



## EmbraceEP® Contract

Embrace®  
PO Box 305  
Highland, IL 62249

Lake Forest Community High School District  
115  
300 South Waukegan Road  
Lake Forest, IL 60045

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 Lake Forest Community High School District 115 (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. 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 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-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 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. 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 fourteen month period from May 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.

<b>Program Subscription</b>	<b>Price</b>	<b>QTY</b>	<b>Subtotal</b>
EmbraceIEP® Annual Subscription Annual Subscription Fee	\$16.00	220	\$3,520.00
Less Prorated Months (July 2020 - April 2021)	-\$2,933.34	1	-\$2,933.34
			<b>\$586.66</b>
<b>Additional Components Per District (Annual Fee)</b>			
Embrace® 504	\$600.00	1	\$600.00
Less Prorated Months (July 2020 - April 2021)	-\$500.00	1	-\$500.00
			<b>\$100.00</b>
<b>Additional Services Per District (Annual Fee)</b>			
SFTP (Secure File Transfer Protocol) Student Import	\$500.00	1	\$500.00
Less Complimentary Discount	-\$500.00	1	-\$500.00
			<b>\$0.00</b>
<b>Implementation Services and Training (Initial Year Only)</b>			
Non-Recurring Implementation Services	\$1,500.00	1	\$1,500.00
Training: (3) Webinar Sessions	\$250.00	3	\$750.00
			<b>\$2,250.00</b>

Subtotal **\$2,936.66**

**Total Cost for 20-21 School Year \$2,936.66**

<b>Program Subscription</b>	<b>Price</b>	<b>QTY</b>	<b>Subtotal</b>
EmbraceIEP® Annual Subscription Annual Subscription Fee	\$16.00	220	\$3,520.00
			<b>\$3,520.00</b>
<b>Additional Components Per District (Annual Fee)</b>			
Embrace® 504	\$600.00	1	\$600.00
			<b>\$600.00</b>
<b>Additional Services Per District (Annual Fee)</b>			
SFTP (Secure File Transfer Protocol) Student Import	\$500.00	1	\$500.00
			<b>\$500.00</b>

Subtotal **\$4,620.00**

**Total Cost for 21-22 School Year \$4,620.00**

\* Pricing good for 90 days from the date delivered to prospective client.

Contract will be invoiced and payable in 2 installments:

2020-2021 School Year: \$2,936.66 - Due on receipt

2021-2022 School Year: \$4,620.00 - Due July 1, 2021

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.

**12. 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.

**13. 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.

**14. DURATION.** This contract for website access to EmbraceEP® is initially for a fourteen month period.

**15. 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.

**16. 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.

**17. 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.

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

**19. 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.

**20. 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.

**21. 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.

**22. 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®**



**Licensors:**

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

FEIN: 20-4100129

August R. Brecht, President

*August Brecht*

Licensee:

Lake Forest Community High School District 115

FEIN:

Jennifer Sterpin, Director of Special Education

*Jennifer Sterpin*

KLF / J. Smith

## **Lake Forest Community High School District 115 and Embrace® Agreement Addendum**

This Data Privacy Addendum (the "Addendum") by and between Lake Forest Community High School District 115 (the "School District") and Brecht's Database Solutions, Inc. d/b/a Embrace® (the "Company") (collectively, the "Parties") is incorporated in, effective simultaneously with, and modifies the attached agreement between the Parties and all current and supplemental terms and conditions, order forms, policies, practices, procedures, and/or other documentation relating to the agreement attached as Exhibit A to this Addendum (collectively, the "Agreement"). This Addendum supersedes the Agreement by adding to, deleting from, and modifying the Agreement. To the extent any provision in this Addendum results in any conflict or inconsistency between the Agreement and this Addendum, this Addendum shall govern and any term of the Agreement that conflicts with this Addendum or is inconsistent with this Addendum shall be of no force or effect.

### **1. Definition of School District Data**

As used in this Addendum, "School District Data" includes:

- "Personally Identifiable Information" and "Education Records" of students as defined in regulations implementing the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. § 99.3;
- "School Student Records" as defined in the Illinois School Student Records Act ("ISSRA"), 105 ILCS 10/2(d);
- "Covered Information" as defined in the Illinois Student Online Personal Protection Act ("SOPPA"), 105 ILCS 85/5; and
- All other non-public information, including student data, metadata, and user content, of the School District's students.

### **2. Services and Data Provided**

2.1 Nature of Products or Services Provided. The Company has agreed to provide the following products and/or services to the School District: software, website hosting, and support services. The services provided are further detailed in Section 10 of the Agreement.

