



EmbraceDS® Contract

Embrace®
PO Box 305
Highland, IL 62249

Mid-State Special Education Cooperative
202 Prairie Street P.O. Box 46
Morrisonville, IL 62546

The following is an EmbraceDS® 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 Mid-State Special Education Cooperative - Cooperative Only (hereinafter "You", "Your" or "Licensee").

**EMBRACE®
EmbraceDS®
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, destruction or modification 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. SOPPA Compliance, 105 ILCS 85/15(4).

(a) The information ("Data") transmitted to Embrace® for storage may include, but is not limited to, student identification; attendance; educational and therapeutic recommendations; educational and therapeutic completion; communications between administration, educators, staff and parents/guardians regarding student, their education and any necessary assistance students may require.

(b) The services provided by Embrace® are set forth below.

(c) The Party's expressly agree and state that in performing its obligations hereunder Embrace® is acting as a "school official" with a legitimate educational interest in the School District data and it is performing an institutional service or function under this Agreement for which the District would otherwise use its own employees. Embrace's® use of the data is under the direct control of the District and such data shall only be used for authorized purposes. Embrace® shall not re-disclose such information to third parties or affiliates (unless permitted or required under law) without permission from the District or pursuant to a court order.

(d) Data Breach.

a. In the event of a data breach attributed to Embrace®, which means an unauthorized disclosure, access, alteration, or use of School District data by Embrace® or its employees, Embrace® shall promptly institute the following: (1) notify the School District by telephone and email as soon as practicable, but no later than twenty-four hours after Embrace® becomes aware of the data breach; (2) provide the School District with the name and contact information for an Embrace® employee who shall serve as the Embrace's® primary security contact; (3) assist the School District with any investigation, including interviews of Embrace® employees and review of all relevant records; (4) assist the School District with notification(s) the School District deems reasonably necessary related to the security breach; (5) provision of credit monitoring for one year to those students whose covered information was exposed in a manner during the breach such that a reasonable person would believe it could impact their credit or financial security; and (6) pay the reasonable legal fees (or assume the defense of the district at Embrace's discretion), reasonable audit costs, fines, and any other fees or damages imposed against the school solely as a result of Embrace's actions or failure to act.

b. In the event of a data breach attributed to the School District, which means an unauthorized disclosure, access, alteration, or use of School District data the School District shall promptly: (1) notify Embrace® by telephone and email as soon as practicable, but no later than twenty-four hours after the School District becomes aware of the data breach; (2) provide Embrace® with the name and contact information for an employee of the School who shall serve as the School District's primary security contact; (3) assist Embrace® with any investigation, including interviews with School employees and review of all relevant records. Embrace® shall have no liability for any damages related to a data breach due to or caused by School District's software, equipment, personnel, students or unauthorized third-parties using or exceeding their authorized use of the School's access, computer system or network. (4) pay the reasonable legal fees (or assume the defense of Embrace at the district's discretion), reasonable audit costs, and any other fines, fees or damages imposed against Embrace solely as a result of district's actions or failure to act.

(e) Embrace® shall provide all notifications required by the State Board of Education or any other State or federal law. Embrace® shall not provide any other notices without prior written permission from the School District.

(f) Upon written notification by District that student information is no longer needed for the purposes of this Agreement, Embrace® shall delete the information within 60 days so long as Embrace® is not required by law or court order to retain the same. Embrace® is not responsible for the deletion of any data due to District request.

(g) This Agreement and any amendments hereto must be published on the School District's website or, if the District does not have a website, made available for public review at its administrative office.

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 DS forms 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-SIGNATURE USAGE. 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. LIMITATION OF LIABILITY. In no event will Embrace® be liable to you for any loss, damages, claims, or costs whatsoever including any consequential, indirect or incidental damages, any lost profits or lost savings, any damages resulting from business interruption, personal injury or failure to meet any duty of care, or claims by a third party.

