

**BRASHER FALLS CENTRAL SCHOOL DISTRICT**

**REQUEST FOR PROPOSAL**

**FOR**

**UNIVERSAL PRE-KINDERGARTEN PROGRAM SERVICES**

**AT THE**

**BRASHER FALLS CENTRAL SCHOOL DISTRICT**

**1039 State Highway 11C**

**Brasher Falls, NY 13613**

BRASHER FALLS CENTRAL SCHOOL DISTRICT  
Request for Proposal  
UNIVERSAL PRE-KINDERGARTEN PROGRAM

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# Part I

## RFP Information

**BRASHER FALLS CENTRAL SCHOOL DISTRICT**  
**Request for Proposal**  
**UNIVERSAL PRE-KINDERGARTEN PROGRAM**

**Section 1 - Introduction and Purpose**

- 1.1 The Brasher Falls Central School District (“District”) is located in St. Lawrence County, New York. The District anticipates being granted funds pursuant to 3602-e of the Education Law to implement a pre-kindergarten program through collaborative efforts with eligible agencies. The District requires services for the following students:
- Up to 14 students, age 4, for ½ day session of 2.5 hours
- 1.2 The District seeks proposals by eligible agencies (“Proposer”) as defined in Section 3602-e of the Education Law and in the Regulations of the Commissioner of Education (8 NYCRR 151-1) to serve as an independent contractor to collaborate with the District in providing a pre-kindergarten instructional program for the District during the 2023-2024 school year. After the 2023-2024 school year, the District shall have the option (in its discretion) to renew the agreement upon written notice to the successful contractor for five (5) addition 1-year terms (2024-2025 school year, 2025-2026 school year, 2026-2027 school year, 2027-2028 school year, and 2028-2029 school year).

**Section 2 - Time Line and Receipt of Proposals**

I.	Pre-Proposal Meeting	To be scheduled if deemed appropriate
II.	Release of RFP's to Potential Vendors	June 7, 2023
III.	Return of Proposals	July 10, 2023 by 2:00PM
IV.	Review of Proposals and Selected Vendor Presentations (if any)	July 11 – July 14, 2023
V.	Implementation	September 1, 2023-June 30, 2024

- 2.1 Three copies of the proposal and other required documents must be sealed in an envelope marked with the name and address of the Proposer and must be received **no later than** July 10, 2023 by 2:00PM at the offices of:

**BRASHER FALLS CENTRAL SCHOOL DISTRICT**  
**1039 State Highway 11C**  
**Brasher Falls, NY 13613**  
**ATTN: CHRISTOPHER ROSE, SUPERINTENDENT**

- 2.2 The proposal submitted by the individual Proposer(s) is the document upon which the

District will make its initial judgment regarding the Proposer's qualifications, understanding of the District's scope and objectives, methodology, and ability to complete services under the Contract contained at Exhibit "A" (the "Contract Documents").

- 2.3 Those submitting Proposals do so entirely at their expense. There is no express or implied obligation by the District to reimburse any firm or individual for any costs incurred in preparing or submitting Proposals, preparing or submitting additional information requested by the District, or for participating in any selection interviews.
- 2.4 Submission of any Proposal indicates acceptance of all of the terms and conditions contained in the Request for Proposal ("RFP"). Any exceptions must be highlighted and noted in an addendum to the proper submittal.
- 2.5 The District reserves the right to reject any and all Proposals, in whole or in part, submitted in response to its RFP.
- 2.6 The District reserves the right to waive any and all informalities and to disregard all non-conforming, non-responsive or conditional Proposals.
- 2.7 The District may, at any time by written notification to all Proposers, change any portions of the RFP.
- 2.8 During the evaluation of Proposals, the District may require clarification of information and may invite Proposers to an oral presentation to amplify and/or validate Proposal contents.

### **Section 3 - Proposal Submission**

- 3.1 The Proposal shall include all of the information requested in Part II of this RFP.

### **Section 4 – Contract Term:**

- 4.1 The initial contract period shall be for one year. The District may at the end of this period extend the agreement for up to five (5) additional 1-year periods. The parties will mutually agree to the fee for services and the actual service deliverables for the additional period(s).
- 4.2 The Proposer acknowledges and agrees to be bound by all the terms and conditions as set forth in the Contract Documents contained in Exhibit "A".
- 4.3 The Successful Proposer shall execute a contract with the District in substantial conformance with this RFP.

### **Section 5 - Restriction on Disclosure and Use of Data:**

- 5.1 Upon submission, proposals and other materials submitted by Proposers become records subject to the Freedom of Information Law (FOIL) of New York State. The District may deny public access to such records or applicable portions which are trade secrets and are maintained for the regulation of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise, are specifically exempted from disclosure by state or federal statute, or are otherwise exempted from disclosure under FOIL. Proposers should mark confidential only those portions of their proposals which they believe are not required to be disclosed under FOIL. The District, however, may be obligated to disclose information consistent with the requirements of FOIL notwithstanding any such markings made by Proposers.