2.2 School District Data Provided. To allow the Company to provide the products and/or services described in Section 2.1, the School District will provide the following categories or types of School District Data to the Company: student identification information; attendance information; educational and therapeutic recommendations; educational and therapeutic completion; communications between administration, educators, staff and parents/guardians regarding student, their education and necessary assistance students may require.

2.3 Minimum Data Necessary Shared. The Company attests that the data requested by the Company from the School District for the School District to access the Company's products and/or services represents the minimum necessary data for the products and/or services as described in the Agreement and this Addendum.

2.4 Publication of Agreement and Subcontractors. Under SOPPA, the School District must publish the Company's name and business address, a copy of the Agreement and this Addendum, and a list of any subcontractors to whom School District Data may be disclosed. The Company agrees to provide to the School District prior to execution of the Agreement and this Addendum the name, business address, and list of subcontractors to be published.

### **3. Compliance with Law**

3.1 The Company agrees that all sharing, use, and storage of School District Data will be performed in accordance with all applicable Federal and State laws. The Company agrees that it will comply with all applicable laws and refrain from using School District Data in any way prohibited by any law, whether such requirements are specifically set forth in this Addendum. Applicable laws may include, but are not limited to, FERPA; ISSRA; SOPPA; the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6502; the Protection of Pupil Rights Amendment ("PPRA"), 20 U.S.C. 1232 h; and the Illinois Children's Privacy Protection and Parental Empowerment Act ("CPPPEA"), 325 ILCS 17/1 et seq.

#### **4. Data Ownership and Use**

4.1 Data Ownership and Control. The School District Data and any intellectual property rights thereto remain the property of and under the control of the School District. The Company does not obtain any right, title, or interest in any of the School District Data furnished by the School District.

4.2 School District Access to Data. Any School District Data in the possession or under the control of the Company shall be made available to the School District upon request by the School District. The Company shall be responsible to provide copies of or access to School District Data in the possession or under the control of the Company to the School District within a reasonable time frame and in all cases within time frames that will allow timely compliance by the School District with any statutorily or court ordered deadline. This includes requests under the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1 et seq., requests regarding student records under FERPA or ISSRA, requests for records in discovery in state or federal court or administrative proceedings, and any other request.

4.3 Company Use of Data. The Company may use and disclose the School District Data only for the purposes described in the Agreement and only in a manner that does not violate local, state, or federal privacy laws and regulations. These include, but are not limited to, the following requirements, as applicable:

4.3.1 School Officials Requirements. The Company acknowledges that it is acting and designated as a "school official" or "official of the school" with a "legitimate educational interest" in the School District Data as those terms are used in FERPA, ISSRA, and SOPPA (a "School Official"). The Company agrees to abide by the limitations and requirements applicable to a School Official. The Company agrees it is performing an institutional service or function for which the school would otherwise use employees and is under the direct control of the school with respect to the use and maintenance of the School District Data. The Company agrees that it will use the School District Data only for authorized purposes and will comply with all limitations and requirements imposed on a School Official under FERPA, ISSRA, and SOPPA, including the requirements that the Company: (1) collect and use School District Data only for the purpose of fulfilling its duties under the Agreement and this Addendum and only for the benefit of the School District and its end users; (2) will not share, disclose, or re-disclose the School District Data to any third party or affiliate except as permitted by FERPA, ISSRA, and SOPPA or provided for in this Addendum, otherwise authorized in writing by the School District, or pursuant to a court order; (3) will not use School District Data (including metadata) for advertising or marketing purposes unless such use is specifically authorized by this Addendum or otherwise authorized in writing by the School District.

4.3.2 PPRA Requirements. With respect to the Company's collection, disclosure, or use of School District Data as governed by the PPRA, the Company's collection, disclosure, or use of any School District Data shall be for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, the School District's students or educational institutions, or otherwise for the use and benefit of the school. The Company will not use the School District Data for any purpose other than the School District's purpose.

4.3.3 COPPA Requirements. To the extent applicable, the Company agrees that its use of the School District Data will be solely for the benefit of the School District's students and for the school system, and that the Company will not collect personal information from students for any purpose other than the School District's purpose, including any other commercial purpose.

4.4 Internal Company Disclosure. The Company attests that only individuals or classes of individuals who are essential to perform the work under the Agreement will have access to the School District Data and that those individuals and classes of individuals will be familiar with and bound by this Addendum and relevant law. The Company shall cause each officer, director, employee, subcontractor, and other representative who will have access to any School District Data during the term of the Agreement to comply with all legal requirements applicable to the School District Data, including but not limited to those outlined in this Agreement and under relevant law.