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

- Website access to the licensee for staff completion of medical service sheets with respect to Medicaid billing.
- Restrictive access to the website to allowing for multiple levels of use, providing each level with only the access needed.
- 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).
- Identification of Medicaid recipients using the Recipient Eligibility Verification System.
- Provide projected claim amounts based on services provided.
- Support for district as needed to file claims and interpret adjudication notices.
- Web hosting.
- Cross-reference data with the IEP system to track percentages of services to be provided against services delivered.
- Maintenance and updates.
- Multiple support channels available to all users
- Maintain all student data in secure facility on secure servers.
- Daily backups.

11. DISTRICT RESPONSIBILITIES.

- Register with HFS as a Medicaid Provider obtain a HFS ID number and an NPI number.
- Provide Embrace® access to the HFS/MEDI/IEC system by accepting August Brecht as an administrator.
- Register, or Re-validate, the district with IMPACT.
- Provide Embrace® access to district IMPACT Application.

- Identify staff that provide covered services and give them access to the EmbraceDS® software.
- Complete a Fee-for-Service cost calculation form for each service provider type in the EmbraceDS® software.
- Maintain the IEP system student data including Medicaid eligibility and ID numbers for students.
- Use the MEDI system to look up Medicaid numbers for new IEP students and students transferring in from other districts.
- Based on reports available in the EmbraceDS® system, the district will be responsible for making sure that practitioners are claiming appropriately for their services provided.
- The LEA must verify that no practitioner providing service has been terminated, suspended, or barred from the Medicaid program. The lists of terminated, suspended, and barred practitioners are available at the following Websites. Both lists must be queried to obtain a complete list of terminated, suspended, or barred providers. <http://exclusions.oig.hhs.gov/> and <http://www.state.il.us/dpa/html/sbhs.htm>
- The LEA must maintain Practitioner credential records. These records must:
 1. Be retained on the premises of the LEA
 2. Be current
 3. Include copies of all applicable licenses and certificates
 4. Include a list of current practitioners and associated license numbers

12. FEE-FOR-SERVICE WEBSITE YEARLY COSTS. The contract is for a one year period from July 1, 2023 to June 30, 2024 (2023-2024 school year). (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 from your annual contract.

Program Subscription	Annual Fee
EmbraceDS® (Percentage Fee): 5% of HFS Reimbursements Facilitated by Embrace® *Payment of this fee to EmbraceDS® shall be subject to Medicaid's reconciliation (Cost Settlement) process. shall issue any outstanding payments to EmbraceDS® promptly after each Medicaid reconciliation process/cycle.	5% of Reimbursements
Special Transportation Services Per District (Percentage Fee)	
Special Transportation (<u>District</u> inputs Transportation Data in EmbraceDS®): 5% of HFS Reimbursement Facilitated by Embrace®	
Special Transportation (<u>Embrace®</u> inputs Transportation Data supplied by district if elected): 10% of HFS Reimbursement Facilitated by Embrace®	

13. 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.

14. **INDEMNITY**. You agree to hold us harmless from any and all liabilities, losses, actions, damages, or claims (including all reasonable expenses, costs, and attorney fees) arising out of or relating to any use of, or reliance on the website and its related software.

15. **DURATION**. This contract for website access to EmbraceDS® is for a 1 year period.

16. **AUTOMATIC CONTRACT RENEWAL**. Unless cancelled by a Party hereto this Agreement and any accessory components selected by the district will automatically renew, on its last effective date, for successive one-year terms. 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 annual renewal date shall apply.

17. **NON-RENEWAL OF CONTRACT**. In the event that you do not enter into a Renewal Contract, Embrace® will maintain your database information in read-only format for one (1) year from the date of termination of this Contract or subsequent failure to renew. Embrace® is not responsible for the loss of any information after termination or failure to renew the Agreement on your behalf.

18. **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.

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

20. **ARBITRATION**. Any and all disputes between us and you shall be resolved through mandatory Arbitration under the American Arbitration Association Rules. All arbitrations shall be held in Highland, IL.

21. **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 compel or enforce arbitration of this Agreement or any Renewal thereof is the third Judicial Circuit, Madison County, Illinois or the United States District Court for the Southern District of Illinois.

22. **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.

23. **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

August Brecht

Licensors:

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

Licensee:

Mid-State Special Education Cooperative

FEIN:

Angela Armour, Director of Special Education

Angela Armour 4/19/23

KLF