## **Section 6 - Proposal Evaluation:**

- 6.1 Upon review of the proposals submitted, the Proposer shall be selected based on the following criteria:
- (1) the eligible agency's capacity to effectively, efficiently and immediately provide needed services;
  - (2) the ease of utilization and accessibility of the program to parents and/or guardians;
  - (3) capacity to provide ongoing staff development;
  - (4) staffing patterns and qualifications;
  - (5) documentation that all applicable health and safety codes and licensure or registration requirements are met;
  - (6) anticipated fiscal share and other resources will be contributed to the universal prekindergarten program;
  - (7) current program design and experience in providing developmentally-appropriate programs;
  - (8) fiscal solvency;
  - (9) stability of staff, rate of turnover and ability to fill vacancies in a timely manner;
  - (10) articulated mission/philosophy statements;
  - (11) record management and documentation procedures followed by the agency;
  - (12) administrative structure;
  - (13) capacity and experience in serving children with disabilities;
  - (14) capacity and experience in serving children and their parents and/or guardians when they are limited English proficient;
  - (15) children's progress as demonstrated by assessments; and
  - (16) demonstrated effectiveness of the eligible agency's program.
- 6.2 Proposals will remain valid until the execution of a contract by the District, unless otherwise rejected consistent with this RFP per Section 9.2.
- 6.3 The District will award a contract(s) resulting from this solicitation to the most responsible Proposer or Proposers whose proposal, in the sole judgment of the District, will be most advantageous to the District , after cost and other factors, specified elsewhere in this request are considered.
- 6.4 The Proposer shall allow the District to conduct at a minimum one site visit prior to

contracting for services.

#### **Section 7 - Alternatives and Deviations:**

- 7.1 Proposer may include in its Proposal items not specified in this RFP, which it would consider pertinent. All such alternatives must be listed separately from the Proposal and the cost thereof must be separate and itemized. Any and all deviations from the terms and conditions of this RFP must be listed in the attached Statement of Compliance.

#### **Section 8 - Specification Clarification:**

- 8.1 All questions about the meaning or intent of the specifications must be submitted in writing to:

CHRISTOPHER ROSE, SUPERINTENDENT

Via E-Mail: [crose@bfcsd.org](mailto:crose@bfcsd.org)

Replies will be issued by the Addenda mailed or delivered to all parties recorded as having received the proposal documents. Questions received less than four (4) days prior to the date of submission of Proposals will not be answered. Only questions answered by formal written Addenda will be binding.

#### **Section 9 - Withdrawal of Proposals:**

- 9.1 Proposals may be withdrawn by written notice received at any time before award. Proposals may be withdrawn in person by a Proposer or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.
- 9.2 Each proposal shall constitute a firm offer for a period of ninety (90) days from the Proposal opening date. After expiration of the firm offer period, if no contract award has been made, a Proposal may be withdrawn if the Proposer does so in writing directed to Christopher Rose, Superintendent; otherwise, Proposals remain in effect consistent with the terms of Section 6.2 of this RFP.

#### **Section 10 - Insurance and Security Requirements:**

- 10.1 The Successful Proposer shall procure and maintain at its own expense and from insurers acceptable to District, such insurance policies written through insurance companies licensed to do business in the State of New York and who are AM Best Rated A- or better, and will fully protect Successful Proposer and District from all claims for injuries or damages, including attorneys' fees, by whomever caused, arising out of the actions of the Successful Proposer, whether before or after its completion. Successful Proposer shall also maintain at its own expense any other insurance required by law, in any event to include the following:

- General Liability, Including Personal Injury; Broad Form  
\$1,000,000 (per occurrence)
- Property Damage; Explosions;  
\$2,000,000 (aggregate)
- Completed Operations and Contractual Liability
- Sexual Abuse & Molestation  
\$1,000,000 (per occurrence)  
\$2,000,000 (aggregate)
- Automobile Liability, for all owned and non-owned vehicles  
\$1,000,000 (combined single limit)
- Umbrella Liability  
\$3,000,000
- Worker's Compensation including Disability  
As required by law
- Employer's Liability  
\$1,000,000/\$1,000,000/\$1,000,000

BRASHER FALLS CENTRAL SCHOOL DISTRICT, shall be named as additional insured on all of these policies, including the coverage for ongoing and completed operations, except Worker's Compensation. If the General Liability policy is subject to an aggregate limit, it shall contain an aggregate limit per Site or similar endorsement. All such policies shall be primary and non-contributory over any and all collectible insurance, and shall provide that they will not be canceled, allowed to expire or restrictively modified without thirty (30) days' prior notice to the District. All such insurance must be evidenced by certificates of insurance endorsed as required above, in form satisfactory to the District. Any policy deductibles shall be borne by Successful Proposer. The District shall be entitled, upon request, to a certified copy of Successful Proposer's insurance policies for any period of time applicable to Successful Proposer work hereunder.



