

STATE OF NORTH CAROLINA NORTH CAROLINA COMMUNITY COLLEGE SYSTEM	REQUEST FOR BEST AND FINAL OFFER NO. IFB 50-2223035-BAFO #3	
	Due Date: July 17, 2024 at 2:00 PM ET	
	Issue Date: July 12, 2024	
Refer <u>ALL</u> inquiries regarding this BAFO to: Grant Braley braleyg@nccommunitycolleges.edu (919) 807-7199	Commodity Number: 43232303	
	Description: Recruiting & Admissions CRM	
	Using Agency: NC Community College System	
	Requisition No.: N/A	


NOTICE TO VENDOR

Offers, subject to the conditions made a part hereof, will be received at this office until 2:00 PM Eastern Time on the day of opening and then opened for furnishing and delivering the goods and services as described herein. Refer to page 2 for proper mailing instructions. Bids submitted via facsimile (fax) machine in response to this Best and Final Offer (BAFO) will not be accepted. The offer is subject to rejection unless submitted on this form.

EXECUTION

In compliance with this BAFO, and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish any or all goods and services which are offered at the prices agreed upon and within the time specified herein. Pursuant to N.C.G.S. § 143B-1354 and under penalty of perjury, the undersigned Vendor certifies that this offer has not been arrived at collusively or otherwise in violation of Federal or North Carolina law and this offer is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting an offer for the same commodity, and is in all respects fair and without collusion of fraud.

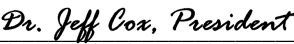
Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.

OFFEROR Element451, Inc. (dba Element451)		
STREET ADDRESS 1 Glenwood Avenue		PO BOX, ZIP N/A
CITY, STATE, ZIP Raleigh NC 27603		TELEPHONE NUMBER 718.644.2026
NAME & TITLE OF PERSON SIGNING Ardis Kadiu, CEO		TOLL FREE TEL. NO N/A
FAX NUMBER N/A		
AUTHORIZED SIGNATURE 	DATE 7/9/2024	E-MAIL ardis@element451.com

Offer valid for ninety (90) days from date of offer opening unless otherwise stated here: _____ days

ACCEPTANCE OF OFFER

If the State accepts any or all parts of this offer, an authorized representative of the North Carolina Community College System (NCCCS) shall affix a signature hereto. The acceptance shall include the Vendor's response to this BAFO, any provisions and requirements of the IFB that have not been superseded by the BAFO, and the NC Department of Information Technology Terms and Conditions. These documents shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the awarded Vendor.

<u>FOR STATE USE ONLY</u>	
Offer accepted and contract awarded on this date as indicated on the attached certification,	
by _____ DocuSigned by:  Dr. Jeff Cox, President	12/17/2024
Authorized representative of the North Carolina Community College System	Date

DELIVERY INSTRUCTIONS

The Vendor shall email one (1) signed copy of its offer to **braleyg@ncccommunitycolleges.edu** on or before the date and time specified on the execution page.

Please include the BAFO number in the email subject line. The file must not be password-protected and must be capable of being copied to other media.

REQUEST FOR BEST AND FINAL OFFER (BAFO)

This request is to acquire a best and final offer from the Vendor for an NCCCS Customer Relationship Management solution. The offer should integrate the previous response to the Information for Bids (IFB) No. IFB 50-2223035 and Addenda and any changes listed below.

Acceptance shall create a contract having an order of precedence as follows: (i) the BAFO(s); (ii) special terms and conditions specific to the IFB; (iii) specifications of the IFB; (iv) the NC Department of Information Technology (NCDIT) Terms and Conditions; and (v) the agreed portions of the awarded Vendor's offer.

NOTE: This IFB is still in the evaluation period. During this period and prior to award, possession of the BAFO, original bid response and accompanying information is limited to personnel of NCDIT Statewide IT Procurement Office, and to agencies responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence the evaluation process (i.e., assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

The State encourages the vendor to supply more competitive prices. Vendor should submit its most competitive prices on page 3 of this request for BAFO.

I. BAFO COST

(If Vendor has additional options that it wants to offer and are not listed, provide them on a separate sheet with applicable costs.)

Please complete the following price table and provide total three-year costs for the following three (3) scenarios:

- Systemwide Pricing, Total Pricing if the entire system were to adopt the product (including any applicable credits for existing colleges that are already customers and how payments would work during systemwide onboarding).
- Pilot Pricing, Pricing for up to 5 colleges in a Cohort Model to pilot adoption of the product.
- Competitive Institutional level pricing. Pricing for colleges that may purchase individually.

