



EmbraceEP® Contract

Embrace®
PO Box 305
Highland, IL 62249

Lake Zurich Community Unit School District 95
832 South Rand Road
Lake Zurich, IL 60047

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 Zurich Community Unit School District 95 (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 Agreement, 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 Data. “Data” 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, and shall include all “covered information” as defined in SOPPA.

Embrace® acknowledges that all 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) Categories of Covered Information. The information ("Data") transmitted to Embrace® for storage may include records related to student identification; attendance and discipline; 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, and other records related to student placement and progress.

(b) Statement of Product and Services. The services provided by Embrace® are set forth below in Paragraph 10. Embrace's receipt and use of the data is pursuant to its provision of software and/or services to assist the District in drafting individualized education programs, 504 plans, and/or multi-tier systems of support for students.

(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 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 Data or information contained therein to third parties or affiliates (unless permitted or required under law) without permission from the District or pursuant to a court order. In the event that Embrace® does disclose or intends to disclose such Data to third parties or affiliates, Embrace® agrees to provide School District with a list of third parties and their affiliates to whom Embrace® is disclosing Data or has disclosed Data (the "Third-Party Disclosure List"). In the event that Embrace® intends to disclose such Data to third parties and their affiliates Embrace® shall provide a Third-Party Disclosure List to School District at the beginning of each State of Illinois fiscal year and at the beginning of each calendar year.

(d) Data Breach.

a. In the event of a data breach attributed to Embrace®, which means an unauthorized acquisition, disclosure, access, alteration, or use of Data by or through 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 costs of audit of the data breach. School District shall have no liability to Embrace for any damages related to a data breach to the extent due to or caused by Embrace's software, equipment, personnel, or unauthorized third-parties using or exceeding their authorized use of Embrace's access, computer system or network.

b. In the event of a data breach attributed to the School District, which means an unauthorized disclosure, access, alteration, or use of Data by or through the School District the School District shall promptly: (1) notify Embrace® by telephone and email as soon as practicable; and (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. Embrace® shall have no liability for any damages related to a data breach to the extent 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.

(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) Transfer or Deletion of Data.

a. Upon written notification by District at any time that student Data is no longer needed for the purposes of this Agreement, Embrace® shall, within 60 days, either (1) upon the District's request, transfer all Data to the District or (2) if transfer is not requested by the District, securely dispose of the data pursuant to subsection (f)c. so long as Embrace® is not required by law or court order to retain the same. Embrace® is not liable for the deletion of any data performed pursuant to District request.

b. Upon expiration or termination of this Agreement, Embrace® shall transfer all Data to the District or facilitate the District's download of such Data. Subject to the Termination clause (Par. 16 infra.) Embrace® agrees to maintain all Data until it receives written confirmation from the District that it has received or downloaded all needed Data. Upon such written confirmation from the District, Embrace® agrees to securely dispose of all Data pursuant to subsection (f)c. so long as Embrace® is not required by law or court order to retain the same.

c. All destruction and disposal of Data shall be in accordance with industry best practices, including the guidelines issued by the United States Department of Education Privacy Technical Assistance Center such as the document entitled Best Practices for Data Destruction (<https://studentprivacy.ed.gov/resources/best-practices-data-destruction>). Embrace® agrees to provide the School District with a certificate of data destruction upon request. Embrace® is not liable for the disposal of any data when such disposal was pursuant 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, it shall be made available for public review at its administrative office.

(h) Embrace® represents and warrants that it implements and maintains reasonable security procedures and practices that otherwise meet or exceed industry standards designed to protect Data from unauthorized access, destruction, use, modification, or disclosure, including but not limited to the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of the Data.

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, unless such damages result from the grossly negligent, intentionally, willful and wanton acts or omissions of Embrace®.

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 shall either party be responsible to the other for consequential, indirect or incidental damages or lost savings.

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.

Program Subscription	Price	QTY	Subtotal
EmbraceIEP® Annual Subscription Annual Subscription fee	\$10,500.00	1	\$10,500.00
Less Prorated Months July 2020 - April 2021	-\$8,750.00	1	-\$8,750.00
			\$1,750.00
Additional Components Per District (Annual Fee)			
Embrace® 504	\$2,100.00	1	\$2,100.00
Less Prorated Months July 2020 - April 2021	-\$1,750.00	1	-\$1,750.00
			\$350.00
Additional Services Per District (Annual Fee)			
SFTP (Secure File Transfer Protocol) Student Import	\$500.00	1	\$500.00
SFTP (Secure File Transfer Protocol) PDF Export	\$500.00	1	\$500.00
SAML (Security Assertion Markup Language) User Authentication	\$500.00	1	\$500.00

			\$1,500.00
Implementation Services and Training (Initial Year Only)			
Non-Recurring Implementation Services	\$1,500.00	1	\$1,500.00
Training: (1) Webinar Sessions	\$250.00	4	\$1,000.00
			\$2,500.00

Subtotal **\$6,100.00**

Total Cost for 20-21 School Year \$6,100.00

Program Subscription	Price	QTY	Subtotal
EmbraceIEP® Annual Subscription <small>Annual Subscription fee</small>	\$10,500.00	1	\$10,500.00
			\$10,500.00
Additional Components Per District (Annual Fee)			
Embrace® 504	\$2,100.00	1	\$2,100.00
			\$2,100.00
Additional Services Per District (Annual Fee)			
SFTP (Secure File Transfer Protocol) Student Import	\$500.00	1	\$500.00
SFTP (Secure File Transfer Protocol) PDF Export	\$500.00	1	\$500.00
SAML (Security Assertion Markup Language) User Authentication	\$500.00	1	\$500.00
			\$1,500.00