## **5. Company Obligations Regarding Data**

5.1 Safeguards. The Company agrees to take appropriate administrative, technical, and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of School District Data. The Company shall ensure that School District Data are secured and encrypted to the greatest extent practicable during use, storage and/or transmission.

5.1.1 Security Procedures and Practices. The Company agrees that it will implement and maintain security procedures and practices that, at a minimum, are designed to protect covered information from unauthorized access, destruction, use, modification, or disclosure that based on the sensitivity of the data and the risk from unauthorized access: (i) use technologies and methodologies that are consistent with the U.S. Department of Commerce's National Institute of Standards and Technology's Framework for Improving Critical Infrastructure Cybersecurity Version 1.1. and any updates to it; or (ii) maintain technical safeguards as they relate to the possession of covered information in a manner consistent with the provisions of 45 C.F.R. 164.312.

5.1.2 Storage of Data. The Company agrees to store and process the School District Data in a manner that is no less protective than those methods used to secure the Company's own data. The Company agrees that School District Data will be stored on equipment or systems located within the United States.

5.1.3 Audit of Safeguards. The Company shall maintain complete and accurate records of its security measures for School District Data and produce such records to the School District for purposes of audit upon reasonable prior notice during normal business hours. The School District reserves the right at its sole discretion to audit the Company's storage of School District Data at the School District's expense to ensure compliance with the terms of the Agreement and this Addendum.

5.1.4 Reasonable Methods. The Company agrees to use "reasonable methods" to ensure to the greatest extent practicable that the Company and all parties accessing School District Data are compliant with state and federal law. The School District reserves the right to audit such measures upon reasonable prior notice during business hours.

5.2 Privacy Policy. The Company must publicly disclose material information about its collection, use, and disclosure of covered information, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document. Any changes the Company may implement with respect to its privacy policies or terms of use documents shall be ineffective and inapplicable with respect to the School District and/or School District Data unless the School District affirmatively consents in writing to be bound by such changes. Access by students or parents/guardians to the Company's programs or services governed by the Agreement and this Addendum or to any School District Data

stored by the Company shall 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 this Addendum.

5.3 Data Return/Destruction. Upon expiration of the Agreement, for any reason whatsoever, and upon the School District's written request the Company shall return all School District Data in the Company's possession and control. Also, if requested by the District in writing, the Company shall destroy all the School District Data within 30 days. The Company agrees to send a written certificate confirming the proper destruction or return of the Data. Such certificate shall be delivered within 30 days of the date of the event triggering return/destruction (e.g., one-year after the termination of the Agreement or within 30 days of the School District's written request to the Company for destruction). The Company shall destroy School District Data in a secure manner and in such a manner that it is permanently irretrievable in the normal course of business. The only exception to the requirements of this Section 5.3 is if the Company has express written consent from a student's parent or legal guardian consenting to the maintenance of the covered information.

5.4 Authorizations. The Company agrees to secure individual School District or parent/guardian written authorizations to maintain or use the School District Data in any manner beyond the scope of or after the timeline set forth in the Agreement.

5.5 Data Breach. For purposes of this section, "data breach" means the unauthorized disclosure of data, unauthorized provision of physical or electronic means of gaining access to data that compromises the security, confidentiality, or integrity of School Student Data, or other unauthorized access, alteration, use or release of School District Data, as well as any other circumstances that could have resulted in such unauthorized disclosure, access, alteration, or use.

5.5.1 In the event of a data breach, the Company agrees to the following: (1) notify the School District by telephone and email within the most expedient time possible and without unreasonable delay, but no later than 24 hours after the determination that a breach has occurred; (2) at the time notification of the breach is made, provide the School District with the name and contact information for an employee of the Company who shall serve as the Company's primary security contact; (3) assist the School District with any investigation, including interviews with Company employees and review of all relevant records; (4) provide the School District within the most expedient time possible and without unreasonable delay, and in no case later than fifteen (15) days after notification to the School District that a data breach occurred, the number of students whose covered information is involved in the breach; the date, estimated date, or estimated date range of the breach; a description of the covered information that was compromised or reasonably believed to have been compromised in the breach; and contact information for the person who parents/guardians may contact at the Company regarding the breach; and (4) assist the School District with any notification the School District deems necessary related to the security breach. The Company agrees to comply with the terms of this Section 5.5.1 regardless of whether the misuse or unauthorized release of School District Data is the result of or constitutes a material breach of the Agreement or this Addendum.

5.5.2 The Company shall not, unless required by law, provide any notices except to the School District without prior written permission from the School District.

5.5.3 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) up to the limits of its insurance coverage.

5.5.4 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 the Embrace's® breach of this contract or negligent act(s) or omission(s) up to the limits of its insurance coverage.