The North Carolina Community College System may use one or multiple of the above pricing structures to implement CRM. Vendors must complete the cost table as required and may provide other pricing scenarios in addition to required tables. NCCCS will only consider additional pricing structures if it is advantageous to the state.

Most competitive pricing will consider the entire volume of the system and provide competitive pricing that institutions would not be able to achieve alone.

The pricing table provided must be complete and include any anticipated year-over-year price increases or decreases. Additionally, ITEM 5 "Other Costs" must include all additional expenses necessary to the full deployment of the solution not otherwise outlined in the table and any additional optional items that could be proposed as a part of the solution (add-ons).

ITEM	DESCRIPTION	YEAR 1 COST	YEAR 2 COST	YEAR 3 COST
1	Software Fee	\$3,014,195	\$3,225,188	\$3,450,951
2	Configuration, Integration Services	\$0	\$0	\$0
3	Training	\$0	\$0	\$0
4	Technical Support	\$462,000	\$494,340	\$528,944
5	Other Costs	\$575,400 Implementation	\$0	\$0

TOTAL THREE-YEAR COST \$11,751,018

Note: Please refer to the chart above for our comprehensive system-wide pricing details. Additionally, we have attached a more detailed pricing document (Excel doc). All optional "other costs" for system-wide pricing are included in Tab 1, titled "NCCCS Buy - Pricing". Further, our NCCCS Pricing Excel document provides a breakdown of institutional purchase pricing, including pilot pricing on tab 2, titled "NCCC Per Institution Pricing." Tab 2 includes option "other costs" for each institution as well. Tab 3, titled "NCCCS Per Institution Estimates," provides estimates for each institution's cost if purchased separately.

OPTIONAL COSTS – may or may not be purchased by the State

ITEM	DESCRIPTION	YEAR 4 COST	YEAR 5 COST
6	Software Fee	\$3,692,518	\$3,950,994
7	Technical Support	\$565,970	\$605,588
8	Other Costs (must be itemized in detail)	\$0	\$0

II. VENDOR STANDARD AGREEMENTS

The Vendor Standard Agreement ("Vendor Agreement") consists of the Element 451® Master Agreement Contract for Services (including the Service Level Agreement), attached hereto as Attachment A, and is incorporated by reference into this IFB 50-2223035 in the manner shown below.

- A. As it appears in the Vendor Agreement, the term "Agreement" shall mean this IFB 50-2223035.**
- B. The following paragraphs of the Master Agreement Contract for Services (MACS) of the Vendor Agreement, as modified, shall supersede the NC Department of Information Technology Terms and Conditions:**
- i. **First paragraph:** *Delete the paragraph in full and replace it with, "The Vendor Agreement, as defined in this BAFO 3, is effective as of date provided in IFB 50-2223035 (the "Effective Date"). "Client" means the North Carolina Community College System or one of the 58 individual NC Community Colleges that purchases Products or Services pursuant to an SOW. "Company" means Element451® whose principal place of business is at 1 Glenwood Avenue, 5th Floor, Raleigh, NC 27603.*
 - ii. **2. Services**
 - **2.1 Access and Use:** Client hereby subscribes to the Services and Company hereby grants Client a non-exclusive, non-transferable (except in compliance with Section 17.6) right to access and use the Services during the Term, solely for its internal business purposes by Authorized Users in accordance with the terms and conditions herein. Company will provide Client with the Element451® platform agreed upon in Exhibit A the SOW between the Client and Vendor. Such platform is referred to in this Agreement as the "Services".
The second paragraph of Section 2.1 shall remain unchanged.
 - **2.4 Suspension or Termination of Services:** Company may, directly or indirectly, by any lawful means, suspend, terminate, or otherwise deny Client's, any Authorized User's, or any other person's access to or use of all or any part of the Services, ~~without incurring any liability~~, if: (a) Company receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Company to do so; or (b) Company believes, in its good faith and reasonable discretion, that: (i) Client or any Authorized User has failed to comply with any material term of this Agreement and has not cured that failure within thirty (30) days of written notice of such failure; (ii) Client or any Authorized User is, has been, ~~or is likely to be~~ involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section 2.4 does not limit any of Company's other rights or remedies whether at law or in equity, under this Agreement.
 - iii. **5. Additional Responsibilities of Client Related to Use of the Services:**
Client has and will retain sole responsibility for:
(a) all Client Systems and Client Data, including its content and use by its Authorized Users; (b) all instructions provided by or on behalf of Client or any Authorized User in connection with the Services and all actions taken with its Authorized User identification code(s)/password(s), including any misuse or unauthorized use thereof; and (c) its and its Authorized Users' compliance with any Standard Terms of Use posted on the Element451® platform, as amended or updated from time to time by Company in its sole discretion.
 - iv. **6.1 Company Materials:** The following is added as a new paragraph at the end of this subparagraph:
Notwithstanding these supplemental terms and conditions, hyperlinks, or similar references to additional license agreements of third Parties the State has no financial obligation or liability to Esri or such third parties under such additional terms and conditions. The State will not knowingly violate the licensing limitations stated in such additional terms and conditions.