## Statement of Compliance

Please Submit as part of your proposal the following information:

**RE: The Brasher Falls Universal Pre-Kindergarten Program**

We hereby acknowledge receipt of the Brasher Falls CSD-Universal Pre-K RFP and verify that our proposal conforms to the RFP except as detailed below:

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

## Part II

# Proposal Submission

# Brasher Falls Central School District

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The Proposal for the **Universal Pre-Kindergarten Program** should include under separate cover the following:

## **Section I - General Information**

1. Legal Name of Organization  
DBA Name (If different than above)  
Principal location: City, State, Zip Code  
Tel. number and Fax number  
Any additional office locations.  
  
Contact information for the Administrator/Site Coordinator and other key personnel.
2. Please indicate how your company is organized (corporation, partnership, LLC, etc.)  
What is your state of organization?  
How long has your organization been in business?
3. Federal Tax ID Number.
4. Provide copies of all current licenses your organization holds regarding the operation of your business. Provide certifications your organization holds and employees hold regarding the operation of your business.

## **Section II - Implementation**

5. A complete outline including a detailed time schedule of the implementation process (e.g. parent communications, parent/student orientations/Open House, special events, parent/teacher conferences, progress reports) specifically for the District assuming a September 1, 2023 start-up date.

## **Section III - Services, Objectives and Experience**

6. A description of the services to be provided by the Proposer;
7. A detailed narrative which describes how the Proposer will meet the following, as set forth and described in the Contract Documents contained in Exhibit "A", as well as the New York State Universal Pre-Kindergarten Program Required Components and Required Instructional Components documents (Exhibits "B" and "C")
  - a. the District's Mission and Target Goals.
  - b. Service Requirements.
  - c. Curriculum and Assessment;
  - d. Supervision and Professional Development.
  - e. Mutual Communication requirements.

- f. Safety and Access to the School Building, including the safety protocols the Provider will establish for security, access, and entry into buildings.
  - g. A budget of proposed expenditures for services rendered.
- 8. A detailed narrative and description of the Proposer's staff qualifications/ experience, the Proposer's qualifications and experience to carry out the requested services, including, but not limited to, staffing patterns, child-staff ratio and administrative structure, number of years in business, length of experience, and experience with administering pre-kindergarten programs;
- 9. Resumes of professional staff members who may be involved with the District;
- 10. The Cost to the District, in terms of cost per child, as calculated on the Cost Proposal Form at Part III of this RFP;
- 11. The Name and title of the person(s) authorized to bind the Proposer, together with the main office address, and the telephone number (including area code);
- 12. In the event the Proposer has not previously provided a pre-kindergarten instructional program to the District, please provide at least four (4) references from similar projects including name, addresses, and telephone numbers;
- 13. The attached Statement of Compliance;
- 14. Provide any additional information that would distinguish your services to the District;
- 15. In addition, the District may perform such investigations it deems necessary to determine the ability of the Proposer to perform the work. The Proposer shall furnish to the District, within five (5) days of a request, all such information and data for this purpose as may be requested. The District reserves the right to reject any Proposal if the information submitted by, or investigation of, such Proposer fails to satisfy the District that such Proposer is properly qualified to carry out the obligations contained in the Contract Documents and to complete the work contemplated therein. Conditional Proposals will not be accepted.

## Part III

# Cost Proposal Form

# Brasher Falls Central School District

## COST PROPOSAL FORM

### Universal Pre-kindergarten Program

#### Submit to:

**BRASHER FALLS CENTRAL SCHOOL DISTRICT  
1039 State Highway 11C  
Brasher Falls, NY 13613**

1. The undersigned Proposer proposes and agrees, if this Proposal is accepted, to enter into a Contract with the owner in the form included at Exhibit "A" (the "Contract Documents") to complete all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Term indicated in this Proposal and in accordance with the Contract Documents.
2. Proposer accepts all of the terms and conditions of the RFP and the Contract Documents. This proposal may remain open for ninety (90) days after the day of Proposal opening. Proposer will sign the Contract and submit other documents required by the Contract Documents within fifteen (15) days after execution.
3. In submitting this Proposal, Proposer represents, as more fully set forth in this Contract, that:
  - (a) Proposer has examined copies of all the Contract Documents and of the following addenda: (If none, so state)

Date:

Number:

(receipt of all of which is hereby acknowledged)

- (b) Proposer has examined the legal requirements (federal, state, and local laws, ordinances, rules, and regulations) and the conditions affecting cost, progress, or performance of the contract and has made such independent investigation as Proposer deems necessary;

4. Proposer will complete the work for the following price(s):

2023-2024 Pre-Kindergarten Program

A. Number of Children \_\_\_\_\_

B. Cost Per Child \_\_\_\_\_

C. Total Cost ("Contract Price") \_\_\_\_\_

5. Communication concerning this Proposal shall be addressed to: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Proposer

\_\_\_\_\_  
District

## **EXHIBIT “A” CONTRACT TEMPLATE**

### **AGREEMENT FOR UNIVERSAL PRE-KINDERGARTEN (UPK) SERVICES**

**THIS AGREEMENT** (“Agreement”) is between the **Brasher Falls Central School District**, with offices located at 1039 State Highway 11C, Brasher Falls, NY 13613, (hereinafter the “District”), and \_\_\_\_\_ with offices located at \_\_\_\_\_ (hereinafter the “Provider”).