Subtotal **\$14,100.00**

Total Cost for 21-22 School Year \$14,100.00

* 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: \$6,100.00 - Due on receipt

2021-2022 School Year: \$14,100.00 - 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. Embrace® shall indemnify, defend and hold harmless Licensee, its individual Board members, employees and agents from any losses, damages, fines, liabilities, costs, fees (including, but not limited to, reasonable attorneys' fees, court costs and expert witness fees) arising from, related to or connected with any negligent, intentional or willful and wanton acts or omissions of Embrace®, any third-party claims that Embrace's® software infringes on any third-parties' and any breach of this Contract by Embrace®. Likewise, Licensee shall indemnify, defend, and hold harmless Embrace®, its individual Board members, employees and agents from any losses, damages, fines, liabilities, costs, fees (including, but not limited to, reasonable attorneys' fees, court costs and expert witness fees) arising from, related to or connected with any negligent, intentional or willful and wanton acts or omissions of Licensee, and any breach of this Contract by Licensee.

14. DURATION. This contract for the fourteen month period set forth in paragraph 12 above. All prices apply to individual districts, cooperatives, joint agreements, and associations.

15. TERMINATION OF CONTRACT. In the event that you terminate or fail to renew the Agreement Embrace® will maintain your database information in read-only format for one (1) year from the date of termination. Embrace® is not responsible for the loss of any information after termination or failure to renew the Agreement.

16. 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.

17. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois, notwithstanding its choice of law provisions.

18. VENUE. Any action brought to enforce the terms and provisions of this Contract shall be brought in the Lake County, Illinois Circuit Court or in the U.S. District Court for the Northern District of Illinois, Eastern Division.

19. 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.

20. 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.

21. FORCE MAJEURE. In the event a party to the Contract unable to perform or must cease normal operations due to Acts of God, which shall include, but are not limited to, epidemics, pandemics, plague, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, civil disturbances, labor disputes, strikes, governmental acts, regulations or executive order or other causes that are beyond the reasonable control of the affected party (collectively, a "Force Majeure Event"), such party shall not be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract. Furthermore, in the event that Embrace® is unable to perform due to a Force

Majeure Event, the Licensee shall have no obligation to pay Embrace® for any fees, costs, and expenses of any kind whatsoever during the term of the Force Majeure Event and shall be entitled to a prorated refund of such fees during the Force Majeure Event if Licensee prepaid for the services hereunder. The affected party shall give notice as soon as practicable to the other party upon the occurrence of a Force Majeure Event, stating the period of time the occurrence is expected to continue. To the extent possible, the affected party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The affected party shall resume the performance of its obligations as soon as reasonably practicable after the end of the Force Majeure Event. If the Force Majeure Event continues for a period of thirty days following the earlier of the commencement of the Force Majeure Event or receipt of the notice required hereunder, either party may thereafter terminate this Contract upon seven days' written notice to the other party and any prepaid sums made under this Contract shall be returned to the Licensee on a prorated basis. The failure to provide the initial notice required hereunder shall not affect a party's right to invoke the rights and privileges set forth herein.

22. PAYMENT TERMS. Notwithstanding anything in the Contract to the contrary, all payments required by the Licensee shall be made in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 et seq.

23. INSURANCE. During the term of the Contract, Embrace® shall maintain Cyber Liability Insurance or Data Breach Coverage, on an occurrence basis, in the minimum amount of \$2,000,000 per occurrence and a minimum of \$2,000,000 in the aggregate. Embrace® waives all rights of subrogation it and its insurers may have against any of the Indemnitees. Further, Embrace® shall provide the Licensee with a certificate of insurance evidencing the satisfaction of the insurance requirements herein prior to commencing the services.

24. COMPLIANCE WITH LAWS. Embrace® shall comply with all applicable laws, ordinances, rules, regulations, and codes, in performing under the Contract.

25. AUTHORITY TO EXECUTE AND NON-ASSIGNMENT. Each signatory hereto represents and warrants that he or she has the proper corporate authority to execute this Amendment and bind his or her entity to the terms and conditions hereof. Moreover, Embrace® may not assign this Contract without the prior written consent of Licensee. Further, Embrace® shall not subcontract out any of the services under this Contract without the prior written consent of Licensee, which consent may be withheld in its sole discretion.

Licensor:

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

FEIN: 20-4100129

August R. Brecht, President

August Brecht

Licensee:

Lake Zurich Community Unit School District 95

FEIN: 36-6004879

Victoria Cullinan, Assistant Superintendent for Business and Operations

Victoria Cullinan

Licensor:

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

KLF / J. Smith

Signature Certificate

Document Ref.: DIREA-MPW6I-P8B9P-KNJME

Document signed by:

	August Brecht Verified E-mail: gus@embraceeducation.com	
IP: 96.40.211.219 Date: 06 May 2021 14:22:37 UTC		

	Victoria Cullinan Verified E-mail: vicky.cullinan@lz95.org	
IP: 209.7.66.24 Date: 11 May 2021 18:23:43 UTC		

Document completed by all parties on:
11 May 2021 18:23:43 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.