- v. **7.3 Additional Client Representations, Warranties, and Covenants:** Client represents, ~~warrants, and covenants~~ to Company that (a) Client owns or otherwise has and will have the necessary rights and consents in and relating to the Client Data so that, as received by Company and processed in accordance with this Agreement, they do not ~~and will not~~ infringe, misappropriate, or otherwise violate any intellectual property rights, or any privacy or other rights of any third party or violate any applicable law; and (b) In connection with using the Services and carrying out its obligations contained in this Agreement, Client shall comply with all applicable laws and regulations ~~including, without limitation, obligations as a “controller” under the EU General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA)~~ to, among other things, ensure valid consent is obtained where necessary and proper privacy notices and disclosures are provided to students and prospective students.
- vi. **11.1 Privacy Laws:** ... Company shall at all times comply with all of the privacy and security laws applicable to Company as a service provider to Client as division of the State of NC that processes Client Personal Data, including without limitation, the Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), the Health Insurance Protection Act of 1998 (COPPA), laws and regulations of the U.S. Federal Trade Commission, ~~the State of California and the Commonwealth of Massachusetts, including the Student Online Personal Information Protection Act (SOPIPA), the GDPR and any other~~ all NC state student privacy laws, rules or regulations. ...

C. The following paragraphs of the MACS of the Vendor Agreement shall supersede the NC Department of Information Technology’s Terms and Conditions without modification:

- i. 1. Definitions: Authorized User, Client Data, Client Personal Data, Client Systems, Company Materials, Company Systems,
- ii. 2. Services
 - 2.2 Onboarding; Training
 - 2.3 Use Restrictions
 - 2.5 Service Level Agreement
- iii. 5. Additional Responsibilities of Client Related to Use of the Services
- iv. 6.2 Client Systems; Client Data
- v. 7.1 Mutual Representations and Warranties
- vi. 7.2 Additional Company Representations, Warranties, and Covenants
- vii. 7.4 DISCLAIMER OF WARRANTIES

D. The following paragraphs of the MACS of the Vendor Agreement shall supplement the NC Department of Information Technology's Terms and Conditions:

- i. 11.2 Confidential Information
- ii. 11.3 Return of Confidential Information
- iii. 11.4 Injunctive Relief
- iv. 12. Security; Audits (including 12.1 - 12.4)
- v. 13. Insurance
- vi. 14. Non-Solicitation: The last sentence shall be deleted in full.
- vii. 15. Notices: Each Party giving or making notice, request, demand or other communication (“Notice”), pursuant to this Agreement shall give the Notice in writing by personal delivery, ~~facsimile~~, email, prepaid Registered or Certified mail, return receipt requested, or prepaid nationally recognized overnight courier. A Notice shall be ~~deemed~~ considered to be received by the addressee: one (1) business day after sending, if sent by personal or overnight delivery service, ~~facsimile~~, email or other electronic means; and ~~three (3) upon business days after mailing, receipt as evidenced by a signed receipt~~ if sent by certified or registered mail.

E. The following paragraphs of the MACS of the Vendor Agreement shall have no force or effect:

- i. 1. Definitions: "Confidential Information"
- ii. 1. Definitions: "Force Majeure Event"
- iii. 1. Definitions: "Initial Term"
- iv. 1. Definitions: "Renewal Term"
- v. Definitions: "Term"
- vi. 3. Term and Termination; Transition Services (and all subparagraphs therein)
- vii. 4. Fees; Payment Terms; Taxes; Fee Increases (including all subparagraphs.)
- viii. 8. Infringement Claims of Third Parties
- ix. 9. Indemnification (and all subparagraphs therein)
- x. 10. Limitation of Liability
- xi. 12.5 Security Breaches
- xii. 16. Governing Law and Jurisdiction
- xiii. 17. Miscellaneous
- xiv. Signature page

ATTACHMENT A

Master Agreement Contract for Services

MASTER SERVICE AGREEMENT

This **MASTER SERVICES AGREEMENT** (the “**Agreement**”), by and between the entity (“**Client**”) named in the Element451, Inc. Service Order (the “**Service Order**”) and Element451, Inc. (“**Company**”) a Delaware corporation, effective as of the date set forth in the first Service Order between Client and Company (the “**Effective Date**”). Company and Client agree that this Agreement, including all exhibits hereto and the Service Order, represent the entire agreement between the parties with respect to the subject matter of the Agreement.

