



EmbraceEP® Contract

Embrace®
PO Box 305
Highland, IL 62249

Northwest Suburban Special Education
Organization (NSSEO)
799 West Kensington Road
Mount Prospect, IL 60056

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 Northwest Suburban Special Education Organization (NSSEO) - Organization Only (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®. Embrace® warrants that no third party has any claim to any trademark, patent, or proprietary interest in any services Embrace® provides to you. Embrace® will defend, hold harmless, and indemnify you from any claims brought by a third party against you to the extent based on an allegation that the Embrace® website, software or database infringe any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party.

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 Covered Information is privacy protected by federal and state law, including the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), the Illinois School Student Record Act (105 ILCS 10/), and the Personnel Record Review Act (820 ILCS 40/), the Student Online Personal Protection Act (105 ILCS 85/1 et seq.) (“SOPPA”), and the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/).

Embrace will store and process Covered Information in a manner that meets or exceeds industry best practices. This includes appropriate administrative, physical, and technical safeguards to secure Covered Information from unauthorized access, disclosure, and use. Embrace® will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Embrace® 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 District Covered Information. Covered Information shall include, but is not limited to, personally identifiable information or material, information gathered through operation of the Embrace® service for K-12 school purposes that personally identifies a student, student data, metadata, and user or pupil-generated content, whether gathered by Embrace® or provided by District or its users, students, or students’ parents/guardians.

Embrace® acknowledges that all District Covered Information 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 Covered Information transmitted to Embrace® may include, but is not limited to, personally identifiable information, 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.

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.

(c) In the event of a data breach attributed to Embrace®, which means an unauthorized acquisition, disclosure, access, alteration, or use of Covered Information, 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, and any other fines, fees or damages imposed against the District solely as a result of Embrace's actions or failure to act.

(d) 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.

(e) Upon written notification by District that Covered 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.

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

(g) With respect to Covered Information that could be considered "education records," the District shall have the right to access such information for educational purposes and, subject to paragraph 17, Embrace® will not implement controls to restrict the District's access to its education records.

(h) With respect to Embrace's® collection, use or disclosure of Covered information from students, as governed by applicable laws, Embrace® agrees that such actions will be solely for the benefit of the District's students and for the school system, and that Embrace will not collect personal information from students for any purpose, including any other commercial purpose, and will not amass a profile about a student, except in furtherance of District purposes, unless otherwise permitted by law or requested by a student or the student's parent or unless done to allow or improve operability and functionality of the Embrace® service.

(i) If Embrace® discloses Covered Information to a third party, the following conditions must be met: 1) Embrace must have a contract with the third party; 2) the disclosure must be in furtherance of providing the contracted service; 3) the third party must not further disclose Covered information; and 4) the third-party must implement and maintain reasonable security procedures and practices that meet or exceed industry standards. Embrace® will provide the District with a list of any third parties to whom Embrace® is currently disclosing Covered Information or has disclosed Covered Information. Embrace will provide this list within 14 business days of January 1 and within 14 business days of July 1. Covered Information does not include information that has been de-identified such that the resulting data cannot reasonably be used to identify an individual student.

(j) The District agrees to implement and maintain reasonable security procedures and practices to protect Covered Information from unauthorized access, destruction, use, modification, or disclosure. As a courtesy, in the event the District becomes aware of malicious, unauthorized access to the Embrace database, the District will notify Embrace in its full discretion. The District's acts or omissions in notifying Embrace under this paragraph will not be a basis for any liability or damages against the District whatsoever.

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 District that the website will permit the District's users to complete medical service sheets for Medicaid billing for the period of time outlined in the current contract. Additionally, the licensee will be able to generate reports summarizing services provided, and Embrace® will submit claims in "X12 format" for claim reimbursement. If the Services do not perform as warranted, Embrace® will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the Embrace® current support process in effect at the time of the Defect. 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, the warranty against non-infringement of intellectual property rights, and Embrace's indemnification for a breach are the only warranties 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. Embrace® does not warrant to the District 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.

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. Except as otherwise stated herein, Embrace® will not 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 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

11. **RESERVED.**

12. 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 three year period from July 1, 2021 to June 30, 2024. (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
EmbraceIEP® Annual Subscription Annual Subscription Fee	\$16.00	450	\$7,200.00
			\$7,200.00
Additional Components Per District (Annual Fee)			
Behavior Incident Reporting	\$600.00	1	\$600.00
			\$600.00
Additional Services Per District (Annual Fee)			
SFTP (Secure File Transfer Protocol) Student Import	\$500.00	1	\$500.00
			\$500.00

Subtotal **\$8,300.00**

Total Cost for 21-22 School Year \$8,300.00

Program Subscription	Price	QTY	Subtotal
EmbraceIEP® Annual Subscription Annual Subscription Fee	\$16.00	450	\$7,200.00
			\$7,200.00
Additional Components Per District (Annual Fee)			