**WHEREAS**, the District is eligible for aid under Section 3602-e of the Education Law for a Universal Pre-Kindergarten Program, (hereinafter, the “Program”); and

**WHEREAS**, the Provider is an eligible agency approved by the Commissioner of Education to implement a prekindergarten program in accordance with Section 3602-e of the Education Law and Regulations of the Commissioner; and

**WHEREAS**, the District agrees to contract with Provider and Provider agrees to perform Pre-Kindergarten services for and on behalf of the eligible students assigned to Provider by District.

**NOW, THEREFORE**, the parties agree as follows:

1. **Term**: The term of this Agreement is September 1, 2023 through June 30, 2024. The District may terminate this Agreement prior to the expiration of the term:

- With or without cause upon thirty (30) days’ written notice to the Provider.

In the event the Agreement is terminated under this Section, all performance and financial obligations would cease upon the termination date.

2. **Provider Services and Obligations**: The minimum services to be provided and requirements to be met by Provider hereunder are as follows:

- a. The Provider will design and implement the Program in accordance with Subpart 151-1 of the rules of the New York State Education Department. The District curricular framework and instructional philosophy will be incorporated into lessons. The Provider will provide meals to program participants during each day the program is in session in accordance with applicable laws and regulations at no additional cost to the program participants or the District.



- b. Instruction shall be provided on all days that the District is in session, and Provider's UPK teachers and aides will work the same days as District teachers and aides, including Superintendent conference days. Days of instruction must be provided within the public school calendar year (September through June) and cannot extend past June 30th.
- c. Provider shall meet and comply with all of the uniform quality standards set forth in Section 151-1.3 of the Regulations of the Commissioner of Education for universal prekindergarten classrooms, which are incorporated herein.
- d. Provider shall follow the UPK timeline of progress reports and parent-teacher conferences.
- e. Provider shall ensure that a minimum of 2.5 hours of instruction is provided each half-day the Program is in session.
- f. The Program will be operated 5 days a week except as set forth herein.
- g. The Program will have a maximum slot allocation of fourteen (14) students and will have qualified teachers and paraprofessionals in a number at least commensurate with the number of students, as required by Section 151-1.3(e) of the Commissioner's Regulations. The Program's class size will not exceed the class size authorized by Section 151-1.3(e) of the Commissioner's Regulations.
- h. Provider shall prepare and maintain a daily attendance record for each student.
- i. In the event the District is closed or delayed, the Provider will be notified by the District and will follow the District schedule. In the event that the Provider is closed or delayed, the Provider will notify the District as soon as that decision is made but no later than 6:30 AM on the date of closure/delay.
- j. Services shall be provided to those children designated to the Provider by the District as eligible for the Services. The District may change such designation and/or number of children from time to time or at any time. A complete enrollment list will be provided by the District, to include the name, address and birth date of the student, the name(s) of the parent(s), proof of residency and proof of income eligibility, if applicable.

- k. Instruction shall be delivered by a teacher who holds appropriate New York State certification and a copy of said certification must be provided to the District, or as otherwise authorized to provide services by applicable law.
  - l. The Provider's facilities shall provide adequate classroom space and meet the appropriate New York State fire code regulations and a copy of the inspection must be provided to the District.
  - m. A valid Certificate of Occupancy must be provided to the District.
  - n. The Provider will provide support services to eligible children and their families necessary to support the child's participation in the prekindergarten program.
  - o. The Provider shall ensure that the environment and learning activities of the prekindergarten program are designed to promote and increase inclusion and integration of preschool children with disabilities and to ensure that participating children with limited English proficiency are provided equal access to the Program and its opportunities.
  - p. Provider will provide an on-site education director who possesses a bachelor's degree or higher in the area of early childhood education. If Provider's on-site education director is uncertified, a plan of study to obtain a certification valid for service in the early childhood grades within 5 years must be submitted to the District prior to the start of service.
3. **Obligations of District:** The requirements to be met by the District hereunder are as follows:
- a. The District will be fully responsible for the enrollment process, and will manage the registration of students through the District Office.
  - b. The District will evaluate and designate students eligible for services with the Provider and provide a complete enrollment list to the Provider, to include the name, address and birth date of the student, the name(s) of the parent(s), proof of residency and proof of income eligibility, if applicable.
  - c. The District will notify the Provider of its final student assignments on or before September 1, 2023.
  - d. The District will provide transportation to eligible students to and from the Program.

- e. The District shall have the right to have its representative visit the Program for information and assessment purposes.

4. **Compensation:**

- a. Compensation will be based on the number of students enrolled, multiplied by a per pupil allocation amount as provided below:

Number of Children	1.0 session/.5 session (cost per child)
< 15	11,964/5,982

- b. Payments will be made in equal installments in October, January, April and June.
- c. No parent or any other person shall be required or requested to make any payment for tuition, maintenance, transportation, in addition to the payments made by the District pursuant to this Agreement for the provision of services contracted by the Provider.
- d. Provider shall be solely responsible for employing and compensating the instructors and other personnel necessary for the service.