In consideration of Company’s engagement hereunder to perform the services and/or provide the products described herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following terms and conditions:

1. Definitions.

“**Authorized User**” means Client’s employees, consultants, contractors, agents (a) who are authorized by Client to access and use the Services (or any portion thereof) under the rights granted to Client pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

“**Client Data**” means any and all data or information: (i) provided to Company by Client or its Authorized Users; or (ii) collected by Company on behalf of the Client in the course of its performance of the Services, including, without limitation, any Client Personal Data and Client Confidential Information.

“**Client Personal Data**” has the meaning set forth in Section 11.1.

“**Client Systems**” means Client’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services.

“**Company Materials**” means the Services, Company Systems and any and all other documents, materials, methods, processes, and other technologies and inventions, including technical or functional specifications, descriptions, requirements, plans, reports, information and/or data, that are provided or used by Company in connection with the Services or otherwise relate to the Services or Company Systems. For the avoidance of doubt, Company Materials include Resultant Data but do not include Client Data.

“**Company Systems**” means the information technology infrastructure used by or on behalf of Company in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Company or through the use of third-party services.

“**Confidential Information**” means all information, documents or other materials designated by either party as confidential and which is disclosed to the other party and information, documents or other materials that would reasonably be understood to be confidential and proprietary given the nature of the information and the context of its disclosure, including without limitation, any information relating to know-how, markets, customers, products, trade secrets, patents, inventions, procedures, methods, designs, strategies, plans, development efforts, assets, liabilities, prices, costs, revenues, profits, organization, employees, agents, resellers or business in general, or, the algorithms, programs, source codes, user interfaces and organization of a party’s products or services. Without limiting the generality of the foregoing, Client Personal Data and Client Data will be the Confidential Information of Client and the Company Materials will be the Confidential Information of Company. “Confidential Information” shall not include any information that: (i) is in the public domain or becomes publicly known through no fault of the receiving party; (ii) is otherwise properly received by the receiving party from a third party without an obligation of confidentiality; or (iii) is independently developed by the receiving party without reference to or reliance on the Confidential Information of the disclosing party.

“Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, acts of war, government order or government mandate, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts or labor difficulties or any other cause beyond the reasonable control of a party.

“Initial Term” has the meaning set forth in Section 3.1.

“Renewal Term” has the meaning set forth in Section 3.1.

“Resultant Data” means data and information related to Client’s and Authorized Users’ use of the Services that is used by Company in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

“Service Activation Date” means the date the Services are first available to Client and Company provides written notification (e-mail is sufficient) that the Services are available for Client’s use.

“Service Activation Date” means the date the Services are first available to Client and Company provides written notification (e-mail is sufficient) that the Services are available for Client’s use.

“Services” has the meaning set forth in the applicable Service Order between the parties.

“Service Order” means the written document(s) between Client and Company setting forth the Services to be provided by Company, the price to be paid by the Client to Company for such Services, the period of performance and such other terms and conditions consistent with this Agreement to which the parties have agreed. Over the course of the Term of this Agreement, the parties may agree to multiple Service Orders for different Services provided by Company and each Service Order shall be binding only upon execution by both parties. Any changes in the scope of a Service Order will be addressed in an amendment to such Service Order signed by both parties.

“Term” has the meaning set forth in Section 3.1.

2. Services.

2.1 Access and Use.

Client hereby subscribes to the Services and Company hereby grants Client a non-exclusive, non-transferable (except in compliance with Section 17.6) right to access and use the Services during the Term, solely for its internal business purposes by Authorized Users in accordance with the terms and conditions herein. Company will provide Client with the Element451® platform agreed upon in an executed Service Order between the parties. Such platform and any other services expressly referenced in the Service Order is collectively referred to in this Agreement as the “Services.”

Company reserves the right, in its sole discretion, to make changes to the Services that it reasonably deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Company’s services to its Clients; (ii) the competitive strength of or market for Company’s services; or (iii) the Services’ cost efficiency or performance; or (b) to comply with applicable law; provided, however, if Company removes any material functionality from the platform as subscribed to by Client, may, terminate its subscription by providing written notice to Company within 60 days of the removal of such functionality.

