

This Confidential Data Privacy Agreement (“**DPA**”) is entered into by and between:

THE BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY, a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 (the “**Board**” or “**Jefferson County Public Schools**”) and

Care Solace, Inc., a vendor organized under the laws of Delaware with its principal place of business located at 120 Birmingham Dr., Suite 200, Cardiff, CA 92007. (the “**Provider**”).

WHEREAS, the Provider is providing educational or digital services to the Board.

WHEREAS, the Provider and the Board recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. § 1232g (34 CFR Part 99); the Children’s Online Privacy Protection Act (“**COPPA**”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations and

WHEREAS, the Provider and the Board desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

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

ARTICLE I: PURPOSE AND SCOPE

1. **Entire Agreement.** This DPA is the entire agreement between the Parties regarding issues and/or claims relating to data privacy, sharing, and security, and supersedes any and all agreements, representations, and negotiations, either oral or written, between the Parties before the effective date of this DPA. This DPA may not be amended or modified except in writing as provided below. This DPA is supplemented by the Board’s Procurement Regulations currently in effect (hereinafter “**Regulations**”) that are incorporated by reference into and made part of this DPA. In the event of a conflict between any provision of this DPA and the Regulations, the Regulations shall prevail. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
2. **Term.** This DPA shall be effective as of November 30, 2022 (the “**Effective Date**”) and shall continue for three (3) years, terminating on November 29, 2025.
3. **Services.** The services to be provided by Provider to the Board pursuant to this DPA are detailed in **Exhibit “A”** and the Service Agreement (the “**Services**”). Any compensation to be provided by the Board to Provider is also detailed in **Exhibit “A”** and in Paragraph 11 of the Service Agreement (the “**Compensation**”). Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to the Board are costs associated with the compiling of Confidential Data requested under this DPA and costs associated with the electronic delivery of Confidential DATA to Provider.
4. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Confidential Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing the Services, the

Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the Board. Provider shall be under the direct control and supervision of the Board, with respect to its use of Confidential Data.

5. **Confidential Data to Be Provided.** In order to perform the Services described above, the Board shall provide Confidential Data as identified in the Schedule of Data, attached hereto as **Exhibit “B”**.
6. **DPA Definitions.** The definition of terms used in this DPA is found in **Exhibit “C”**. In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc. for the purposes of this DPA only. In all other instances, the definitions used in the Service Agreement shall prevail and apply.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Confidential Data Property of the Board.** All Confidential Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the Board. The Provider further acknowledges and agrees that all copies of such Confidential Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Confidential Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Confidential Data contemplated per the Service Agreement, shall remain the exclusive property of the Board. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the Board as it pertains to the use of Confidential Data, notwithstanding the above.
2. **Parent Access.** To the extent required by law the Board shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Confidential Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for the Board to respond to a parent or student, whichever is sooner) to the Board’s request for Confidential Data in a student’s records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Confidential Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the Board, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the Board, transfer, or provide a mechanism for the Board to transfer, said Student-Generated Content to a separate account created by the student.
4. **Law Enforcement Requests.** Should law enforcement or other government entities (“Requesting Party(ies)”) contact Provider with a request for Confidential Data held by the Provider pursuant to the Services, the Provider shall notify the Board in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the Board of the request.

5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Confidential Data in a manner no less stringent than the terms of this DPA.
6. **Research and Program Evaluation.** For any project, involving data collection or research (e.g., program evaluation or monitoring activities), student or staff participation is voluntary. As a federally authorized Institutional Review Board (IRB), the Board complies with the federal definition for research, which includes sharing of Personally Identifiable Information (PII) for the purposes of answering a question or evaluating activities for effectiveness beyond standard educational or operational procedures. Thus, all data collection and research activities must be approved by the Board's IRB and shall not begin before approval is secured from the IRB. If Provider wishes to collect data specifically for program evaluation or research purposes, or if Provider wishes to use identifiable data for program evaluation or research purposes, Provider must apply for and obtain permission from the Board's IRB prior to beginning any research or evaluation related data collection.