## **6. Prohibited Uses**

6.1 The Company shall not do any of the following:

6.1.1 Sell School District Data; use or share School District Data for purposes of targeted advertising, as defined in Section 85/5 of SOPPA; or use School District Data to create a personal profile of a student other than for accomplishing the purposes described in the Agreement and this Addendum and explicitly authorized in writing by the District;

6.1.2 Use information, including persistent unique identifiers, created or gathered by the operator's site, service, or application to amass a profile about a student, except in furtherance of "K through 12 school purposes," as defined by SOPPA. "Amass a profile" does not include the collection and retention of account information that remains under the control of the student, the student's parent or legal guardian, or the School District; or

6.1.3 Sell or rent a student's information, including covered information. This Section does not apply to the purchase, merger, or other type of acquisition of the Company by another entity if the Company or its successor entity complies with all relevant law and this Addendum regarding previously acquired School District Data.

6.2 Notwithstanding the previous paragraphs and any other terms of this Addendum, the Company may use School District Data for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application if such use is authorized by Federal or State law. The Company agrees to notify the School District if it believes release of School District Data is otherwise justified under law, including the reasons set forth in SOPPA Section 84/10(4); however, any such disclosure must be made by the School District and pursuant to valid ISSRA and FERPA exceptions.

## **7. Miscellaneous**

7.1 Service Levels. The Company's products or services are provided 24 hours per day, 7 days per week. The Company shall ensure 99.9% up-time, Monday through Friday between 6 a.m. and 6 p.m. US Central Time ("Up-time"). Where Up-time percentage averages less than 99.9% in a calendar month, the School District shall have the right to terminate the Agreement immediately upon written notice to the Company and shall be entitled to a refund of the School District's fees paid for the services, as depreciated on a straight-line basis over a 12-month period commencing on the date the School District first had access to the Services through the date of termination. Any IEP Contract is excluded from this refund.

7.2 Limited Warranty. For the purposes of this Addendum, a "Defect" is defined as a failure of the Company's product or service to substantially conform to the then-current Company's User Guides materials. For as long as the Agreement is in place, the Company warrants that the Company's products or services will not contain Defects. If the products or services do not perform as warranted, the Company will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the Company's then-current support call process. Should the Company be unable to cure the Defect or provide a replacement product within five business days, the School District shall be entitled to a refund of its fees paid for the products or services, as depreciated on a straight-line basis over a

12-month period commencing on the date the School District first has access to the Company's products or services through the date of termination.

7.3 Harmful Code. Using a recent version of a reputable virus-checking product (to the extent commercially available), the Company will check its software and other systems used by the Company to deliver the products or services to the School District for any harmful code, including, without limitation, any viruses, worms, or similar harmful code, and will use commercially reasonable efforts to eliminate any such harmful code that the Company discovers.

7.4 Indemnification. The Company agrees to indemnify, defend and hold harmless, up to \$2 million, the School District and its officers, directors, employees, agents, attorneys and assigns, against any third-party claims, demands, actions, arbitrations, losses and liabilities resulting from damage caused by the Company employees, contractors, or subcontractors in performing its obligations under the Agreement or this Addendum.

7.4.1 Insurance. During the term of this Agreement, the Contractor, at its sole cost and expense, and for the benefit of the District, shall carry and maintain the following insurance at a minimum:

7.4.2 Comprehensive general liability and property damage insurance, insuring against all liability of the Contractor related to this Agreement, with a minimum combined single limit of at least One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) Personal & Advertising Injury, Two Million Dollars (\$2,000,000) Products/Completed Operations Aggregate, and Two Million Dollars (\$2,000,000) general aggregate;

7.4.3 Professional Liability/Technology Errors & Omissions Insurance with limits in the per claim amount of not less than Two Million Dollars (\$2,000,000) and the annual aggregate of not less than Two Million Dollars (\$2,000,000);

7.4.4 Automobile liability Insurance with a combined single limit of One Million Dollars (\$1,000,000) (only required if Contractor will be on-site);

7.4.5 Cyber liability/identity theft insurance with a combined limit of Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) general aggregate;

7.4.6 Workers' Compensation Insurance covering all costs, statutory benefits, and liabilities under State Workers' Compensation and similar laws for the Contractor's respective employees with Employers Liability of limits of \$1,000,000 Each Accident; \$1,000,000 Disease – Each Employee; \$1,000,000 – Policy Limit; and

The insurance shall include sexual abuse and molestation coverage if the Contractor will be on District premises. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or comparable rating service.