2.2 Onboarding; Training.

If the Service Order includes training or onboarding services, the Company will provide the training services or onboarding schedule at the kick off call scheduled after contract execution. In addition, throughout the Term, a Company Customer Support Specialist will be responsible for day-to-day Client inquiries from the hours of 9am ET to 5pm EST and the Client will have 24-hour access to the Company ticketing system, Live Support, and the Element451® help Center (<http://help.element451.com/>). Any additional onboarding and/or training services may be purchased by Client at Company’s then current standard rates.

2.3 Use Restrictions.

Client shall not, and shall not permit any other person to access or use the Services or other Company Materials except as expressly permitted by this Agreement.

For purposes of clarity and without limiting the generality of the foregoing, Client shall not, except as this Agreement expressly permits: (a) copy, modify, or create derivative works of the Services or any Company Materials; (b) create, attempt to create, or grant permission to the source program and/or object program associated with any software component of the Services; (c) decompile, disassemble or reverse engineer any software component of the Services for any reason. (d) grant permission or access to the Services or any part thereof to any third party other than an Authorized User accessing the Services with his/her then-valid access credentials; (e) input, upload, transmit, or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or transmit, or activate any code designed to modify, damage, delete, disable or disrupt the Services or the Company Systems or otherwise impede or harm the Services, Company Systems, or Company's provision of services to any third party; (f) remove, delete, alter, or obscure any copyright or other proprietary rights notices from any Company Materials, including any copy thereof; (g) access or use the Services or any other Company Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party, or that violates any applicable law; or (h) access or use the Services or other Company Materials for purposes of competitive analysis, or for the development, provision, or use of a competing software service.

2.4 Suspension or Termination of Services.

Company may, directly or indirectly, by any lawful means, suspend, terminate, or otherwise deny Client's, any Authorized User's, or any other person's access to or use of all or any part of the Services, without incurring any liability, if: (a) Company receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Company to do so; or (b) Company believes, in its good faith and reasonable discretion, that: (i) Client or any Authorized User has failed to comply with any material term of this Agreement and the breach represents an imminent threat to the Company Systems, Confidential Information or the security of another user; (ii) Client or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section 2.4 does not limit any of Company's other rights or remedies, whether at law, in equity, under this Agreement.

2.5 Service Level Agreement.

The parties agree that the delivery of Services shall be governed by the Service Level Agreement.

3. Term and Termination; Transition Services.

3.1 Term.

This Agreement shall commence on the Effective Date and shall continue for an initial period as described in the Service Order from the Service Activation Date (the "Initial Term"). Thereafter, any extension or renewal period (each a "Renewal Term") will be as specified in the Service Order. (As used herein, each "Renewal Term" and, collectively, together with the Initial Term, the "Term"). Unless otherwise agreed by the parties, the Service Activation Date will be no later than 30-days after the Effective Date.

3.2 Termination for Convenience.

After the Initial Term, Client may terminate this Agreement at any time upon providing at least 90 days prior written notice.

3.3 Termination for Cause.

Either party may terminate this Agreement for cause immediately by giving written notice to the other party upon the occurrence of any of the following events: (i) if the other party ceases to do business, or otherwise terminates its business operations; (ii) if the other party breaches any material provision of this Agreement and fails to fully cure such breach within thirty (30) days of written notice describing the breach; or (iii) if the other party becomes insolvent, or seeks protection under any bankruptcy, receivership, trustee, creditor's arrangement composition or comparable proceeding, or if any such proceeding is instituted against the other party and not dismissed within thirty (30) days. Notwithstanding the foregoing: Client may not terminate this Agreement for Company's failure to meet a specified performance standard set forth in the Service Level Agreement unless Company fails to meet any specified individual performance standard in the Service Level Agreement three (3) times over a six (6) month period, after Client has provided, after each failure, a notice in accordance with this Section.

3.4 Transition Services.

Upon termination or expiration of this Agreement, the Company agrees to provide Client with reasonable transition assistance services to facilitate the orderly transition of the Services to Client or an alternate provider; provided, however, that Company reserves the right to charge the Client for such services at its then-standard rates.

4. Fees; Payment Terms; Taxes; Fee Increases.

4.1 Fees and Payment Terms.

Client shall pay Company the fees set forth in the Service Order. Unless otherwise stated in the Service Order, the Company will invoice Client upon execution of this Agreement. Client agrees to pay any applicable amounts within the time period stated in the Service Order, or if no such time is stated, within thirty (30) days of Client's receipt of a valid invoice from Company.

