in the event that School 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 School District.

50. 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**

51. Performance. 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. Governing Law. 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 42-50, *supra*, shall be governed by the procedural and substantive provisions of the FAA.

53. Venue for Arbitration. Arbitration conducted as set forth in Paragraphs 42-50, *supra*, shall take place in Los Angeles County, CA.

54. Notices. All notices, requests, demands or other communications required by this Agreement between Care Solace and School 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 School District:  
Azusa Unified School District  
546 South Citrus Avenue  
Azusa, CA 91702  
Attention: Arturo Ortega  
Superintendent of Schools  
Email: aortega@azusa.org

If to Care Solace:  
Care Solace, Inc.  
1624 Market St. Ste 226  
PMB 94660  
Denver, CO 80202-1559  
Attention: Peter C. Biberstein  
Email: peter.biberstein@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. Third-Party Beneficiaries. The Parties agree that this Agreement is intended to benefit Authorized Users as third-party beneficiaries and that the Parties mutual intent to confer a benefit upon Authorized Users as third-party beneficiaries of this Agreement is a material part of the Agreement's purpose. 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. Waiver. 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. Continuing Obligations. 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. Force Majeure. 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 58 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 42-50, *supra*, without first providing notice and an opportunity to cure as set forth in Paragraphs 17 and 43, *supra*. Any written notice under this Paragraph 58 must comply with the written notice requirements of Paragraph 54, *supra*.

59. Modification of Agreement. 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 54, *supra*.

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

61. Entire Agreement. 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/Headings. 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. Severability. 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. Counterparts. This Agreement may be executed in counterparts which, taken together, shall constitute one original document.

65. Authority to Execute Agreement. 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, Inc. ("Care Solace")**

Printed Full Name: Peter Biberstein

Title: General Counsel & VP of Business Affairs; Admitted in CO, DC, MD & VA



Signature: \_\_\_\_\_

**Azusa Unified School District ("School District")**

Printed Full Name: Norma Carvajal Camacho

Title: Assistant Superintendent, Ed. Services

Signature: \_\_\_\_\_

**Accounts Payable Information:**

School District Dept: \_\_\_\_\_

Accounts Payable contact:

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_