

VORT Corporation

BCP ONLINE SUBSCRIPTION AGREEMENT

As of July 1, 2017

Thank you for subscribing to BCP Online. This Subscription Agreement (“Agreement”) contains the terms and conditions under which VORT Corporation (“VORT”) provides BCP Online (hereinafter referred to as the “Service”).

1. Certification

- a. *In order for you to qualify to use the Service, you must certify as to the truthfulness of all of the following items 1 a-e below by emailing a signed copy of this Agreement to custserv@vort.com or, if interactive online, checking the box to the left.*
- b. If you are agreeing to this Agreement for an organization, you are agreeing that you have authority to bind that organization, and all references to “you” hereafter shall refer to your organization.
- c. The persons using the Service under this Agreement are professional child development specialists or administrative personnel entering data on behalf of professional child development specialists.
- d. The Service is being provided under this Agreement to (1) an Early Head Start Program, (2) a Head Start Program, (3) a Special Education Program or Early Intervention Program in a public school or a private school receiving funding from the U.S. Dept. of Education, (4) a private school which will be using the Service solely for a Special Education Program or Early Intervention Program for students in a public school, or (5) an independent professional child development specialist or practitioner working as an independent contractor for a program mentioned in 1-4 above.
- e. The persons using the Service under this Agreement are not using it for children who are 18 or older or in post-secondary school.
- f. You have received parental or other permission in the form required by applicable law to provide information concerning children on whose behalf the Service is being utilized.

2. Use of the Service

- a. The Service is being provided to you in accordance with this Agreement and all orders placed via VORT’s BCP Online web order or subscription page or via a written document received from you and accepted by VORT, such as a purchase order (collectively referred to as an “Order Form”).
- b. You can add authorized users (“Users”) to your Account in the registration process or by modifying your Account later. If you have subscribed to the Service as an individual professional child development specialist user, you will not be able to add additional Users.
- c. You agree to provide full and complete information for each User, including the User’s full legal name, valid email address, and any other information requested by us for purposes of verification. Each User will be assigned a sub-account (a “User Sub-Account”) having a unique username and password to access and use the Service as associated with your Account.

- d. Each User Sub-Account shall only be used by the User to whom it is assigned, and shall not be shared with, or used by any other person, including other Users. Users shall be responsible for protecting the security of usernames and passwords, or any other codes associated with the Service known to them, and for the accuracy and adequacy of personal information provided to VORT.
- e. Using the Service, Users will be able to create records for an individual (a “Subject”) under your professional care or supervision. Such record will include data (“Subject Data”) created by Users using the Service to record, monitor, and track a Subject’s behavioral characteristics and progression or regression of such behavioral characteristics.

3. VORT’s Responsibilities

- a. VORT will use commercially reasonable efforts to maintain administrative, physical and technical safeguards for the protection of the security, confidentiality and integrity of Subject Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Subject Data by VORT except (1) to provide the Service and prevent or address service or technical problems, (2) as compelled by law, or (3) as expressly permitted pursuant to this Agreement, as otherwise explained in the Privacy Policy, or as otherwise permitted in writing by you.
- b. VORT shall use commercially reasonable efforts to: (1) provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (2) ensure that the Service performs in material respects with any documentation published by VORT related to the functionality of the Service; and (3) make the Service available 24 hours a day, seven days a week, except for: (i) planned downtime (for which VORT shall make good faith efforts to give at least twenty-four (24) hours’ notice provided via email or through the Service and/or by other means); or (ii) any unavailability caused by circumstances beyond VORT’s reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving VORT employees), computer, telecommunications, internet service provider, or hosting facility failures or delays involving hardware, software or power systems not within VORT’s possession or reasonable control, and denial of service attacks.
- c. VORT may establish general practices and limits concerning use of the Service, including without limitation the maximum amount of Subject Data that may be uploaded and stored via use of Service on an aggregate or per Subject record basis, and the maximum disk space that will be allotted on VORT’s servers on your behalf. VORT has no responsibility or liability for the deletion or failure to store any Subject Data maintained or transmitted by use of the Service. VORT may, but is not required to, log off accounts that are inactive for an extended period of time.