5. **Disclosure and Compliance:** Provider hereby confirms that they are familiar with the requirements of 8 NYCCRR Section 151-1, et seq. pertaining to Universal Pre-Kindergarten Programs. Provider's services shall be in accordance with Section 3602-e of the NY Education Law and 151-1 of the Regulations of the Commissioner of Education as now in effect or hereinafter amended and shall comply with any other applicable federal, state and local laws. It is understood and agreed by the parties that failure to do so shall render this Agreement void, in which case, the Provider shall be entitled to no compensation for the portion of the school year in which such compliance ceases to be maintained and shall reimburse the District any amount already received for that portion of such school year. Provider shall observe and require that all employees maintain applicable requirements relating to confidentiality of records and information.

6. **Insurance:** The Provider shall procure and maintain at its own expense and from insurers acceptable to District, such insurance policies written through insurance companies licensed to do business in the State of New York and who are AM Best Rated A- or better, and will fully protect Provider, District from all claims for injuries or damages, including attorneys' fees, by whomever caused, arising out of the actions of

the Provider, whether before or after its completion. Provider shall also maintain at its own expense any other insurance required by law, in any event to include the following:

- General Liability, Including Personal Injury; Broad Form  
\$1,000,000 (per occurrence)
- Property Damage; Explosions;  
\$2,000,000 (aggregate)
- Completed Operations and Contractual Liability
- Sexual Abuse & Molestation  
\$1,000,000 (per occurrence)  
\$2,000,000 (aggregate)
- Automobile Liability, for all owned and non-owned vehicles  
\$1,000,000 (combined single limit)
- Umbrella Liability  
\$3,000,000
- Worker's Compensation including Disability  
As required by law
- Employer's Liability  
\$1,000,000/\$1,000,000/\$1,000,000

BRASHER FALLS CENTRAL SCHOOL DISTRICT, shall be named as additional insured on all of these policies, including the coverage for ongoing and completed operations, except Worker's Compensation. If the General Liability policy is subject to an aggregate limit, it shall contain an aggregate limit per Site or similar endorsement. All such policies shall be primary and non-contributory over any and all collectible insurance, and shall provide that they will not be canceled, allowed to expire or restrictively modified without thirty (30) days' prior notice to the District. All such insurance must be evidenced by certificates of insurance endorsed as required above, in form satisfactory to the District. Any policy deductibles shall be borne by Provider. The District shall be entitled, upon request, to a certified copy of Provider's insurance policies for any period of time applicable to Provider's work hereunder.

7. **Reports and Records:**

- a. Provider agrees to be subject to inspection or review upon request by the District.
- b. Provider shall furnish and/or maintain the following information on staff and

children enrolled in its programs, pursuant to Section 151-1 of the Regulations of the Commissioner of Education including, but not limited to:

- A. Documentation that its services are delivered by a New York State certified teacher, or documentation that services are delivered by an individual otherwise authorized by law. If applicable, a copy of such certification will remain on file with the District throughout the entire school year that services are provided.
- B. UPK students' attendance records.
- C. UPK financial records.
- D. Any child specific information, to include health records, progress reports and completed assessments using the District's approved assessment form.
- E. Daily/weekly lesson plans.
- F. School or program calendar for attendance days.
- G. Parental activity calendar.
- H. Certificate of Occupancy.
- I. Certificate(s) of Insurance.
- J. Fire Drill Log and procedures.

- c. All UPK-mandated paperwork shall be collected, maintained and made available to the District as deemed necessary by District or New York State Education Department personnel.
- d. The Provider shall provide any other reports and information as may be required by the District's Superintendent (or designee) regarding implementation of the UPK program.

- 8. **Indemnification**: The Provider agrees to defend, indemnify and hold the District, its officers, employees, and agents, harmless, at all times during and after the term of this Agreement, from the against all claims, damage, losses, and expenses (including without limitations, reasonable attorneys' fees) arising from, or in any way connected with the negligent or intentional acts or omissions of, or a breach of any term of or condition contained in this Agreement by the Provider, its employees, agents or representatives.
- 9. **Independent Contractor Status**: It is understood and agreed that the Provider, and its

employees and agents, is an independent contractor, and not an employee of the District, and that they cannot bind the District to any obligation, or subject it to any liability whatsoever. As an independent contractor, the Provider and any persons engaged by them shall not be entitled to any medical, health, pension, retirement, disability, unemployment, workers compensation or other insurance or coverage, or any other benefit, similar or dissimilar, from the District. Both parties shall make all tax or other governmental reports in accordance with its status as independent contractors.

10. **Fingerprinting:** Provider agrees to use best efforts to cooperate with the District to have any individuals providing services who will have a direct contact with students to furnish fingerprints and submit to a criminal background check and clearance by the State Education Department's Office of School Personnel Review and Accountability (OSPRA) prior to performing services. These best efforts may include, but are not limited, to completing paperwork and filing such paperwork with an appropriate agency, e.g., BOCES, for the purpose of submitting fingerprints for criminal clearance. Provider shall be solely responsible for any costs associated with the required fingerprinting and criminal clearance. Provider shall provide a complete roster of all persons who will and/or may be providing services under this Agreement and shall further be responsible for providing updated lists as necessary.