If upon receipt of any invoice, Client should have any objections, Client shall provide written notice of such objections to Company within 20 days of receipt of such invoice. Any outstanding invoice balance remaining 30 days past the invoice due date will be subject to a 1% monthly interest charge until the related invoice balance is paid. Company reserves the right to suspend performance of the Services until invoices outstanding for more than 60 days are paid in full.

4.2 Taxes.

All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible for all sales, service, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on Company's income. Client shall pay all charges or taxes as stated in Company's invoice or provide Company with an appropriate certificate of exemption no later than thirty (30) days of the date of any invoice.

4.3 Fee Increases.

Company will increase annual fees by at least 7% for any Renewal Term. If Client is not willing to accept such an increase, Client may exercise its termination right set forth in Section 3.

5. Additional Responsibilities of Client Related to Use of the Services.

Client has and will retain sole responsibility for:

(a) all Client Systems and Client Data, including its content and use by its Authorized Users; (b) all instructions provided by or on behalf of Client or any Authorized User in connection with the Services and all actions taken with its Authorized User identification code(s)/password(s), including any misuse or unauthorized use thereof; and (c) its and its Authorized Users' compliance with any standard Terms of Use posted on the Element451® platform, as amended or updated from time to time by Company in its sole discretion.

6. Intellectual Property Rights.

6.1 Company Materials.

Except for the limited license granted in Section 2, all right, title, and interest in and to the Company Materials are and will remain with the Company. Client has no right, license, or authorization with respect to any of the Company Materials except as expressly set forth in Section 2. All other rights in and to the Company Materials are expressly reserved by the Company. In furtherance of the foregoing, Client hereby irrevocably grants to Company an assignment of all right, title, and interest in and to the Resultant Data.

It is understood that Client may have feedback, suggestions or comments that may, in Company's sole discretion, be incorporated into the Services. Notwithstanding anything to the contrary herein, Client acknowledges and understands that Company shall own exclusively and in perpetuity any and all rights, title and interest in and to any enhancements suggested by Client. Client hereby assigns all of its right, title and interest in any such enhancements suggested to Company and Client will execute such documents as may be deemed reasonably necessary to accomplish the objectives of this Section.

If and to the extent that Company incorporates the software and/or data of any third party in the Services, and use of such third-party software and/or data is not subject to the terms of a license agreement directly between Client and the third-party licensor, the license of Client to such third-party software and/or data shall be defined and limited by the license to Company by such third party.

Client specifically acknowledges that the licensors of such third-party software and/or data shall retain all ownership rights thereto.

6.2 Client Systems; Client Data.

All right, title, and interest in and to the Client Systems and Client Data are and will remain with Client and Company has no right, license, or authorization with respect thereto, except that Client hereby grants permission to the Company to use, reproduce, modify, display and publish the Client Data solely in connection with the Company's provision of the Services in accordance with the terms of this Agreement.

7. Representations and Warranties.

7.1 Mutual Representations and Warranties.

Each party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

7.2 Additional Company Representations, Warranties, and Covenants.

Company represents, warrants and covenants to Client that: (a) Company will provide the Services in a professional and workmanlike manner and in accordance with reasonable professional standards for such services; and (b) In connection with providing the Services and carrying out its obligations contained in this Agreement, the Company shall comply with all applicable laws and regulations.

7.3 Additional Client Representations, Warranties, and Covenants.

Client represents, warrants, and covenants to Company that (a) Client owns or otherwise has and will have the necessary rights and consents in and relating to the Client Data so that, as received by Company and processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any intellectual property rights, or any privacy or other rights of any third party or violate any applicable law; and (b) In connection with using the Services and carrying out its obligations contained in this Agreement, Client shall comply with all applicable laws and regulations including, without limitation obligations as a “controller” under the EU General Data Protection Regulation (the “GDPR”) and the California Consumer Privacy Act (CCPA) to, among other things, ensure valid consent is obtained where necessary and proper privacy notices and disclosures are provided to students and prospective students.

7.4 DISCLAIMER OF WARRANTIES.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 7.1 AND 7.2, ALL SERVICES AND COMPANY MATERIALS ARE PROVIDED “AS IS.” COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR COMPANY MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT OR BE ERROR FREE.