4. Your Responsibilities and Acknowledgements

- a. You are responsible for all activities that occur in your Account(s) and Sub-Accounts, including without limitation ensuring the following: (1) you and Users are in compliance with the terms of this Agreement and all laws applicable to you, (2) all Subject records are created in accordance with applicable law, (3) Subject Data is made available only to those Users and other individuals who have the legal right to access, use and review such Subject Data, (4) all Users prevent unauthorized access to their User Sub-Accounts, (5) unauthorized access or use of the Service is prevented through your Account, (6) VORT is notified promptly of any such unauthorized access or use, (7) Users do not use the Service for infringing,

obscene, threatening, defamatory, fraudulent, abusive, or otherwise unlawful or tortious material, (8) Users do not interfere with or disrupt the Service or introduce damaging code, such as software commonly known as viruses, worms, time bombs, and Trojan horses, and (9) use of commercially reasonable efforts by you to comply with requests made by VORT to assist it in updating or improving various features or functionalities of the Service. Violations of any of the foregoing responsibilities may subject you to immediate termination pursuant to the provisions of Section 10b.

- b. You acknowledge that VORT has no obligation to review Subject Data or your use of the Service.
- c. **To the extent either the Family Educational Rights and Privacy Act (“FERPA”) or Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) applies to you or your Subject Data, you agree to use the Service in strict compliance with those applicable statutes. Specifically, and without limitation, you agree that you will obtain from all applicable parties consent to upload, input, transmit and store personally identifiable information (as defined interpreted under FERPA) or protected health information (as defined and interpreted under HIPAA) through use of the Service in full compliance of all obligations promulgated under those statutes, as applicable, and that you will not allow any unauthorized third party to copy, access, share, distribute or sell any such personally identifiable information or protected health information in violation of those statutes. At this time VORT is unable to serve customers who require Business Associate Agreements due to the burdensome requirements of HIPAA.**
- d. You acknowledge that VORT may use third-party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology and services required to provide the Service. You agree that while VORT endeavors to utilize a minimum of 128-bit Secure Socket Layer (SSL) certificates to protect transactions that occur through use of the Service, data associated with the Service including Subject Data, may not always be encrypted at all times when such data is processed, stored, served, transmitted, and displayed and involve: (1) transmissions over various networks; and (2) changes to conform and adapt to technical requirements of connecting networks or devices.
- e. Your use of the Service is not contingent upon the delivery of any future functionality or features, or dependent on any oral or written public comments made by VORT regarding future functionality or features. The Service and all software, content and information used in connection with the Service are the proprietary property of VORT or its partners or licensors. All rights not expressly granted to you under this Agreement are reserved by VORT including all of their related intellectual property rights.
- f. The Service may provide links to third-party websites. Unless otherwise stated, these links are being provided solely for your convenience, and VORT does not review, screen, or endorse any content, advertising, products, services, or other materials that appear on or are available from such websites. You assume full responsibility for your use of any third-party websites.

5. Ownership and License to Use the Service

- a. During the term of your subscription to the Service, VORT gives you and your Users a limited, nonexclusive, nontransferable, revocable license and right to access and use the Service. You agree not to tamper with the Service or assist anyone in doing so.

- b. The Service and the software comprising the Service are owned exclusively by VORT or its licensors and are protected against copying, translating, modifying or otherwise creating derivative works by United States and international copyright laws and treaties, as well as other laws and treaties. Except for the limited license granted in Section 5a, VORT reserves all rights in the Service and its software, including without limitation all intellectual property rights.
- a. Subject Data is submitted by you through use of the Service. As between VORT and you, you are the exclusive owner of Subject Data.
- b. You confirm that you are the rightful owner or the authorized user of all Subject Data with full rights to allow and authorize us to provide the Service to you with respect to all Subject Data. You will ensure that you have obtained any and all approvals, permissions and authorization for data, and documents and any other information related to the Subject Data or as otherwise needed for VORT to perform its functions.
- c. VORT will not access your Account or User Sub-Account(s) or any of your Subject Data, except (1) to provide the Service, (2) to respond to service or technical problems, (3) to comply with the law, or (4) at your request. You agree to these exceptions.
- d. Notwithstanding the foregoing, you grant to VORT a worldwide, non-exclusive, royalty-free license to aggregate or compile Subject Data with other data, including the Subject Data of other VORT users, so long as such aggregation or compilation omits any data that would enable the identification of you, your Subject(s), or any individual, company or organization, solely to (1) provide the Service, (2) to obtain feedback on and improve the Service, and (3) to provide consultative and analytical information to our users generally. VORT shall have a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on such aggregated data, including all reports, statistics or analyses created or derived therefrom.