**11. Data Privacy and Security:**

- A. **Protection of Confidential Data.** Provider shall provide its services in a manner which protects Student Data (as defined by 8 NYCRR 121.1(q)) and Teacher or Principal Data (as defined by 8 NYCRR 121.1(r)) (hereinafter "Confidential Data") in accordance with the requirements articulated under Federal, New York State and local laws and regulations, including but not limited to the foregoing:
- (a) Provider will adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework.
  - (b) Provider will comply with the School District Data Security and Privacy Policy, Education Law § 2-d, and 8 NYCRR §121.
  - (c) Provider will limit internal access to personally identifiable information to only those employees or sub-contractors that need access to provide the contracted services.

- (d) Provider will not use the personally identifiable information for any purpose not explicitly authorized in this Agreement.
- (e) Provider will not disclose any personally identifiable information to any other party without the prior written consent of the parent or eligible student, unless otherwise authorized pursuant to applicable law.
- (f) Provider will maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable information in its custody.
- (g) Provider will use encryption to protect personally identifiable information in its custody while in motion or at rest.
- (h) Provider will not sell personally identifiable information nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.
- (i) In the event Provider engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on the Provider shall apply to the subcontractor.

B. Data Breach. In the event that Confidential Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to the School District without unreasonable delay and not more than seven calendar days after the discovery of such breach. Provider shall follow the following process:

- (a) The security breach notification shall be titled “Notice of Data Breach,” shall be clear, concise, use language that is plain and easy to understand, and to the extent available, shall include: a brief description of the breach or unauthorized release; the dates of the incident in the date of discovery; a description of the types of Confidential affected; an estimate of the number of records affected; a brief description of the Provider’s investigation or plan to investigate; and contact information for representatives who can assist the School District with additional questions.
- (b) The Provider shall also prepare a statement for parents and eligible students which provides information under the following categories:

“What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.”

- (c) Where a breach or unauthorized release of Confidential Data is attributed to Provider, and/or a subcontractor or affiliate of Provider, Provider shall pay for or promptly reimburse the School District for the cost of notification to parents and eligible students of the breach.
- (d) Provider shall cooperate with the School District and law enforcement to protect the integrity of investigations into the breach or unauthorized release of Confidential Data.
  - i. The name and contact information of the reporting School District subject to this section.
  - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
  - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
  - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
  - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
  - vi. Information about what the agency has done to protect individuals whose information has been breached.
  - vii. Advice on steps that the person whose information has been breached may take to protect himself or herself.
- (e) Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Protected Data or any portion thereof, and agrees to provide Client, upon request, with a copy of said written incident response plan.



- C. 2-d Addenda. The following addenda attached hereto shall be incorporated into the Agreement, and shall supersede any inconsistent provisions in the Agreement:
- a. Addendum A: Parents' Bill of Rights for Data Privacy and Security;
  - b. Addendum B: Parents' Bill of Rights – Supplemental Information Addendum;
  - c. Addendum C: Provider's Data Security and Privacy Plan.
12. **COVID-19 Health and Safety Compliance**: Provider shall comply with all federal, state, local laws, rules, regulations, executive orders, guidance and other requirements applicable to or arising from the COVID-19 pandemic while performing duties under the Agreement. Provider shall defend, indemnify and hold harmless the District, its Board of Education, its officers, administrators, employees, agents and representatives from and against all claims, demands, causes of action, liabilities, losses, damages, judgments, penalties, costs and expenses (including reasonable attorneys' fees) arising out of or caused by negligent or intentional acts or omissions of Provider in connection with the COVID-19 pandemic (for example, arising from Provider's failure to comply with COVID-19 health and safety protocols).
13. **Miscellaneous**:
- a. Neither party may assign its rights or obligations under this Agreement without the written consent of the other party. Any attempt to assign or transfer any of the rights or obligations hereunder is void.
  - b. This Agreement constitutes the entire agreement between the parties. No change may be made in any of its terms without the written consent of the parties.
  - c. Paragraph headings have been provided for convenience of reference only and shall not control, affect the meaning or be used in the interpretation of any provisions of this Agreement.
  - d. To the extent that any portion of this Agreement is deemed by a Court of competent jurisdiction to be unenforceable, the unenforceable provisions shall be deemed eliminated, but only to the extent necessary to permit the remaining provisions to be enforced.
  - e. This Agreement shall be governed by and construed under the laws of the State of New York.
  - f. St. Lawrence County, New York shall be the venue of any action or proceeding arising from or related to this Agreement.

g. The District shall not be liable for payment under this Agreement if Provider's services are no longer needed by the District due to any of the following causes (which events and/or circumstances are hereinafter referred to as "Force Majeure"), to the extent beyond the parties' reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy; the parties stipulate that Force Majeure shall include the novel coronavirus COVID-19 pandemic which is ongoing as of the date of the execution of this Agreement.