8. Infringement Claims of Third Parties.

If the Services and/or any other Company Materials are, or in Company's sole discretion are likely to become, subject to a claim of infringement, Company, at its option and expense, shall either (i) procure for Client a license or a right to continue using the Services and/or the Company Materials; or (ii) modify the Services and/or the Company Materials to make them non-infringing in a manner that does not materially impair their functionality. If neither of the foregoing two options are reasonably available to Company then either party may terminate this Agreement by notice to the other party. Except for the indemnification obligations set forth in section 9, the foregoing shall be Client's sole and exclusive remedy and Company's sole and exclusive obligation with respect to any infringement claims relating to the Company Materials.

Company will have no obligation with respect to any actual or threatened infringement claim based in whole or in part upon (i) Client Systems, (ii) any enhancements, upgrades or modifications to Company Materials made by Client, or any party that Client authorizes, directs or permits to make such enhancements, upgrades or modifications, or (iii) Client's or its Authorized Users' failure to use the Company Materials in accordance with this Agreement or any documentation regarding their use provided by Company.

9. Indemnification.

9.1 Company Indemnification.

Company agrees to indemnify, defend and hold harmless Client, its affiliates, officers, directors, employees and agents from any and all damages, losses, costs and expenses (including reasonable attorneys' fees) arising out of any claim, demand, or action by a third party (collectively, “Losses”) in connection with (i) any breach or alleged breach by such party of any representation, warranty, covenant or other obligations set forth in this Agreement; or (ii) any claim that the authorized use of the Company Materials infringes upon or violates the intellectual property rights of a third-party.

9.2 Indemnification Procedure.

Client shall promptly notify Company in writing of any action for which Client believes it is entitled to be indemnified pursuant to this Section 9. Client (the “Indemnitee”) shall cooperate with Company (the “Indemnitor”) at the Indemnitor’s sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any such action on any terms or in any manner that adversely affects the rights of any Indemnitee, without the Indemnitee’s prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such action, the Indemnitee shall have the right, but no obligation, to defend against such action, including settling such action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee’s failure to perform any obligations under this Section 9.2 will not relieve the Indemnitor of its obligations under this Section 9, except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure.

10. Limitation of Liability.

EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS AGREEMENT, A BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 11, OR AS ARISING FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AFFILIATES TO CLIENT FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER IN CONNECTION WITH THIS AGREEMENT, EXCEED THE FEES PAYABLE TO COMPANY HEREUNDER THE PRECEDING TWELVE (12) MONTHS UNDER THIS AGREEMENT. IN THE EVENT SUCH ACTION ARISES AT ANY TIME BEFORE THE COMPLETION OF THE INITIAL TWELVE (12) MONTHS OF THE TERM OF THIS AGREEMENT, THE FEES AND CHARGES DUE TO COMPANY AT SUCH TIME SHALL BE ANNUALIZED FOR PURPOSES OF CALCULATING THE MAXIMUM LIABILITY OWED FOR ANY DAMAGES HEREUNDER. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, BUSINESS INTERRUPTION OR LOSS OF DATA, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Privacy; Confidentiality.

11.1 Privacy Laws.

To the extent, in providing the Services for Client, Company receives, maintains or is afforded access in any way to any information relating to an identified or identifiable individual or any information that can be used to identify, locate or contact an individual, including a potential student of Client (“Client Personal Data”), including, without limitation: (A) first and last name; (B) a home or other physical address; (C) telephone number; (D) email address or online identifier associated with an individual; (E) cookie information, IP address, username and password, and usage and traffic data or profiles that is combined with any of the foregoing; and (F) financial information, healthcare information, credit or debit card data or any information defined as personal information (or similar) under any privacy or security law, Company shall at all times comply with all of the privacy and security laws applicable to Company as a service provider to Client that processes Client Personal Data, including without limitation, the Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Children’s Online Privacy Protection Act of 1998 (COPPA), laws and regulations of the U.S. Federal Trade Commission, the State of California and the Commonwealth of Massachusetts, including the Student Online Personal Information Protection Act (SOPIPA), the GDPR and any other state student privacy laws, rules or regulations. Company acknowledges and agrees that any Client Personal Data that is collected, acquired, maintained, processed or stored by Company in connection with the provision of Services pursuant to this Agreement will be considered confidential and proprietary information of Client and Company will maintain all Client Personal Data in strict confidence and in accordance with this Agreement.