ARTICLE III: DUTIES OF THE BOARD

1. **Provide Data in Compliance with Applicable Laws.** The Board shall provide Confidential Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights.** If the Board has a policy of disclosing Education Records and/or Confidential Data under FERPA (34 CFR § 99.31(a)(1)), the Board shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.
3. **Reasonable Precautions.** The Board shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Confidential Data.
4. **Unauthorized Access Notification.** The Board shall notify Provider promptly of any known unauthorized access. The Board will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Confidential Data privacy and security, all as may be amended from time to time, including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; 7 C.F.R. 245.6 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.
2. **Data Custodian.** For the purposes of this DPA and ensuring Provider's compliance with the terms of this DPA and all application of state and federal law, Provider designated Chris Imani, Chief Technology Officer, chris@caresolace.org, as the data custodian ("Data Custodian") of the

Confidential Data. The Board will release all data and information under this DPA to Data Custodian. Data Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this DPA, including confirmation of the return or destruction of data as described below. The Board may, upon request, review the records Provider is required to keep under this DPA.

3. **Authorized Use.** The Confidential Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in **Exhibit "A"** or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA. Provider will not contact the individuals included in the data sets without obtaining advance written authorization from the Board, except as is necessary to perform the Services.
4. **Provider Employee Obligation.** Provider shall require all of Provider's employees and agents who have access to Confidential Data to comply with all applicable provisions of this DPA with respect to the Confidential Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Confidential Data pursuant to the Service Agreement.
5. **Insurance.** Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County
Attn: Insurance/Real Estate Dept.
3332 Newburg Road
Louisville, Kentucky 40218

6. **No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Confidential Data or any portion thereof, including without limitation, user content or other nonpublic information and/or personally identifiable information contained in the Confidential Data other than as required by law or court order or as authorized by a parent or "eligible student," as defined in FERPA. If Provider becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule, regulation, or otherwise), then Provider shall use all reasonable efforts to provide the Board with prior notice before disclosure so that the Board may seek a protective order or other appropriate remedy to present the disclosure or to ensure the Board's compliance with the confidentiality requirements of federal or state law. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information or to Subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Confidential Data to any third party.
7. **De-Identified Data:** Provider agrees not to attempt to re-identify De-Identified Confidential Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the Board or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive Learning

purpose and for customized student Learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by the Board to return or destroy Confidential Data. Except for Subprocessors, Provider agrees not to transfer de-identified Confidential 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 the Board who has provided prior written consent for such transfer. Prior to publishing any document that names the Board explicitly or indirectly, the Provider shall obtain the Board's prior written approval.

8. **Disposition of Data.** Upon written request from the Board, Provider shall dispose of or provide a mechanism for the Board to transfer Confidential Data obtained under the Service Agreement in a usable format, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the Board is received to return the data in a usable format, Provider shall dispose of all Confidential Data after providing the Board with reasonable prior notice. The duty to dispose of Confidential Data shall not extend to Confidential Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The JCPS may employ a **"Directive for Disposition of Data"** form, a copy of which is attached hereto as **Exhibit "D"**. If the JCPS and Provider employ **Exhibit "D"**, no further written request or notice is required on the part of either party prior to the disposition of Confidential Data described in **Exhibit "D"**.
9. **Advertising Limitations.** Provider is prohibited from using, disclosing, or selling Confidential Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to the Board. This section does not prohibit Provider from using Confidential Data (i) for adaptive Learning or customized student Learning (including generating personalized Learning recommendations); or (ii) to make product recommendations to teachers or JCPS employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Confidential Data as permitted in this DPA and its accompanying exhibits.
10. **Liability.** Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Provider's intentional or negligent release of personally identifiable student, parent or staff data ("Data Claim" or "Data Claims"). Provider agrees to hold harmless the Board and pay any costs incurred by the Board in connection with any Data Claim; provided, however, that Provider shall not assume any liability for Data Claims resulting from the sole negligence of the Board or Jefferson County Public Schools. The provisions of this Section shall survive the termination or expiration of this DPA.