7. Right to Modify, Suspend or Discontinue the Service

- a. VORT reserves the right at any time to modify or discontinue, temporarily or permanently, any feature associated with the Service, with or without notice. Your sole remedy in such event shall be to cancel the Service. Your continued use of the Service following any modification constitutes your acceptance of the modification or discontinuance.
- b. VORT reserves the right to temporarily suspend access to the Service for operational purposes, including, but not limited to, maintenance, repairs or installation of upgrades, and will endeavor to provide reasonable notice prior to any such suspension.
- c. Subject to the provisions of Section 10 hereof, VORT shall have the right to permanently discontinue the Service upon notice to you.

8. Privacy and Security Policy

- a. VORT's Privacy and Security Policy relative to the Service (the "Privacy Policy") is available [here](#) and is hereby incorporated into and made a part of this Agreement.
- b. If any portion of this Agreement conflicts with a provision of the Privacy Policy, the provision of the Privacy Policy shall prevail.

9. Payment, Refunds and Subscription Changes

- a. Any subscription for use the Service will be automatically renewed for successive terms. The renewal charge shall be equal to the original signup price, unless otherwise notified in advance by VORT to you via the contact information VORT has on file for you or as posted within the Service. You will have 10 days after the date any renewal fee notification is delivered to you or otherwise posted via the Service to give notice of non-renewal of your subscription, in which case your subscription will terminate at the conclusion of the most recent term and no further charges will be incurred.
- b. You will be charged either on a monthly or yearly basis (as specified on your most current Order Form) for the initial term and any renewal term, in advance and no refunds or credits will be issued for partial months of service, upgrade/downgrade refunds, or refunds for months unused with an active subscription. VORT reserves the right to change its pricing for any new terms.
- c. As part of your Account registration, you were required to provide VORT with a valid credit card for payment of all applicable subscription fees (as specified on the Order Form). Should your credit information require updating, your access to the Service may be suspended until such updated information is received. You authorize VORT to process all amounts owed by you to VORT with your credit card information. All subscription fees are exclusive of all federal, state, municipal or other taxes, and VORT will charge you tax when required to do so.
- d. During your subscription term, you may upgrade your Account by going to www.VORT.com/BCP-Online/ or within your Account and paying any additional applicable charges.
- e. Subject to the provisions of Section 10, there are no charges for canceling a subscription, and subscriptions canceled prior to the end of the then-current expiration date will not be charged again in the following applicable monthly or yearly term. The amount charged on the next billing cycle will be automatically updated to reflect any changes to the subscription, including upgrades or downgrades. Subscription changes, including downgrades, may result in loss of content, features, or an increase or reduction in the amount of available capacity for content provided by VORT.

10. Cancellation and Termination

- a. You may cancel your subscription at any time by contacting us via your Account.
- b. VORT in its sole discretion has the right to suspend or discontinue providing the Service to you, without notice, for non-compliance with this Agreement, and pursue any other remedy legally available to it. Should any such suspension or discontinuance occur, you shall remain obligated to pay all fees owed for the remainder of the then-current subscription term, all of which fees shall become immediately due and payable in full to the extent not yet paid. VORT may also terminate and delete your Account, your access to all or portions of the Service or your use thereof for any other reason or no reason at any time, in VORT's sole discretion; provided, however, you shall not be obligated to pay any fees that would otherwise become owed for the remainder of the then-current subscription term and if you pre-paid any amounts VORT shall reimburse you any pre-paid and unused subscription fees based on the remaining term of your subscription.

- c. Upon your cancellation, or in the event that VORT elects to permanently discontinue the Service and remove the Service from the market, you shall have 30 days to access your Account and download/export your Subject Data. Upon expiration of such 30-day period, VORT shall exert commercially reasonable efforts to delete your Subject Data.

