



## EmbraceIEP® Contract

Embrace®  
PO Box 305  
Highland, IL 62249

Waukegan Community Unit School District #60  
1201 North Sheridan Road  
Waukegan, IL 60085

The following is an EmbraceIEP® Contract (hereinafter "contract" or "agreement") for software, website hosting, and support services for special education Individualized Education Programs ("IEPs"). This contract is made between Brecht's Database Solutions, Inc. d/b/a Embrace® Software for Educators (hereinafter "Embrace®", "We", "Us" or "Licensor") and the Board of Education, Waukegan Community Unit School District #60, Waukegan, Illinois (hereinafter "You", "Your" or "Licensee").

**EMBRACE®**  
**EmbraceIEP® (INDIVIDUAL EDUCATION PROGRAM)**  
**WEBSITE LICENSE AND SUPPORT SERVICES 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 it 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. The term "database" for purposes of this Section does not include the District's data uploaded, stored or otherwise coming into contact with Embrace's® database or software.

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), the Illinois School Student Record Act (105 ILCS 10/), the Personnel Record Review Act (820 ILCS 40/), and the Illinois Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/). In the event of a data breach, Embrace® shall immediately notify You in writing via e-mail; take immediate action to remedy the consequences of any breach; advise the District of the action taken and any additional action contemplated; and cooperate with You in addressing questions that may arise as a result of the data breach. The above is in addition to any other obligation Embrace® has under the terms of this Contract.

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. Embrace® shall comply with the statutes and regulations referenced in this paragraph.

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 the Embrace® website or software for any other purpose than agreed to in advance between Embrace® and you.

**6. LIMITED WARRANTY.** Embrace® solely 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. This limited warranty is the only warranty provided 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. Except as otherwise noted herein, 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, secure, or error-free; or (b) the results that may be obtained from the use of the website will be accurate or reliable.

All warranty claims must be made no later than 90 business days after the one-year period that follows the termination of this agreement.

The parties each individually assume all risk for any damage to their respective computers, computer systems, network or loss of data that results from Licensee's using the website or software, including any damages resulting from computer viruses, absent willful and wanton conduct by the party who is established as the source of such damage.

**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. 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
- iePoint 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 , and that student record and employee information is not unlawfully accessed by parties other than District personnel and their associates.
- On-line help manuals
- E-mail support for staff
- Phone support for designated staff
- A user management system will be included allowing a system administrator to create new users, edit existing users, and delete users, This system will be compatible with the District's LDAP system in place at the inception of the contract to support user authentication against District's LDAP system.
- Secure socket layer ("SSL") and session tracking for user authorization (the SSL is the component of the software which encrypts the information going between the website and the user, and confirms the identity of the host and the user)
- Website hosting
- Maintenance and updates
- Daily backups
- Website updates as necessary to maintain Illinois State Board of Education required forms
- 99.99% uptime guarantee

**10. IEP YEARLY COSTS.** Website access is per IEP student per year. Student count used for price calculation is the most recent iStar December child count. "Read Only Users" such as regular education staff are free if added and trained by the district. The initial contract is for a one year period from July 1, 2021 to June 30, 2022. (Prices apply to individual districts, cooperatives, joint agreements, and associations.) Custom forms and/or programs, if requested, are an additional cost and will be billed on an individual basis.

Program Subscription	Price	QTY	Subtotal
EmbraceIEP® Annual Subscription Annual Subscription Fee	\$10.00	2225	\$22,250.00

<b>\$22,250.00</b>			
<b>Additional Components Per District (Annual Fee)</b>			
Embrace504®	\$4,450.00	1	\$4,450.00
<b>\$4,450.00</b>			
<b>Additional Services Per District (Annual Fee)</b>			
SFTP (Secure File Transfer Protocol) Student Import	\$500.00	1	\$500.00
SFTP (Secure File Transfer Protocol) Student Export	\$500.00	1	\$500.00
LDAP (Lightweight Directory Access Protocol) User Authentication	\$500.00	1	\$500.00
<b>\$1,500.00</b>			

Subtotal      **\$28,200.00**

**Total Cost for 21-22 School Year      \$28,200.00**

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

#### **11. GENERAL PROVISIONS.**

A. **Nondiscrimination.** Embrace® represents and warrants that it has in place and shall maintain throughout the term of this Agreement policies and procedures prohibiting nondiscrimination in the work place or in the delivery of its services based on race, creed, color, religion, national origin, ancestry, age, sex, pregnancy, marital status, sexual orientation, physical or mental disability, military status, status upon discharge from military service, citizenship status, sexual orientation or any other category protected by local, state or federal nondiscrimination laws, rules, regulations or ordinances and for investigating and addressing as appropriate allegations of discrimination when they occur.

B. **Student record information, confidentiality.** Embrace® acknowledges and agrees that it is being given access to school student record information and employee information to facilitate and assist the District. As such Embrace® is a "school official" for purposes of school student record sharing and is being provided access to personally identifiable information.

Embrace® further represents and warrants that, in addition to its obligation to comply with the respective privacy laws set forth above, its directors, employees, contractors and agents with access to school student record information maintained on Embrace's® database, computers or computer systems are aware of the confidentiality protections afforded to information contained in student school records as set forth above; and that they have been advised that the information contained in school student records may not be used for a purpose other than that associated with this Agreement or re-released absent specific written consent of the parent or adult student to whom the record pertains, unless otherwise allowed by law, at risk of being prohibited from access to student record information for a period of up to five years.



C. **Amendment.** Any amendment to the terms of this agreement shall be in writing and signed by authorized individuals of both Embrace® and the District.