ARTICLE V: DATA PROVISIONS

1. **Data Storage.** Where required by applicable law, Confidential Data shall be stored within the United States. Upon request of the Board, Provider will provide a list of the locations where Confidential Data is stored.
2. **Audits.** No more than once a year, or following unauthorized access, upon receipt of a written request from the Board with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the Board to audit the security and privacy measures that are in place to ensure protection of Confidential Data or any portion thereof as it pertains to the delivery of services to the JCPS. The Provider will cooperate reasonably with

the Board and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or the Board, and shall provide reasonable access to the Provider's facilities, staff, agents and the Board's Confidential Data and all records pertaining to the Provider, the Board and delivery of Services to the Board. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Confidential Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the standards set forth in **Exhibit "E"**. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit "E"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who the Board may contact if there are any data security concerns or questions. Additionally, The Provider agrees to maintain a minimum security standard including but limited to the following precautions and protections:

- a) Encrypting all data, at rest and in transit;
- b) Maintaining multi-factor authentication on accounts that can access the network or email remotely, including 3rd party accounts;
- c) Securing access to any physical areas/electronic devices where sensitive data are stored;
- d) Establishing and enforcing well-defined data privilege rights which follow the rule of least privilege and restrict users' access to the data necessary for this to perform their job functions;
- e) Ensuring all staff and 3rd parties sign a nondisclosure statement, and maintaining copies of the signed statements;
- f) Installing end-point protection including but not limited to anti-malware and anti-spyware on any device connected to the network that has access to scoped data, when applicable

4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Confidential Data that compromises the security, confidentiality or integrity of the Confidential Data maintained by the Provider the Provider shall provide notification to the Board within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:

- (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
 - i. The name and contact information of the individual reporting a breach subject to this section.
 - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - iii. 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.

- iv. 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; and
 - i. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- (2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Confidential Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- (1) Provider 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 Confidential Data or any portion thereof, including personally identifiable information and agrees to provide the Board, upon request, with a summary of said written incident response plan.
- (2) The Board shall provide notice and facts surrounding the breach to the affected students, parents or guardians, or staff, as applicable.
- (3) In the event of a breach originating from the Board's use of the Service, Provider shall cooperate with the Board to the extent necessary to expeditiously secure Confidential Data.

5. Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act. If Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:

- a. "Personal Information" is defined in accordance with KRS 61.931(6) as an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
 - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;

- iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or
 - vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
- b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
 - c. Provider shall not re-disclose, without the written consent of JCPS or of a parent or "eligible student" (as defined by FERPA), any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
 - d. Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
 - e. Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

6. Cloud Computing Service Providers. If Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), Provider agrees that:

Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."

Pursuant to KRS 365.734(2), Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.

Pursuant to KRS 365.734(2), Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.

Pursuant to KRS 365.734(3), Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).

ARTICLE VI: MISCELLANEOUS

7. **Termination.** Either party may terminate this DPA if the other party breaches any terms of this DPA, provided however, the breaching party shall have thirty (30) days to cure such breach and

this DPA shall remain in force. The Board may terminate this DPA in whole or in part at any time by giving written notice to Provider of such termination and specifying the effective date thereof, at Least thirty (30) days before the specified effective date. In the event of termination by the Board for breach of this DPA, in accordance with **Attachment A**, the Board shall compensate Provider for Services satisfactorily performed through the effective date of termination. Any attempt to terminate the Service Agreement based upon a breach of this DPA shall be considered a "Dispute" subject to the dispute resolution provisions set forth in Paragraphs 11 of this section below.

8. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of JCPS's Confidential Data pursuant to Article IV, section 6.
9. **Priority of Agreements.** This DPA shall govern the treatment of Confidential Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence.
10. **Modification.** No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.
11. **Disputes.** Any differences or disagreements arising between the Parties concerning the rights or liabilities under this DPA, or any modifying instrument entered into pursuant to this DPA, shall be resolved through the procedures set out in the Regulations.
12. **Notices.** All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or certified mail, sent to the designated representatives below.

The designated representative for the Board for this DPA is:

Name: Alicia Averette Title: Assistant Superintendent

Address: 3332 Newburg Road, Louisville, KY 40218

Phone: 502-485-3255 Email: alicia.averette@jefferson.kyschools.us

The designated representative for the Provider for this DPA is:

Name: Peter C. Biberstein Title: General Counsel & VP of Business Affairs

Address: 1624 Market St., Ste 226 PMB 94660, Denver, CO 80202-1559

Phone: (785) 532-8903 Email: peter.biberstein@caresolace.org

13. **Amendment and Waiver.** This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither

failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

14. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
15. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR JEFFERSON COUNTY KENTUCKY FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.
16. **Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the Board no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Confidential Data within the Service Agreement. The Board has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
17. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Confidential Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Confidential Data and/or any portion thereof.
18. **Relationship of Parties.** The Board is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor the Board shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.
19. **Equal Opportunity.** During the performance of this DPA, Provider agrees that Provider shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the

Compensation is paid from federal funds, this DPA is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this DPA as if set forth in full herein.