Behavior Incident Reporting	\$600.00	1	\$600.00
			\$600.00
Additional Services Per District (Annual Fee)			
SFTP (Secure File Transfer Protocol) Student Import	\$500.00	1	\$500.00
			\$500.00

Subtotal **\$8,300.00**

Total Cost for 22-23 School Year \$8,300.00

Program Subscription	Price	QTY	Subtotal
EmbraceIEP® Annual Subscription Annual Subscription Fee	\$16.00	450	\$7,200.00
			\$7,200.00
Additional Components Per District (Annual Fee)			
Behavior Incident Reporting	\$600.00	1	\$600.00
			\$600.00
Additional Services Per District (Annual Fee)			
SFTP (Secure File Transfer Protocol) Student Import	\$500.00	1	\$500.00
			\$500.00

Subtotal **\$8,300.00**

Total Cost for 23-24 School Year \$8,300.00

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.

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. Notwithstanding any language contained in this Agreement, the District agrees to indemnify Embrace® from any and all third-party liabilities, losses, actions, damages, or claims (including all reasonable expenses, costs, and attorney fees) directly arising out of the District's breach of this contract or negligent act(s) or omission(s). Notwithstanding any language contained in this Agreement, Embrace® agrees to indemnify the District from any and all third-party liabilities, losses, actions, damages, or claims (including all reasonable expenses, costs, and attorney fees) directly arising out of Embrace's® breach of this contract or Embrace's® negligent act(s) or omission(s).

15. DURATION. This contract for the three (3) year time period set forth in paragraph 12 above. All prices apply to individual districts, cooperatives, joint agreements, and associations.

16. RESERVED.

17. RETURN/DESTRUCTION OF LICENSEE DATA. Upon expiration of the term of the Agreement, upon the earlier termination of the Agreement for any reason, or upon the District's request, Embrace® covenants and agrees: 1) that, upon request, it will provide a digital copy of all Covered Information the District has uploaded, stored, or otherwise entered into Embrace's database or software. Embrace® does not guarantee that the digital information will be usable by any other database system; 2) that it will maintain your database information and continue to provide read-only access (Read-Only access includes the ability to download and print PDFs as well as to run reports on previously entered data) of data and any documents for one (1) year from the date of termination of this Contract or subsequent failure to renew. At the end of the one (1) year read only time-frame, or sooner at Licensee request, Embrace® will remove any and all on-line access to District Covered Information. Embrace® is not responsible for the loss of any information after termination or failure to renew the Agreement.

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. Any changes hereto must be in writing and signed by authorized representatives of both parties.

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

20. DISPUTE RESOLUTION. In the event of any dispute or claim arising out of or related to this Agreement, the parties shall, as soon as reasonably practicable after receiving written notice from the other party of the dispute, meet and confer in good faith regarding such dispute at a mutually agreeable time and place. The obligation to meet and confer does not obligate either party to agree to any compromise or resolution of the dispute. The meet and confer process shall be considered a settlement negotiation for purposes all applicable laws and shall be conducted confidentially and without prejudice to either party's rights to pursue legal remedies through the judicial system. The parties may agree to utilize the services of a mediator through the American Arbitration Association to facilitate meet and confer discussions and agree to jointly and equally share the expenses of the mediator. If the parties fail to resolve any dispute for any reason within 30 days after a party provides written notice of a dispute, either party may file suit.

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.

Licensors:

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

FEIN: 20-4100129

August R. Brecht, President

August Brecht

Licensee:

Northwest Suburban Special Education Organization (NSSEO)

FEIN:

Eric Murray, Technology Coordinator

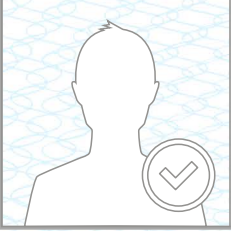

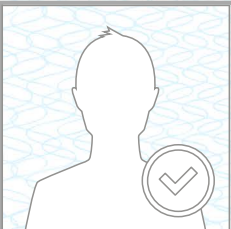

Eric Murray

KLF

Signature Certificate

Document Ref.: JRDOT-VJTDK-UC8P9-UUNRU

Document signed by:

	August Brecht Verified E-mail: gus@embraceeducation.com IP: 96.40.211.219 Date: 22 Apr 2021 15:58:31 UTC	
	Eric Murray Verified E-mail: emurray@nsseo.org IP: 98.226.176.101 Date: 06 May 2021 13:24:11 UTC	

Document completed by all parties on:

06 May 2021 13:24:11 UTC

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Signed with PandaDoc.com

PandaDoc is the document platform that boosts your company's revenue by accelerating the way it transacts.

