



EmbraceEP® Contract

Embrace®
PO Box 305
Highland, IL 62249

Niles Township District for Special Education
8701 Menard Avenue
Morton Grove, IL 60053

The following is an EmbraceEP® Contract (hereinafter "contract" or "agreement") for software, website hosting, and support services. This contract is made between Brecht's Database Solutions, Inc. d/b/a Embrace® (hereinafter "Embrace®", "We", "Us" or "Licensor") and Niles Township District for Special Education and East Prairie SD 73, Fairview South SD 72, Golf SD 67, Lincolnwood SD 74, Morton Grove SD 70, Niles Elementary SD 71, Skokie SD 68, Skokie SD 73.5, and Skokie/Morton Grove SD 69 (hereinafter "You", "Your" or "Licensee").

EMBRACE®
EmbraceEP® (INDIVIDUAL EDUCATION PROGRAM)
WEBSITE LICENSE AGREEMENT

NOTICE TO USER: PLEASE READ THIS AGREEMENT CAREFULLY. BY USING ALL OR ANY PORTION OF THE WEBSITE YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

YOU AGREE THAT THIS AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY THAT OBTAINS ACCESS THROUGH LICENSEE TO THE WEBSITE AND ON WHOSE BEHALF IT IS USED. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT EXECUTE THIS CONTRACT OR USE ANY OF OUR PRODUCTS OR WEBSITE.

Embrace® owns all intellectual property in/on the Embrace® website (hereafter "website") and its related Embrace® software (hereafter "software"). Embrace® agrees to allow you and/or your authorized agents to login and access the website and use our software only in accordance with the terms of this Agreement. Any unauthorized access or use of Embrace's products is cause for immediate termination of your access to its products by all means available to us.

1. LICENSE TO ACCESS WEBSITE. As long as you obtained access to the website from Embrace® and as long as you comply with the terms of this and any other Agreement you have with Embrace®, Embrace® grants you a non-exclusive license to use the website in the manner and for the term and purposes described below.

2. INTELLECTUAL PROPERTY OWNERSHIP. The website and its related software are the intellectual property of and are owned by Embrace®. The structure, organization, and code of the website and its related software contain valuable trade secrets and confidential information of Embrace®. Except as expressly stated herein, this Agreement does not grant you any intellectual property rights whatsoever in the website and its related software and all rights are reserved by Embrace®.

Any form, database, or software that is altered, conceived, made, or developed in whole or in part by Embrace® (including any developed jointly with you) during or as a result of our relationship with you shall become and remain the sole and exclusive property of Embrace®. You agree to make no claim in the rights or ownership of any such form, database or software.

To the extent that any custom form is created by Embrace® for you, based upon any prior form, template or exemplar provided by you, you warrant and represent to Embrace® that you created said form(s) or have the legal right to use said form(s). You agree to indemnify Embrace® for any third-party claims for infringement, misappropriation or other violation of any third-party's intellectual property rights where such claims are made against Embrace® for forms, templates or exemplars created based upon material provided by you to Embrace®.

3. DATA SECURITY. Embrace's database or software may host privacy protected data provided by you concerning students and employees. This information is privacy protected by federal and state law, including the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g)("FERPA"), the Illinois School Student Record Act (105 ILCS 10/), the Personnel Record Review Act (820 ILCS 40/) and the Student Online Personal Protection Act (105 ILCS 85/1 et seq.)("SOPPA").

Embrace will store and process Data in accordance with industry best practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. Provider **will** conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Provider will also have a written incident response plan, which will include prompt notification of the School District in the event of a security or privacy incident, as well as best practices for responding to a breach of Personally Identifiable Information ("PII"). PII shall include, but is not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider's software, website, service, or app, including mobile apps, whether gathered by Provider or provided by District or its users, students, or students' parents/guardians.

Embrace® acknowledges that all of your data uploaded, stored, or otherwise coming into contact with Embrace's database or software, is and shall remain your sole and exclusive property and be subject to all applicable federal and state privacy protections through the term of this Agreement.

4. CONFIDENTIALITY OF STUDENT RECORDS AND INFORMATION; SOPPA COMPLIANCE. The Parties shall execute a separate SOPPA Addendum for purposes of compliance with SOPPA and other applicable laws governing the confidentiality of student records and information, which shall be attached hereto as Exhibit 1 and which shall be effective simultaneously with this Agreement.

5. **RESTRICTIONS**. You may not copy, modify, adapt or translate any Embrace® software. You may not reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of any Embrace® software.