20. **Prohibition on Conflicts of Interest.** It shall be a breach of this DPA for Provider to commit any act which is a violation of Article XI of the Regulations entitled “Ethics and Standards of Conduct,” or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.
21. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to Provider for the duration of this DPA and shall reveal any final determination of a violation by the Provider of the preceding KRS chapters.
22. **Access to School Grounds.** No employee or agent of Provider shall access the Board’s school grounds on a regularly scheduled or continuing basis for purposes of providing services to students under this DPA.

IN WITNESS WHEREOF, The Board and Provider execute this DPA as of the Effective Date above.

BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY

By: _____ Date: _____

Printed Name: Dr. Marty Pollio _____

Title/Position: Superintendent _____

Care Solace, Inc.

By: CM _____ Date: November 17, 2022

Printed Name: Chad Castruita _____

Title/Position: Founder / CEO _____

EXHIBIT “A”**DESCRIPTION OF SERVICES**

Provider shall provide software licenses and support for the following products at prices equal or below Provider’s standard pricing rates for the products:

As set forth more fully in the Service Agreement, Care Solace will manage and operate a version of caresolace.org that is branded for Jefferson County Public Schools. Care Solace will take all reasonable steps to ensure the branded site is live in December 2022. Care Solace will provide access to the branded site to users authorized by the School District, including School District staff, students, and parents, on a Software-as-a-Service basis.

Care Solace shall also facilitate a process called the “Warm Handoff,” whereby School District staff or third party designated as school officials provide contact information of a student or family in need of mental health treatment providers. Care Solace will work with contact to connect the student to treatment providers. Care Companions are available 24 hours per day, 7 days per week, to work directly with students and families to connect with treatment providers.

COMPENSATION

Purchase orders shall be entered by the Academic Support Programs department. Funds for purchase shall come from SP11033-0735 (no project for code). Total payments under this DPA shall not exceed \$400,000 per fiscal year, running from July 1-June 30.

EXHIBIT "B"

SCHEDULE OF DATA

Category of Data	Elements	Check if Used by Your System
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	X
	Other application technology meta data Please specify:	
Application Use Statistics	Meta data on user interaction with application	X
Assessment	Standardized test scores	
	Observation data	
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	

CARE SOLACE
Ex B- G-drive

Student class attendance data

Communications	Online communications captured (emails, blog entries)	X
Conduct	Conduct or behavioral data	X
Demographics	Date of Birth	X
	Place of Birth	
	Gender	X
	Ethnicity or race	X
	Language information (native, or primary language spoken by student)	X
	Student disability information	

Category of Data	Elements	Check if Used by Your System
	Other demographic information-Please specify:	X
Enrollment	Student school enrollment	X
	Student grade level	X
	Homeroom	
	Guidance counselor	X if referring staff member
	Specific curriculum programs	
	Year of graduation	
	Other enrollment information-Please specify: Name and contact information for referring staff member	

Parent/Guardian Contact
Information

Address

	Email	X
	Phone	X
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian Name	First and/or Last	X
Schedule	Student scheduled courses	
	Teacher names	
Special Indicator	English language Learner information	
	Low income status	
	Medical alerts/ health data	

Category of Data	Elements	Check if Used by Your System
	Specialized education services (IEP or 504)	
	Living situations (homeless/foster care)	
	Other indicator information-Please specify:	
Staff Data	First and Last Name	X
	Email Address	X
	Staff ID number	
	Other information – Please specify Phone number, role, school site(s), students associated with, if referring someone to services.	
Student Contact Information	Address	
	Email	X if student is over 18
	Phone	X if student is over 18

Student Identifiers Local (School district) ID number

	State ID number	
	Provider/App assigned student ID number	
	Student app username	
	Student app passwords	
Student Name	First and/or Last	X
Student In App Performance	Program/application performance (typing program student types 60 wpm, reading program student reads below grade level)	
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures, etc.	