This Agreement is entered into effective September 1, 2023.

Dated: \_\_\_\_\_, 2023

[INSERT PROVIDER NAME]

\_\_\_\_\_  
By: \_\_\_\_\_

BRASHER FALLS CENTRAL  
SCHOOL DISTRICT

\_\_\_\_\_  
**Superintendent of Schools**

## **ADDENDUM A**

### **Parents' Bill of Rights for Data Privacy and Security**

Parents' Bill of Rights for Data Privacy and Security Parents (including legal guardians or persons in parental relationships) and Eligible Students (students 18 years and older) can expect the following:

1. A student's personally identifiable information (PII) cannot be sold or released for any Commercial or Marketing purpose. PII, as defined by Education Law § 2-d and the Family Educational Rights and Privacy Act ("FERPA"), includes direct identifiers such as a student's name or identification number, parent's name, or address; and indirect identifiers such as a student's date of birth, which when linked to or combined with other information can be used to distinguish or trace a student's identity. Please see FERPA's regulations at 34 CFR 99.3 for a more complete definition.
2. The right to inspect and review the complete contents of the student's education record stored or maintained by an educational agency. This right may not apply to Parents of an Eligible Student.
3. State and federal laws such as Education Law § 2-d; the Commissioner of Education's Regulations at 8 NYCRR Part 121, FERPA at 12 U.S.C. 1232g (34 CFR Part 99); Children's Online Privacy Protection Act ("COPPA") at 15 U.S.C. 6501-6502 (16 CFR Part 312); Protection of Pupil Rights Amendment ("PPRA") at 20 U.S.C. 1232h (34 CFR Part 98); and the Individuals with Disabilities Education Act ("IDEA") at 20 U.S.C. 1400 et seq. (34 CFR Part 300); protect the confidentiality of a student's identifiable information.
4. Safeguards associated with industry standards and best practices including, but not limited to, encryption, firewalls and password protection must be in place when student PII is stored or transferred.
5. A complete list of all student data elements collected by NYSED is available at [www.nysed.gov/data-privacy-security/student-data-inventory](http://www.nysed.gov/data-privacy-security/student-data-inventory) and by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.
6. The right to have complaints about possible breaches and unauthorized disclosures of PII addressed.
  - (i) Complaints should be submitted to the EA, Kevin Welsh, Director of Data and Technology, P.O. Box 307, Brasher Falls, NY 13613 or [kwelsh@bfcasd.org](mailto:kwelsh@bfcasd.org)
  - (ii) Complaints may also be submitted to the NYS Education Department at [www.nysed.gov/data-privacysecurity/report-improper-disclosure](http://www.nysed.gov/data-privacysecurity/report-improper-disclosure), by mail to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234; by email to [privacy@nysed.gov](mailto:privacy@nysed.gov); or by telephone at 518-474-0937.
7. To be notified in accordance with applicable laws and regulations if a breach or unauthorized release of PII occurs.
8. Educational agency workers that handle PII will receive training on applicable state and federal laws, policies, and safeguards associated with industry standards and best practices that protect PII.
9. Educational agency contracts with vendors that receive PII will address statutory and regulatory data privacy and security requirements.

## **ADDENDUM B**

### **Parents' Bill of Rights – Supplemental Information Addendum**

1. **EXCLUSIVE PURPOSES FOR DATA USE:** The exclusive purposes for which “student data” or “teacher or principal data” (as those terms are defined in Education Law Section 2-d and collectively referred to as the “Confidential Data”) will be used by Provider (the “Contractor”) are limited to the purposes authorized in the contract between the Contractor and the Brasher Falls Central School District (the “School District”) commencing September 1, 2023 and expiring June 30, 2024 (the “Contract”).
2. **SUBCONTRACTOR OVERSIGHT DETAILS:** The Contractor will ensure that any subcontractors, or other authorized persons or entities to whom the Contractor will disclose the Confidential Data, if any, are contractually required to abide by all applicable data protection and security requirements, including but not limited to those outlined in applicable state and federal laws and regulations (e.g., Family Educational Rights and Privacy Act (“FERPA”); Education Law §2-d; 8 NYCRR Part 121).
3. **CONTRACT PRACTICES:** The Contract commences and expires on the dates set forth in the Contract, unless earlier terminated or renewed pursuant to the terms of the Contract. On or before the date the Contract expires, protected data will be exported to the School District in the format it was provided and/or destroyed by the Contractor as directed by the School District.
4. **DATA ACCURACY/CORRECTION PRACTICES:** A parent or eligible student can challenge the accuracy of any “education record”, as that term is defined in the FERPA, stored by the School District in a Contractor’s product and/or service by following the School District’s procedure for requesting the amendment of education records under the FERPA. Teachers and principals may be able to challenge the accuracy of APPR data stored by School District in Contractor’s product and/or service by following the appeal procedure in the School District’s APPR Plan. Unless otherwise required above or by other applicable law, challenges to the accuracy of the Confidential Data shall not be permitted.
5. **SECURITY PRACTICES:** Confidential Data provided to Contractor by the School District will be stored on Provider’s servers secured in accordance with law. The measures that Contractor takes to protect Confidential Data will align with the NIST Cybersecurity Framework including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.
6. **ENCRYPTION PRACTICES:** The Contractor will apply encryption to the Confidential Data while in motion and at rest at least to the extent required by Education Law Section 2-d and other applicable law.