The comprehensive general liability, property damage, auto liability, and umbrella liability insurance policy shall provide coverage for any claims related to Embrace®'s actions or failure to act for which demands are being made against the District and its Board, both individually and collectively, and all Board members, employees, volunteers, representatives, and agents in their respective capacities for the District on a primary noncontributory basis with a waiver of subrogation in favor of the District (if the Contractor will be on the District's premises the waiver of subrogation shall also apply to the workers' compensation insurance the waiver of subrogation shall also apply to the workers' compensation insurance). If requested, the Contractor shall provide copies of applicable policies. The failure

to provide acceptable insurance shall be deemed a breach of this Agreement entitling the District to terminate this Agreement immediately. No coverage may be canceled, terminated, or reduced by Embrace® without Embrace® or its insurer(s) having first given at least 30 days prior written notice to the District by certified mail, return receipt requested.

7.5 Infringement. The Company warrants that no third party has any claim to any trademark, patent, or proprietary interest in any product or service the Company provides to the School District. The Company will defend, hold harmless, and indemnify the School District from any claims brought by a third party against the School District to the extent based on an allegation that any Company product or service infringes any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party. If the School District's use of the Company's products is restricted as the result of a claim of infringement, the Company shall do one of the following: (i) substitute another equally suitable product or service; (ii) modify the allegedly infringing Company product or service to avoid the infringement; (iii) procure for the School District the right to continue to use the Company product or service free of the restrictions caused by the infringement; or (iv) take back such Company product or service and refund to the School District the fees previously paid for the Company's product or service depreciated on a straight line basis over 12 months and terminate the School District's license to use the Company's product.

7.6 Any provision in the Agreement, except for Section 7.7 of this Addendum, that limits the Company's liability, requires the School District to release the Company for claims the School District may have against the Company is deleted. Further, any provisions requiring the School District to release its class action rights is deleted.

7.7 Mutual Limitation of Liability. Neither party will be liable for breach-of-contract damages that the breaching party could not reasonably have foreseen on entry into this agreement.

7.8 Taxes. The School District is a tax-exempt organization. Federal excise tax does not apply to the School District and State of Illinois Sales Tax does not apply. The amounts to be paid to the Company hereunder are inclusive of all other taxes that may be levied, including sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Company shall be responsible for any taxes levied or imposed upon the income or business privileges of the Company.

7.9 Payments. The School District shall make payments to the Company in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1. If the School District is late in making a payment it shall make interest payments at the maximum amount permitted under the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4.

7.10 Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, acts of terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of the delayed party), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

7.11 Freedom of Information Act. The Company acknowledges that School District is subject to the Illinois FOIA, and that the School District shall not be in breach of any confidentiality provisions contained in the Agreement if the School District releases a record in compliance with the FOIA.

7.12 Governing Law. The Agreement and this Addendum shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the



Northern District of Illinois. Any references to arbitration, mediation, or required notices of claims in the Agreement are not applicable to the School District.

7.13 Renewal of Agreement. The parties may renew the Agreement and this Addendum in writing.

7.14 Termination. The School District may immediately terminate the Agreement if the School District makes the determination that the Company has breached a material term of the Agreement or this Addendum. In addition, the School District may terminate this Agreement at any time without cause after providing the Company with 90 days written notice. If the District exercises such right it shall be entitled to reimbursement of all fees previously paid but not yet incurred. Any fees owed to Embrace® pursuant to an EmbraceIEP® Agreement at the time of early termination shall be exempt from reimbursement under this paragraph.

7.15 Amendment. No amendment or modification to the Agreement and this Addendum shall be effective unless and until the amendment or modification is in writing and signed by all parties to the Agreement and this Addendum.

7.16 Effective Date. The Addendum shall be deemed dated and become effective on the date the last of the parties signs as set forth below the signature of their duly authorized representatives.

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

A handwritten signature in black ink that reads "August Brecht". The script is cursive and fluid.

August R. Brecht, President

Lake Forest Community High School District 115

A handwritten signature in black ink that reads "Jennifer Sterpin". The script is cursive and fluid.

Jennifer Sterpin, Director of Special Education



# Signature Certificate

Document Ref.: PJ5C7-XF6EI-RF6XE-NAITU

Document signed by:

	<b>Jennifer Sterpin</b> Verified E-mail: jsterpin@lfschools.net	<i>Jennifer Sterpin</i>
IP: 50.206.151.146      Date: 28 Apr 2021 13:44:42 UTC		

	<b>August Brecht</b> Verified E-mail: gus@embraceeducation.com	<i>August Brecht</i>
IP: 96.40.211.219      Date: 28 Apr 2021 14:09:21 UTC		

Document completed by all parties on:

28 Apr 2021 14:09:21 UTC

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