Category of Data	Elements	Check if Used by Your System
	Other student work data -Please specify:	
Transcript	Student course grades	
	Student course data	
	Student course grades/ performance scores	
	Other transcript data - Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	

Other transportation data – Please specify:

Other	<p>Please list each additional data element used, stored, or collected by your application:</p> <p>In order to expedite access to mental health and substance use treatment, Care Solace may collect certain information directly from users with their informed consent. Care Solace will only collect information that our service users are willing to share so we can assist in locating resources that meet their clinical, financial and geographical needs. Potential additional information collected is limited to: zip code, distance willing to travel, treatment preferences, categorical description of issues or insurance provider, need for low-fee or free services.</p>	
None	<p>No Confidential Data collected at this time. Provider will immediately notify JCPS if this designation is no longer applicable.</p>	

EXHIBIT “C”

DEFINITIONS

Compensation: Amounts to be paid to the Provider in exchange for software licenses and support. The maximum amount of Compensation that may be paid under this DPA is set forth in Attachment A. The Board is not obligated to pay the maximum Compensation amount solely by its inclusion in this DPA. Compensation owed is determined by the purchase orders submitted to Provider. The cost for any single license or support provided under this DPA shall not exceed Provider’s standard pricing for that product.

De-Identified Data and De-Identification: Records and information are considered to be De-Identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student’s identity is not personally identifiable, taking into account reasonable available information.

Educational Records: Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student’s cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

Metadata: means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

Operator: means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with the Board to provide a service to the Board shall be considered an “operator” for the purposes of this section.

Provider: For purposes of the DPA, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Confidential Data. Within the DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

Regulations: The Board Procurement Regulations, available on the JCPS website, as may be amended from time to time.

Student Generated Content: The term “Student-Generated Content” means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

School Official: For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Confidential Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

Service Agreement: Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

Confidential Data: Confidential Data includes any data, whether gathered by Provider or provided by the Board or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Confidential Data includes Meta Data. Confidential Data further includes "Personally Identifiable Information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Confidential Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Confidential Data as specified in **Exhibit "B"** is confirmed to be collected or processed by the Provider pursuant to the Services. Confidential Data shall not constitute that information that has been anonymized or De-Identified, or anonymous usage data regarding a student's use of Provider's services.

Subprocessor: For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than Board or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Confidential Data.

Targeted Advertising: means presenting an advertisement to a student where the selection of the advertisement is based on Confidential Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

Third Party: The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Education Records and/or Confidential Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

EXHIBIT "D"**DIRECTIVE FOR DISPOSITION OF DATA**

The Board of Education of Jefferson County Kentucky directs Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between The Board and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

 X Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

[Any Personally Identifiable Information]

 Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

 X Disposition shall be by destruction or deletion of data.

 Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions]

3. Schedule of Disposition

Data shall be disposed of by the following date:

 As soon as commercially practicable.

 X By [60 days after termination/expiration of Service Agreement]

Signature

Authorized Representative of the Board

Date

Verification of Disposition of Data

Authorized Representative of Provider

Date

EXHIBIT “E”

DATA SECURITY REQUIREMENTS

Adequate Cybersecurity Frameworks

Provider will utilize one of the following known and credible cybersecurity frameworks which can protect digital learning ecosystems.

Cybersecurity Frameworks

	MAINTAINING ORGANIZATION/GROUP	FRAMEWORK(S)
	American Institute of CPAs	SOC2
	International Standards Organization (ISO)	Information technology — Security techniques — Information security management systems (ISO 27000 series)
X	The Board of Education of Jefferson County	Board provided standardized questionnaire

SERVICE AGREEMENT

This Service Agreement (the “**Agreement**”) is effective as of the date of the last signature below between the Board of Education of Jefferson County, Kentucky, a political subdivision of the Commonwealth of Kentucky (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 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 December 2022. 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.

1.5 Prior to rendering Services to an Authorized User, Care Solace will obtain written consent from a parent, legal guardian, or "eligible student," (as defined by FERPA) for the release of student records and will also have the parent, legal guardian, or eligible student sign and agree to Care Solace's Terms and Conditions.

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 49, *infra*.