## **ADDENDUM C**

### **Provider's Data Security and Privacy Plan**

**WHEREAS**, the Brasher Falls Central School District (hereinafter "District") and Provider (the "Contractor") entered into an agreement effective September 1, 2023 (hereinafter "Agreement") which applies to and is incorporated into this Data Security and Privacy Plan (hereinafter "Services").

**WHEREAS**, pursuant to the requirements under 8 NYCRR 121, Contractor maintains the data security and privacy plan described herein in connection with the Services provided to the District.

1. During the term of the Agreement, Contractor will implement all State, Federal and local data security and privacy requirements, consistent with the District's Data Security and Privacy Policy in the following way(s): Contractor will only use personally identifiable student data (as defined in 8 NYCRR 121.1) and teacher or principal data (as defined in 8 NYCRR 121.1) in accordance with the Agreement, and applicable laws pertaining to data privacy and security including Education Law § 2-d;
2. Contractor has in place the following administrative, operational and technical safeguards and practices to protect personally identifiable information that it will receive under the Agreement: Contractor maintains reasonable security standards appropriate to the type of data collected, which will include multiple safeguards to help protect against loss, misuse or alteration of information including encryption of data while in motion and at rest, use of two-factor authentication to access the system, regular software security updates and industry best practices for network and physical security.
3. Contractor shall comply with 8 NYCRR 121 in that it acknowledges that it has reviewed the District Parents' Bill of Rights for Data Privacy and Security and will comply with same.
  - a. Contractor will use the student data or teacher or principal data only for the exclusive purposes defined in the Agreement.
  - b. Contractor will ensure that the subcontractor(s), third-party service provider(s), or other authorized persons or entities to whom Contractor will disclose the student data or teacher and principal data, if any, will abide by all applicable data protection and security requirements as described in the "Supplemental Information" appended to the Agreement.
  - c. At the end of the term of the Agreement, Contractor will destroy, transition or return, at the direction of the District, all student data and all teacher and principal data in accordance with the "Supplemental Information" appended to the Agreement.
  - d. Student data and teacher and principal data will be stored in accordance with the "Supplemental Information" appended to the Agreement.
  - e. Student data and teacher and principal data in motion and at rest will be protected using an encryption method that meets the standards described in 8 NYCRR 121.

4. Prior to receiving access to student data and/or teacher and principal data, officer(s) and employee(s) of Contractor and any assignees who will have access to student data or teacher or principal data shall receive training on the Federal and State laws governing confidentiality of such data. Such training shall be provided: on an annual basis.

5. Subcontractors:

Contractor shall utilize subcontractors. Contractor shall manage the relationships and contracts with such subcontractors in the following ways in order to ensure personally identifiable information is protected: Contractor will ensure that any subcontractors, third-party service providers, or other authorized persons or entities to whom the Contractor will disclose the personally identifiable student data and teacher or principal data, if any, are contractually required to abide by applicable data protection and security requirements consistent with those outlined in applicable state and federal laws and regulations (e.g., Family Educational Rights and Privacy Act (“FERPA”); Education Law § 2-d; 8 NYCRR Part 121).

6. Contractor has the following procedures, plans or protocols in place to manage data security and privacy incidents that implicate personally identifiable information: Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner, and manage security incidents in accordance with its documented security incident response plan. Contractor will promptly notify District of any breach or unauthorized release of personally identifiable student data and teacher or principal data in the most expedient way possible and without unreasonable delay but no more than seven calendar days after the discovery of such breach.

7. Termination of Agreement.

- a. Within 30 days of termination of the Agreement, Contractor shall delete or destroy all student data or teacher or principal data in its possession; AND
- b. If requested within 15 days of termination of the Agreement, Contractor shall Return all data to the District using a mutually agreed to format.

8. In the event of a conflict between the terms of this Data Security and Privacy Plan and the terms of the Agreement, the terms of this Data Security and Privacy Plan shall control. All of the defined terms in the Agreement shall have the same definitions in the Data Security and Privacy Plan or 8 NYCRR 121.1, unless otherwise defined herein. Except as expressly set forth in this Data Security and Privacy Plan, the terms and conditions of the Agreement shall remain unmodified and in full force and effect.

**IN WITNESS WHEREOF**, the Contractor hereto has executed this Data Security and Privacy Plan as of September 1, 2023.

Contractor:

By: \_\_\_\_\_

Title: \_\_\_\_\_

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[PROVIDER NAME]

2023-2024 PRE-KINDERGARTEN PROGRAM

A) Number of Children \_\_\_\_\_

B) Cost Per Child \$\_\_\_\_\_

C) Total Cost \$\_\_\_\_\_