11. Disclaimer of Warranties and Limitation of Liability

- a. VORT strives to make the Service a great offering, but there are certain things that VORT cannot guarantee. THEREFORE, TO THE FULLEST EXTENT PERMITTED BY LAW, VORT AND ANY OFFICER, DIRECTOR, EMPLOYEE, SUBCONTRACTOR, AGENT, SUCCESSOR, OR ASSIGN OF VORT OR AFFILIATES, PARTNERS, SUBSIDIARIES, SUPPLIERS AND DISTRIBUTORS (COLLECTIVELY, THE "VORT PARTIES") MAKE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ABOUT THE SERVICE. THE SERVICE IS PROVIDED "AS IS" AND "WITH ALL FAULTS". THE VORT PARTIES ALSO DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, MEETING ANY SPECIFIC REQUIREMENTS, ERRORS, ACCURACY, RELIABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE SERVICE, NOT CONTAINED IN THESE THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY THE VORT PARTIES. THE VORT PARTIES MAKE NO WARRANTY OF ANY KIND TO YOU OR ANY THIRD PARTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE USED BY YOU IN CONNECTION WITH THE SERVICE.
- b. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE VORT PARTIES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF USE, DATA, BUSINESS, OR PROFITS, GOODWILL, INTANGIBLE LOSSES REGARDLESS OF LEGAL THEORY, WHETHER OR NOT VORT HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE MAXIMUM COMPENSATORY DAMAGES (INDIVIDUALLY OR IN THE AGGREGATE) FOR ALL CLAIMS RELATING TO THE SERVICE THAT WILL BE PAYABLE TO YOU BY THE VORT PARTIES SHALL BE THE LOWER OF THE LAST PAID INVOICE OR \$500.

12. Indemnification

You shall defend, indemnify, and hold VORT harmless against any loss, damage, or costs finally awarded against VORT (including reasonable attorneys' fees) incurred in connection with claims, demands, suits or proceedings made or brought against VORT by a third party alleging that (1) your use of the Service other than in compliance with this Agreement violates applicable law, (2) Subject Data, and/or any materials provided to VORT necessary to perform the Service, infringe the intellectual property rights of a third party, or (3) a breach by you of any duty owed to a third-party (inclusive of any duties owed under FERPA or HIPAA to any Subject), (4) an act or omission by you or your Users which in effect constitutes a breach of this Agreement, or (5) the commission by you of any negligent or willful act.

13. Right to Amend this Agreement

- a. VORT reserves the right, in its sole discretion, to modify this Agreement at any time by informing you of such modifications when you attempt to sign-in to your Account and requiring you to agree to them as a condition of continued Service. Your use of your Account or the Service thereafter shall constitute your acceptance of the new terms. Should you have any questions regarding the specific amended terms, please direct them to custserv@vort.com.
- b. In addition to prompting you to accept any changes upon sign-in, VORT shall take reasonable efforts to provide registered members notice (via e-mail, push notification, text message, or other automated format) of any material and substantial changes to this Agreement.

14. Governing Law and Venue

This Agreement and performance under this Agreement shall be governed by the laws of the State of California, excluding that portion relating to conflicts of law, and the validity, interpretation and effect shall be governed by the laws of California applicable to contracts executed and performed wholly therein. The Federal and State courts within the County of San Mateo in the State of California shall have exclusive jurisdiction to adjudicate any interpretation or dispute arising out of this Agreement. Each party hereto expressly consents to the personal jurisdiction of, and venue in, such courts.

15. Miscellaneous

- a. You may not assign any of your rights or delegate any of your duties under this Agreement, except with the prior written consent of VORT. Any purported assignment of rights or delegation of duties in violation of this section is void.
- b. This Agreement, any applicable Order Form, and the Privacy Policy constitute the entire agreement between you and VORT regarding your registration and use of the Service and supersedes all prior agreements, negotiations, representations, and proposals, written or oral, related to its subject matter. The preprinted terms on any purchase order placed under this Agreement shall have no force or effect, and VORT shall have no obligation to perform any typed or handwritten purchase order term that is inconsistent with this Agreement, unless VORT has agreed to such term in writing. There are no conditions precedent to the effectiveness of this Agreement other than those that may be expressly stated in this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealing. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of the other party except for those expressly contained in this Agreement.
- c. The failure of VORT to exercise or enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision.
- d. The Service is designed for use solely within the United States. If you choose to use the Service outside the United States, you do so at your own risk, and you represent and warrant that VORT has no obligations whatsoever to comply with any laws of any non-United States jurisdiction that may otherwise be applicable to you.
- e. If any provision contained in this Agreement is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. The

failure of VORT to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.

Click here to agree to the terms of this Agreement

Or, sign and email this Agreement to custserv@vort.com

Agreed: _____ (Signature)

Print Name: _____

Agency: _____

Date: _____