D. **Severability.** 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.

E. **Independent contractor.** Licensor is an independent legal entity, distinct and apart from District. Licensor confirms and acknowledges that nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. The District shall not have the authority or right to control the activities of Licensor in carrying out the terms of this Agreement.

F. **Taxes.** In all instances relative to any services performed under this Agreement, Licensor shall maintain direct responsibility for the payment of wages and other compensation to any persons who provide services to District under this Agreement, and for any mandatory withholdings and contributions, such as federal, state, and local income taxes, social security taxes, workers' compensation deductions, and unemployment insurance. Vendor shall be responsible for any sales tax, gross receipts tax, excise tax or any other tax of the United States or any state associated with the services provided by Vendor.

12. **INDEMNITY.** You agree to hold Us harmless from any and all third-party liabilities, losses, actions, damages, or claims (including all reasonable expenses, costs, and attorney fees) arising out of or relating to Your breach of this contract or negligent acts or omissions, except as to willful and wanton conduct of Embrace® or its directors, employees, agents, contractors or their successors.

Embrace® agrees to indemnify, defend, and hold Licensee harmless from any and all third-party liabilities, losses, actions, damages, or claims (including all reasonable expenses, costs, and attorney fees) arising out of or relating to Embrace's® breach of this contract or negligent acts or omissions except as to willful and wanton conduct of the District or its employees, agents, contractors or their successors.

13. **DURATION.** This contract for website access to EmbraceIEP® is for a 1 year period. All prices apply to individual districts, cooperatives, joint agreements, and associations during that time period.

Custom forms, software and/or programs are available from Embrace® and, if requested, will be subject to a separate Agreement between You and Us. Customized work is an additional cost and will be billed separately from Your annual contract.

14. **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.

15. **TERMINATION.** Either party may terminate this contract for cause by providing the other party with 30 days' notice of any breach of this contract. The contract will be terminated at the end of the 30 day period unless the

party in breach cures the breach within the 30 day period. Either party may also terminate this contract for convenience by providing the other party with 90 days' written notice. In the event that You terminate the contract before June 30, 2020, Embrace® shall provide a pro rata refund to Licensee of the annual fee for all payments that Licensee has paid. Said refund shall be paid within thirty (30) days of the termination date. This refund will not include payments for SFTP, Training, implementation costs and any additional customization which has been performed at client request.

**16. 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 Licensee's request, Licensor covenants and agrees that it shall maintain Your database information and provide read-only access, to allow downloading of PDF IEP 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's request, Embrace® shall delete any and all Licensee data. Embrace® maintains long-term, off-site, encrypted backups of data which may exist for up to 7 years. Encryption keys used for off-site backups are stored on a separate network from the backup file itself. Data on long-term, off-site backups are preserved for legal/audit purposes. Embrace® acknowledges and agrees that any off site, encrypted backup data remains subject to the student record maintenance and access rules set forth in state and federal law, and shall continue to preserve and protect the privacy of that information consistent with those laws and this Agreement until such time as the data is destroyed. The non-disclosure obligations of Licensor and its Authorized Representatives regarding the information contained in Licensee Data shall survive termination of the Agreement.

Embrace® shall cooperate with District requests for the electronic transfer of District Data stored in its database or on its computers or computer systems to the District. Additional reasonable costs may apply to the same.

**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 Lake County, Illinois.

**20. INSURANCE.** Embrace® shall procure and maintain through an insurance company or companies licensed to conduct business in Illinois insurance with coverage and limits as specified below. Each such policy shall include by endorsement a requirement of at least 30 days written notice to Licensee prior to any termination, cancellation or material amendment to that policy. Upon execution of this contract and on an annual basis thereafter during the term of this contract or any extension thereof, Embrace® shall furnish to Licensee certificate(s) of insurance, policies, and endorsements reflecting the required coverage. The type and minimum limits of insurance required are as follows:

Type	Limits
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Commercial General Liability

1. Per Occurrence: \$1,000,000

2. Aggregate: \$2,000,000

Cyber Liability \$5,000,000

**21. PERSONAL JURISDICTION, VENUE.** We and You hereby acknowledge and confirm that We and You shall be subject to the exclusive personal jurisdiction of the Nineteenth Judicial Circuit Court of Lake County, Illinois or the United States District Court, and that those courts shall be the exclusive venue, relative to any dispute related to this Agreement.

**22. NOTICE.** Any notice required by this contract shall be directed in writing via certified mail, postage prepaid and return receipt requested, and electronic mail (if listed below) to:

**To Embrace®:**

August R. Brecht  
President  
Brecht's Database Solutions, Inc.  
d/b/a Embrace®  
P.O. Bx 304  
Highland, IL 62249  
gus@embraceeducation.com

With a copy to:

Donald K. Schoemaker  
Greensfelder  
12 Wolf Creek Drive., #100  
Belleville, IL 62226  
dks@greensfelder.com

**To Licensee:**

Theresa Plascencia  
Superintendent  
Waukegan Community Unit School District #60  
1201 North Sheridan Road  
Waukegan, IL 60085  
tplascencia@wps60.org

With a copy to:

Dr. Greg Bublitz

Director of Diverse Learners  
Waukegan Community Unit School District #60  
1201 North Sheridan Road  
Waukegan, IL 60085

Notice of any change in the contact information for either party shall be provided to the other party as soon as practicable.

**23. 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.

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

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

FEIN: 20-4100129

August R. Brecht, President

**Licensee:**

Waukegan Community Unit School District #60

**FEIN:**

Greg Bublitz, Director of Diverse Learners

KLF