You may not rent, lease, sell, sublicense, assign or transfer your rights in the website, or authorize any portion of the website and its related software to be copied onto another individual or legal entity's computer except as may be permitted herein.

You may not allow access or use of our website or software for any other purpose than agreed to in advance between Embrace® and you.

6. **LIMITED WARRANTY**. Embrace® warrants to the licensee that the website will permit the licensee to produce, fill-out, and print the IEP forms published by the Illinois State Board of Education for the period of time outlined in the current contract. All warranty claims must be made within the current contract period. If the website or software does not perform as above, the entire liability of Embrace® and your sole and exclusive remedy will be limited to a prorated refund of the license fee you have paid Embrace®. This limited warranty is the only warranty provided by Embrace®. Embrace® expressly disclaims all other warranties, either expressed or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose with regard to the website, software and accompanying written materials.

7. **DISCLAIMER**. Your use of the website is at your sole risk. The website, including the information, services and content is provided on an "as is", "as available", and "with all faults" basis. Embrace® makes no representations, warranties, conditions, or guarantees as to the usefulness, quality, suitability, truth, accuracy, or completeness of the website and/or the forms produced therefrom.

Embrace® does not warrant to the licensee that the forms that may be produced from the website will comply with federal or state laws or regulations, including those which limit the extent to which the information may be disclosed to third parties.

Embrace® will take all commercially reasonable steps to provide an uninterrupted, timely, secure, and error-free website. Nonetheless, Embrace® makes no warranty or representation that (a) the website will be uninterrupted, timely, secure, or error-free; or (b) the results that may be obtained from the use of the website will be accurate or reliable.

You assume all risk for any damage to your computer, computer systems, network or loss of data that results from using the website or software, including any damages resulting from computer viruses.

8. **DISTRICT E-SIGNATUREUSAGE**. Embrace® has the ability to include electronic signatures. If your District is using electronic signatures in the Embrace® system it agrees to hold Embrace® harmless against any and all claims that may arise out of the use of this feature. If you choose not to use electronic signatures for either your staff or all

meeting attendees, you must notify your implementation specialist and verify that they are not available in your system.

All Parties shall ensure that the person entering an e-signature onto any Embrace® document is an authorized signatory. The e-signature of any Party or Person is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. All e-signatures shall be subject to the Uniform Electronic Transactions Act and/or any similar State statutes which have jurisdiction over the transactions of the Parties; this applies to any Parties or end-user's use of Embrace® software's electronic signature functionality. District, and any person using electronic signature functionality, agrees to hold Embrace® harmless for any and all claims which may arise out of their use of that feature. Documents which contain e-signatures may be preserved by Embrace® longer than the duration of the Agreement for the purposes of enforcement of rights and obligations.

Any form or document (including this Agreement) signed electronically between the Parties is to be treated as an original document. All Parties hereto shall ensure that the person entering an e-signature onto any Embrace® document is an authorized signatory. The e-signature of any Party or Person is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document.

9. SERVICES PROVIDED: Embrace® agrees to provide the following services:

- Website access to the licensee for all ISBE required IEP forms and Notice and Consent forms
- Objectives bank with over 4,000 objectives
- Built in Illinois Learning Standards and Core Standards for inclusion on Goal pages
- I-Star FACTS tracking form
- Restrictive access to the website to allow for multiple levels of users, providing each level with only the access that they need
- Servers, security, and hosting to ensure that our programs are secure, fast, and available
- Multiple support channels available to all users
- A user management system will be included allowing a system administrator to create new users, edit existing users, and delete users
- Secure socket layer ("SSL") and session tracking for user authorization (the SSL is the component of the software which encrypts the information going between the website and the user, and confirms the identity of the host and the user)
- Website hosting
- Maintenance and updates
- Daily backups
- Website updates as necessary to maintain Illinois State Board of Education required forms
- 99.99% uptime guarantee

10. IEP YEARLY COSTS. Website access is per IEP student per year. Student count used for price calculation is the most recent iStar December child count. "Read Only Users" such as regular education staff are free if added and

trained by the district. The initial contract is for a one year period from July 1, 2021 to June 30, 2022. (Prices apply to individual districts, cooperatives, joint agreements, and associations) Custom forms and/or programs, if requested are an additional cost and will be billed on an individual basis.