Term of Agreement and Fees

9. This Agreement shall be effective as of the date of the last signature below (hereinafter the "Effective Date").
10. The initial term of this Agreement (hereinafter the "Initial Term") will begin on November 30, 2022 and continue through November 29, 2023. This Agreement will automatically renew for two additional one-year terms on November 30, 2023, and on November 30, 2024 (hereinafter, "Renewal Terms").
11. In exchange for the Services contemplated under this Agreement, School District will compensate Care Solace as follows:
 - 11.1. For the Initial Term, November 30, 2022 to November 29, 2023, School District will pay \$383,644.00 to Care Solace (based on a student enrollment of 95,911) upon execution of this Agreement. Thereafter, on or about November 30 of 2023 and 2024, School District will pay \$383,644.00 to Care Solace for each Renewal Term (from November 30, 2023-November 29, 2024 and from November 30, 2024-November 29, 2025).
 - 11.2. In the event that School District wishes to renew this Agreement after the Renewal Terms, 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.
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 49, *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 49, *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 49, *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 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. [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 the Jefferson County procurement regulations.

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 49, *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 49, *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, *supra*.

40. A School District seeking defense and/or indemnification hereunder shall promptly notify Care Solace in writing of the Claim in accordance with Paragraph 49, *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 38 and 39, *supra*, 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 between the Parties 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 the procedures set forth in the Jefferson County Procurement Regulations.

Limitation on Damages

43. 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.

44. 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.

45. 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.

46. 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

47. 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.

48. Governing Law. This Agreement shall be governed by and construed in accordance with the [laws of Kentucky](#) without giving effect to any choice or conflict of law provision or rule (whether of [Kentucky](#) or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of Kentucky.

49. 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:

Jefferson County Public Schools

500 Mero St

Frankfort, KY 40601

Attention: Alicia Averette
assistant superintendent
Email: alicia.averette@jefferson.kyschools.us

If to Care Solace:

Care Solace, Inc.
1624 Market St. Ste. 226
PMB 94660
Denver, Colorado 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.

50. 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 39, *supra*, brought by third-party beneficiaries including, but not limited to Authorized Users, shall be subject to the limitations on damages set forth in Paragraphs 43-46, *supra*.

51. 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.

52. 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.

53. 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.

54. 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 49, *supra*.

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

56. 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.

57. 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.

58. 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.

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

60. 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.

(“Provider”)

Printed Full Name: Chad Castruita

Title: CEO

Signature: _____

Jefferson County Public Schools (“Client”)

Printed Full Name: Martin Pollio

Title: Superintendent

Signature: _____

Accounts Payable Information:

School District Dept: _____

Accounts Payable contact:

Name: _____

Email: _____

Phone: _____



ADDITRE-01

MIAG

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/16/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Snapp & Associates Insurance Services, LLC 3838 Camino Del Rio, N. Ste. 310 San Diego, CA 92108	CONTACT NAME:	
	PHONE (A/C, No, Ext): (619) 908-3100	FAX (A/C, No): (619) 908-3110
	E-MAIL ADDRESS: Service@snappins.com	
INSURED Care Solace Inc. 8605 Santa Monica Blvd PMB 94660 West Hollywood, CA 90069	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Sentinel Insurance Company, Ltd	
	INSURER B : Hartford Fire Insurance Co.	
	INSURER C : Hiscox Insurance Company Inc	
	INSURER D : Scottsdale Ins. Co.	
	INSURER E :	
INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	72SBABI2630	3/23/2022	3/23/2023	EACH OCCURRENCE \$ 2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
						MED EXP (Any one person) \$ 10,000
						PERSONAL & ADV INJURY \$ 2,000,000
						GENERAL AGGREGATE \$ 4,000,000
						PRODUCTS - COMP/OP AGG \$ 4,000,000
						\$
						COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
						BODILY INJURY (Per person) \$
						BODILY INJURY (Per accident) \$
PROPERTY DAMAGE (Per accident) \$						
\$						
\$						
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	<input type="checkbox"/>	72SBABI2630	3/23/2022	3/23/2023	EACH OCCURRENCE \$ 2,000,000
						AGGREGATE \$
						\$ 2,000,000
						X PER STATUTE OTH-ER
						E.L. EACH ACCIDENT \$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000
						AGG \$ 5,000,000
						Aggregate \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Operations of the named insured subject to the terms and conditions of the policy. Y.A.L.E School is named as additional insured per policy form. 30* days' notice of cancellation, 10* days' notice of cancellation in the event of nonpayment of premium.

CERTIFICATE HOLDER

CANCELLATION

Jefferson County Public Schools 3332 Newburg Road Louisville, KY 40218	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE