

MEMORANDUM OF UNDERSTANDING

Between
NOVATO UNIFIED SCHOOL DISTRICT
And
Mosaic Network, Inc. ("Mosaic")

This memorandum of understanding ("MOU") is entered into by and between the Novato Unified School District ("District") and Mosaic Network, Inc. ("Agency").

Mosaic Network, Inc. is owner of a software program called CoVitalityApp and supporting documentation for use in the collection, management, and evaluation of student assessments available in the CoVitalityApp ("Software").

District, has expressed desire to use Software for data management and reporting needs related to Agency's social emotional assessment activities. Agency desires to permit such a use of Software by the District, at no cost, for a limited time for the purposes of performing student assessment and case management functions for District's data and reporting needs related to social emotional learning and mental health assessment.

District and Agency are hereafter referred to as "the Parties."

1. Services

Agency will provide the services to the District as outlined below and as specified in Attachment A ("Scope of Services and Payment Schedule").

Agency shall provide to the District services related to the Software for the period described in Section 3 hereof (the "Term").

1. Provide District access to and utilization of Software to administer Social Emotional Health Survey for the duration of term agreement.
2. Consultation with pre-identified Novato Unified School District staff regarding implementation of CoVitality App., software technical support and feedback from Novato Unified School District staff regarding user experience or perception of CoVitality App software.

2. Payment

The total cost for the services provided hereunder shall be \$0 (zero). Agency has agreed to waive all costs for the duration of the 2016-2017 school year.

3. Duration of Agreement/Termination

This MOU shall be in effect from November 1, 2016 to June 30, 2017. This MOU may be terminated by either party hereto upon thirty (30) days' written notice to the other party for any reason. In case of emergency, misconduct or other material breach of this MOU, the Parties may immediately terminate this MOU upon written notice.

4. Employment Relationship

Agency shall be solely responsible for the recruitment, training, provision, and supervision of any adult person(s) providing services to the District's students hereunder. Agency shall

be the sole employer of the individuals performing services hereunder for the benefit of the District. Agency shall be solely responsible for paying staff salaries, salary related costs, and benefits, if any, of its employees providing services hereunder. Agency will maintain worker's compensation insurance for each of its employees as required by law.

The District does not have an employment relationship with Agency or its service providers (employees). The District shall not be considered to be the employer of any individuals providing services hereunder for any purpose whatsoever. The District shall not be liable for any compensation, wages, or expenses of Agency or its employees in connection with providing services hereunder. Agency hereby acknowledges its understanding of the above provisions.

5. **Legal Assurances**

Use of the Software: Except as otherwise provided in this letter, District shall not sell, transfer, publish, disclose, display or otherwise make available any portion of the Software to others. District shall use its reasonable best efforts to cooperate with and assist Agency in identifying and preventing any unauthorized use, copying or disclosure of the Software or any portion thereof or any of the algorithms or logic contained therein, if any.

Data Confidentiality: Agency acknowledges that, in the course of meeting its obligations under this letter, it may obtain information related to District that is of a confidential and proprietary nature ("District Confidential Information"). Such District Confidential Information may include, but not by way of limitation, personal information, individually identifiable physical or mental health information, and program activity data. Agency will ensure that continued confidentiality and security of District's Confidential Information is processed, stored, or transmitted under this letter.

Proprietary Rights: Agency retains title to the Software, including, without limitation, all copies and audiovisual aspects thereof and all rights to patents, copyrights, trademarks, trade secrets and other intellectual property rights inherent therein and appurtenant thereto. District shall not, by virtue of this letter or otherwise, acquire any proprietary rights whatsoever in the Software. The Software shall be confidential information of Agency and the sole and exclusive property of Agency. Agency expressly reserves any right not expressly granted to District by this MOU. No identifying marks, copyright or proprietary right notices may be deleted from any copy of the Software provided to or made by District.

Mosaic Proprietary Information: District acknowledges that, in the course of meeting its obligations under this MOU, they will obtain information relating to the Software and to Agency that is of a confidential and proprietary nature ("Mosaic Proprietary Information"). Such Mosaic Proprietary Information includes, without limitation, trade secrets, know-how, inventions, techniques, algorithms, programs, documentation and data (except for data entered and input in the Software by the District personnel related to their program activity). For purposes of this letter, Mosaic Proprietary Information, other than the Software and the Documentation that will be considered Mosaic Proprietary Information regardless of whether it is marked as such, shall be all information clearly marked as such by Mosaic. District will at all times, both during the term of this pilot, as specified in this letter, and for a period of at least five (5) years after its termination, keep in confidence and trust all such Mosaic Proprietary Information, and will not use such Mosaic Proprietary Information other than as permitted under the terms of this letter, nor will District disclose any of such Mosaic Proprietary Information without the written consent of Mosaic and pursuant to a standard proprietary information agreement.

Software Warranties: Agency expressly disclaims, and District hereby expressly waives, all Software warranties, express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose. Agency does not warrant and specifically disclaims any representations that the operation of the Software and/or its use will be uninterrupted or error-free. Agency will use its best efforts to correct any errors or defects identified by the parties.

Agency agrees that it will not share, or permit its employees to share, with any person information concerning any student other than as expressly authorized under law including California Education Code and federal Family Educational Rights and Privacy Act ("FERPA").

Agency understands and acknowledges that the District is a local educational agency as that term is defined by federal law, including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act. In addition to obligating local educational agencies ("LEAs") to accommodate disabled persons in accessing their programs and facilities, LEAs are required to actively and systematically seek out and serve students with disabilities ("child find"), to ensure they receive a free, appropriate public education under the standards of each Act. Agency has been informed of and represents they understand these obligations, and will contact District any time any student receiving services under this agreement is suspected of being disabled as set forth in applicable law. Agency will ensure that its employees' services are coordinated with individual students' IEP team or Section 504 team, if applicable. Failure to do so will result in Agency assuming liability associated with any allegations that the District failed in its child find responsibilities by virtue of participation in services provided by Agency.

6. Indemnification/Hold Harmless

To the furthest extent permitted by California law, Agency shall release from liability, defend, indemnify and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claims"), to property or persons, including personal injury and/or death, directly or indirectly arising out of, connected with, or resulting, solely from the acts of Agency or its adult support service provider(s) (employees), whether negligent or purposeful, in the execution or performance of the services or this MOU. This indemnification/hold harmless excludes any claims, demands, causes of action, or injuries based on the sole and exclusive conduct of District or its employees and officers.

To the furthest extent permitted by California law, District shall release from liability, defend, indemnify and hold free and harmless the Agency, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claims"), to property or persons, including personal injury and/or death, directly or indirectly arising out of, connected with, or resulting, solely from the acts of District or its employees or officers, whether negligent or purposeful, in the execution or performance of the services or this MOU. This indemnification/hold harmless excludes any claims, demands, causes of action, or injuries based on the sole and exclusive conduct of Agency or its employees.

Agency shall have no liability with respect to its obligations under the agreement, as specified in this letter, or otherwise for consequential, exemplary, special, indirect, incidental or punitive damages even if it has been advised of the possibility of such

damages. This limitation applies to all causes of action or claims in the aggregate, including, without limitation, breach of contract, breach of warranty, indemnity, negligence, strict liability, and other torts.

7. Severability

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that determination shall not invalidate or render unenforceable any other provision of this Agreement.

8. Governing Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of California and shall be enforceable in any court of competent jurisdiction located in California.

9. Approval

This MOU must be approved by the District's Board of Education ("Board") and is not effective until approved by the Board.

10. Litigation

Any suggestions, concerns or disagreements with regard to the District's provision of services or Agency's employees' provision of services to District students shall be addressed between Agency and the District in an effort to amicably resolve said matter(s). Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

- a) Dispute Filing: Any dispute concerning or arising out of this MOU shall be filed in either Santa Barbara County Superior Court or the United States District Court for the Central District of California.

11. Counterparts

This Agreement may be executed in counterparts. A copy or original of this document with all signature pages appended together will be deemed a fully executed, original agreement.

12. Entire Agreement

This Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements and understandings, written or oral, between the Parties concerning the subject matter hereof. This Agreement may not be modified in any respect except by a writing duly executed and approved by all Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated below.

AGENCY:

By:
Title:

Dated: _____

DISTRICT:

By:
Title:

Dated: _____

APPROVED BY DISTRICT GOVERNING BOARD: [DATE]

Attachment A - Scope of Services and Payment Schedule

Scope of Services

3. Provide Novato Unified School District access to and utilization of CoVitality App to administer Social Emotional Health Survey for the duration of term agreement.
4. Consultation with pre-identified Novato Unified School District staff regarding implementation of CoVitality App., software technical support and feedback from Novato Unified School District staff regarding user experience and perception of CoVitality App software.

Payment Schedule

Budget Item	Activity	2016-2017 SY November 1, 2016 – June 15, 2017	Unit Price	Bundle Rate (2 Administrations)
1. Project and Software Set Up	Activity 1. Project Planning and Consultation	Waived	\$150 / Administration	\$200 (Discounted)
	Activity 2. Staff Training	Waived		
	Activity 3. Technology Set Up and Configuration	Waived		
2. Software License	Activity 4. Survey Administration	Waived	\$1.25/student	\$1,000/ 500 students (Discounted)
	Activity 5. Survey Results Collection and Validity Diagnostics	Waived		
	Activity 6. Survey Results Analysis and Reporting	Waived		
3. Reports and Communication	Activity 7. Consultation and Results Communication	Waived	\$1,000/day (8 hours total)	---