Program Subscription	Price	QTY	Subtotal
EmbraceEP® Annual Subscription Annual Subscription Fee	\$14,400.00	1	\$14,400.00
			\$14,400.00
Additional Components Per District (Annual Fee)			
Embrace504®	\$2,880.00	1	\$2,880.00
Behavior Incident Reporting	\$1,440.00	1	\$1,440.00
			\$4,320.00
Additional Services Per District (Annual Fee)			
SFTP (Secure File Transfer Protocol) Student Import Coop Only	\$500.00	1	\$500.00
SFTP (Secure File Transfer Protocol) Student Export Coop Only	\$500.00	1	\$500.00
			\$1,000.00

Subtotal **\$19,720.00**

Total Cost for 21-22 School Year \$19,720.00

All quoted prices apply to individual districts, cooperatives, joint agreements, and associations. Custom forms, software and/or programs are available from Embrace® and, if requested, will be subject to a separate Agreement between you and us. Customized work is an additional cost and will be billed separately.

11. **GENERAL PROVISIONS.** If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of this Agreement, which will remain valid and enforceable according to its terms.

12. **INDEMNITY.** The parties agree to indemnify and hold each other harmless against any and all liabilities, claims, causes of action, damages, costs, expenses, and fees, including reasonable attorneys' fees, that either party incurs arising out of or occurring in connection with the other party's negligent, reckless or intentional misconduct or breach of the terms of this Agreement.

13. **DURATION.** This contract for website access to EmbraceEP® is for a 1 year period.

14. **AUTOMATIC CONTRACT RENEWAL.** This Agreement and any accessory components selected by the district may be renewed by mutual agreement of the parties.

The terms of this Master Contract, along with any pricing adjustments provided by Embrace to District at least one hundred and twenty (120) days prior to the renewal date shall apply.

15. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement and understanding between the parties in relation to the subject matter hereof and there are no premises, representations, conditions, provisions, or terms related thereto other than those set forth in this Agreement.

16. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State of Illinois.

17. **VENUE.** We and you (through your signature on this Agreement) agree that the only venue(s) holding jurisdiction for any suit between the parties to enforce this Agreement or any Renewal thereof is the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois.

18. **CAPTIONS.** The captions for the paragraphs of this Agreement shall not be deemed to have legal significance, and are simply designed as an aid in reading and to represent the general terms of the paragraph involved.

19. **BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns, beneficiaries, heirs, executors, administrators, and legal representatives.

Licensor:

Brecht's Database Solutions, Inc. d/b/a EMBRACE®



FEIN: 20-4100129

August R. Brecht, President

Licensee:

Niles Township District for Special Education



FEIN: 36-6004292

Tarin Kendrick, Director of Special Education

SOPPA ADDENDUM

THIS SOPPA ADDENDUM (“Addendum”), effective simultaneously with the attached Embrace IEP and Embrace DS (the “Agreement”) by and between Brecht’s Database Solutions, Inc. d/b/a/ Embrace®, a corporation organized and existing under the laws of Illinois (the “Company”) and Niles Township District of Special Education, Cook County, Illinois (the “LEA”), is incorporated in the attached Agreement and modifies the Agreement (and all supplemental terms and conditions and policies applicable to the Agreement) as follows:

1. Purpose of Addendum A and Compliance with Applicable Privacy Laws. The Company and the LEA agree that the purpose of this Addendum is to describe the services or product that the Company shall provide to the LEA and ensure compliance with applicable privacy laws, including but not limited to the Family Educational Rights and Privacy Act (“FERPA”), the Children’s Online Privacy Protection Act (“COPPA”), the Illinois School Student Records Act (“ISSRA”), the Illinois Student Online Personal Protection Act (“SOPPA”), the Mental Health and Developmental Disabilities Confidentiality Act (“MHDDCA”), and the Personal Information Protection Act (“PIPA”).
2. Use of Confidential Student Records. The Company shall cause each officer, director, employee, consultant, subcontractor, agent, and other representative who shall have access to any personally identifiable information or material or information that is linked to personally identifiable information or material in any media or format of the LEA’s students that is not publicly available (hereinafter “Confidential Student Records”) during the term of the Agreement (collectively, the “Authorized Representatives”) to maintain in strict confidence and trust all Confidential Student Records. The Company shall take all reasonable steps to ensure that no Confidential Student Records are disclosed to any person or entity except those who (i) are Authorized Representatives of the Company performing functions for the LEA under the Agreement and have agreed to be bound by the terms of this Agreement; (ii) are authorized representatives of the LEA, or (iii) are entitled to such Confidential Student Records from the Company pursuant to federal and/or Illinois law. The Company shall use Confidential Student Records, and shall take all reasonable steps necessary to ensure that its Authorized Representatives shall use such records, solely for purposes related to and in fulfillment of the performance by the Company of its obligations pursuant to the Agreement. The identity of Authorized Representatives having access to the Confidential Student Records will be documented and access will be logged.
3. Use of Confidential Student Records as School Official. Pursuant to FERPA, the Company is acting as a school official with a legitimate educational interest, is performing an institutional service or function for which the LEA would otherwise use employees, is under the direct control of the LEA with respect to the use and maintenance of Confidential Student Records, and is using the Confidential Student Records only for an authorized purpose. The Company shall not re-disclose Confidential Student Records to Authorized Representatives or any third-party without express written permission from the LEA or pursuant to court order, unless such disclosure is otherwise permitted under FERPA, ISSRA, SOPPA and MHDDCA. In the event a third party, including law enforcement or a government entity, contacts the Company with a request or subpoena for Confidential Student Records in the possession of the Company, the Company shall

redirect the third party to seek the data directly from the LEA. In the event the Company is compelled to produce Confidential Student Records to a Third Party in compliance with a court order, the Company shall notify the LEA at least five (5) school days in advance of the court ordered production and, upon request, provide the LEA with a copy of the court order requiring such production.

4. Security Standards. The Company shall implement and maintain commercially reasonable security procedures and practices, and physical and technical safeguards, no less rigorous than accepted industry practices (updated as such practices evolve), to protect the Confidential Student Records from unauthorized access, destruction, use, modification, disclosure, or acquisition of computerized data that compromises the security, confidentiality, or integrity of the Confidential Student Records (a “Security Breach”). For purposes of the Agreement and this Addendum, “Security Breach” does not include the good faith acquisition of Confidential Student Records by an employee or agent of the LEA or Company, so long as the Confidential Student Records are used solely for purposes permitted by SOPPA and other applicable law, and so long as the Confidential Student Records are restricted from further unauthorized disclosure.

5. Security Breach Requirements.

A. Assistance with Investigations and Notice: In the event of a Security Breach involving Confidential Student Records, the Company shall promptly:

1. Provide the LEA with the name and contact information for an employee of the Company who shall serve as the LEA’s primary security contact and shall be available to assist the LEA twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach; and
2. Notify the LEA of the Security Breach as soon as practicable, but no later than twenty-four (24) hours after the Company becomes aware of it. Notice to the LEA of any Security Breaches shall be made by telephone at (847) 965-9040, ext. 1102 and (847) 767-3972, and by e-mail to tkendrick@ntdse.org, with a read receipt. Any Security Breach notification provided by the Company to the LEA shall include a list of the students whose Confidential Student Records were compromised or are reasonably believed to have been compromised in the breach, if known.

Immediately following the Company’s notification to the LEA of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Company agrees to fully cooperate with the LEA in the handling of the matter, including, without limitation:

- i. Assisting with any investigation;
- ii. Facilitating interviews with the Company’s employees and other involved in the matter; and

- iii. Making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, or as otherwise reasonably required by the LEA.

B. Assistance with Investigations and Notice: In the event of a Security Breach of the Company's platform caused by the LEA, the LEA shall promptly:

Notify the Company of the Security Breach as soon as practicable via email, return receipt or a phone call to Company.

C. Reimbursement of Expenses: In the event of a Security Breach attributed to the Company, the Company shall reimburse the LEA for any and all reasonable costs and expenses that the LEA incurs in investigating and remediating the Security Breach, including but not limited to costs and expenses associated with:

- i. Providing notification to the parents of those students whose Confidential Student Information was compromised and to regulatory agencies or other entities as required by law or contract;
- ii. Providing credit monitoring to those students whose Confidential Student Information was exposed in a manner during the Security Breach that a reasonable person would believe that it could impact his or her credit or financial security;
- iii. Reasonable legal fees, reasonable audit costs, fines, and any other fees or damages imposed against the LEA as a result of the Security Breach; and
- iv. Providing any other notifications or fulfilling any other requirements adopted by the Illinois State Board of Education or of any other State or federal laws.

D. Reimbursement of Expenses: In the event of a Security Breach caused by the LEA and not attributable to the Company, the LEA shall reimburse the Company for any and all reasonable costs and expenses that the Company incurs in investigating and remediating the Security Breach, including but not limited to costs and expenses associated with legal fees, audit costs, and any other fees or damages sustained by the Company as a result of the Security Breach.

C. The parties agree to indemnify and hold each other harmless against any and all liabilities, claims, causes of action, damages, costs, expenses, and fees, including reasonable attorneys' fees, that either party incurs arising out of or occurring in connection with the other party's negligent, reckless or intentional misconduct or breach of the terms of this Agreement.

6. Transfer or Deletion of Confidential Student Records.

If the Company determines that any of the Confidential Student Records are no longer needed for the purposes of the Agreement and this Addendum, the Company will provide written notice to the LEA as to what Confidential Student Records are no longer needed. The Company will delete or transfer to the LEA such unnecessary Confidential Student Records, as directed by the LEA within thirty (30) days if the LEA requests deletion or transfer of the Confidential Student Records. Notwithstanding the foregoing, upon termination or expiration of the Agreement, the LEA will have access to all Confidential Student Records contained in the Embrace system for a period of sixty (60) days so the LEA may arrange for transfer of such Confidential Student Records. After the sixty (60) day access period, the Company will delete the Confidential Student Records.

The LEA shall establish reasonable procedures pursuant to which a parent, as that term is defined in 105 ILCS 10/2(g), may inspect and/or copy Confidential Student Records and/or challenge the accuracy, relevance or propriety of Confidential Student Records, pursuant to Sections 5 and 7 of ISSRA (105 ILcs 10/5; 105 ILcs 10/7) and Section 33 of SOPPA (105 ILCS 85/33). The LEA shall have access to all Confidential Student Records in the possession of the Provider for the purposes of affording a parent an opportunity to inspect and/or copy the Confidential Student Records and/or request deletion of the same. Company shall assist LEA in obtaining and/or deleting Confidential Student Records in order to respond to a request from a parent, if necessary, within the applicable timeframe required by law. In the event that a parent contacts the Provider directly to inspect, copy or request deletion of Confidential Student Records, the Provider shall refer the parent to the LEA, which shall follow the necessary and proper procedures regarding the requested Confidential Student Records.

7. Prohibited Third-Party Disclosures. The Company shall not sell, rent, lease, trade or otherwise disclose to a third party any Confidential Student Records received from the LEA or its students except as permitted by state or federal law. The Company shall in all respects comply with the applicable provisions of FERPA, COPPA, ISSRA, SOPPA, MHDDCA and PIPA, as amended from time to time.

8. Geographic Transmission and Storage Limitation. The Company shall not transmit to or store any data received from LEA on a server or other data storage medium located outside the United States of America.

9. Company Privacy Policy Changes. Any changes the Company may implement with respect to its privacy policies shall be ineffective and inapplicable with respect to the LEA unless the LEA affirmatively consents in writing to be bound by such changes. Student record access granted to parents/guardians of the LEA's students must not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in the Agreement or this Addendum.

10. Public Access of Contract Documents. Pursuant to SOPPA, the LEA must publish on its website the Agreement between the Company and the LEA, including this Addendum.

11. Survival Clause. The non-disclosure obligations of the Company and its Authorized Representatives regarding the information contained in the Confidential Student Records shall survive termination of the Agreement.

12. SOPPA Required Information.

- A. Description of Services. The Company shall provide the LEA with the following product or service (check one):

See attached document describing the product or service (in lieu of describing product or service); OR

- B. Confidential Student Records. The LEA is providing the following Confidential Student Records to Company strictly in accordance with the Parties' Agreement, including this Addendum, and applicable state and federal law:

See attached Schedule of Data.

- C. Company's Disclosure of Confidential Student Records. The Company has in the past, currently is, and/or will in the future disclose Confidential Student Records to the following third-parties, affiliates, subcontractors, or agents:

None.

- D. Parental and Student Rights. Describe the procedures that a parent and/or student may: (a) inspect and review the student's Confidential Student Records, (b) request from the Company a paper or electronic copy of the student's Confidential Student Records, and (c) request corrections of factual inaccuracies in the student's Confidential Student Records (The Company can provide contact information for such requests only if contact person is reasonably and efficiently able to process the parent or student requests in a timely manner):

Parents and students who wish to do any of the above may submit a written request to the LEA directly. Written requests may be directed to Tarin Kendrick at tkendrick@ntdse.org.

The information under this Section 12 must be updated and provided to the LEA, at a minimum, by the beginning of each fiscal year (July 1) and at the beginning of each calendar year (January 1).

NILES TOWNSHIP DISTRICT OF
SPECIAL EDUCATION

BRECHT'S DATABASE SOLUTIONS,
INC. D/B/A/ EMBRACE®

NILES TOWNSHIP DISTRICT OF
SPECIAL EDUCATION

BRECHT'S DATABASE SOLUTIONS,
INC. D/B/A/ EMBRACE®

By: 

Name (Print): Tarin Kendrick

Title: Executive Director

Date: June 29, 2021

By: August Brecht

Name (Print): August Brecht

Title: President

Date: 6/29/21