11.2 Confidential Information.

All of the parties' other Confidential Information (as defined below) shall be deemed confidential and proprietary. The parties shall treat the Confidential Information of the other party as strictly confidential with at least the same degree of care as the receiving party uses for its own confidential information of similar importance, and in no event less than a reasonable degree of care. The parties will use the Confidential Information only for purposes authorized by this Agreement. The parties shall not disclose or provide any Confidential Information to any third party except as reasonably necessary to perform the Services, or as required by law, and the parties shall take reasonable measures to prevent any unauthorized disclosure of such Confidential Information by their respective employees, agents, contractors or consultants, including by maintaining appropriate nondisclosure agreements. In no way limiting the foregoing, the Company agrees that it shall not, without the Client's prior written approval, collect, maintain, process, use or disclose Client Data for any purpose other than to provide the Services or otherwise comply with Company's obligations under this Agreement.

In the event that a party believes it is required by law to disclose Confidential Information of the other party, such receiving party shall give the other party notice, if permitted by law, in a reasonable amount of time prior to the receiving party's disclosure of Confidential Information to allow the other to protect its proprietary interest therein and shall use commercially reasonable efforts to minimize such disclosure and consult with and assist the other party in obtaining a protective order prior to such disclosure.

11.3 Return of Confidential Information.

Upon termination or expiration of this Agreement or upon Client's earlier request, Company will: (i) provide Client with electronic access to all or any part of the Client Data in Company's possession or control, (ii) promptly return to Client all or any part of such Client Data, and (iii) erase or destroy all or any part of such Client Data, in each case to the extent so requested by Client; provided, however, that Company may retain a copy thereof to the extent, and for so long as reasonably necessary to perform the Services and Company may also retain Client Data in its backups, archives, and disaster recovery systems until such Client Data is deleted in the ordinary course. Upon termination or expiration of this Agreement, each party shall promptly destroy all of the other party's Confidential Information (other than Client Data), any copies or partial copies thereof and material containing the other party's Confidential Information; provided, however, each party's legal department may retain one copy of the Confidential Information and any such other material for archival purposes, subject to terms and conditions of this Agreement.

11.4 Injunctive Relief.

Each of the parties acknowledges that any use or disclosure of Confidential Information in violation of this Agreement may cause irreparable injury to the disclosing party for which other remedies at law would be inadequate, and each of the parties agrees that the disclosing party shall have the right to seek injunctive or other equitable relief as may be necessary or appropriate to prevent any use or disclosure of the Confidential Information in violation of this Agreement, and may also exercise such other rights and remedies as the disclosing party may have at law or in equity.

12. Security; Audits.

12.1 Safeguarding of Client Personal Data; Reasonable Security Measures. Company will implement and maintain industry standard physical, electronic and procedural safeguards to guard Client Personal Data. Such safeguards shall include appropriate procedures designed to: (i) protect the security and confidentiality of such information, (ii) protect against anticipated threats or hazards to the security or integrity of such information and (iii) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to Client or any student/prospective student of Client. Company will conduct annual risk assessments and update its security policies and procedures based upon its findings. Upon request by the Client, Company agrees to provide documentation sufficient to demonstrate Company's compliance with the terms of this paragraph.

12.2 PCI Compliance.

Any software and services used by Company for processing financial transactions shall be compliant with the current standards established by the PCI Security Standards Council (www.pcisecuritystandards.org/index.html). As evidence of compliance Company will provide when requested, a current attestation of compliance.

12.3 Disaster Recovery.

Company will implement and maintain back-up procedures and systems, redundant systems and disaster recovery systems relating to the Services reasonably designed to protect against and minimize interruption to the Services. Company will conduct annual tests of its disaster recovery plan.

12.4 Audits.

Company shall ensure that, on no less than an annual basis, an audit is performed by an independent auditor on any data center used by Company to provide the Services. Upon request, the Company will provide the results of the most recently completed annual audit (in the form of a SSAE-16 report, Service Organization Control (SOC) 2, SOC 3, or other report of substantially similar scope and detail) to Client.

12.5 Security Breaches.

Company will provide prompt notice to the Client of any confirmed or suspected data security breach that Company reasonably believes may have resulted in the unauthorized disclosure of Client Personal Data (any such incident, a "Security Breach"). Company will take commercially reasonable measures designed to resolve any Security Breach and to prevent future Security Breaches. Company will cooperate with Client in its compliance with Client's notification policies and applicable laws requiring notification to individuals affected by any Security Breach. With respect to Security Breaches resulting from Company's breach of any of its obligations under this Agreement, the Company will, in addition to its indemnification obligations set forth in Section 9, reimburse Client for its reasonable notification costs directly related to the Security Breach.

13. Insurance.

During the Term, Company shall, at all times, maintain: (a) Commercial General Liability insurance with a minimum limit of one million dollars (\$1,000,000.00) per occurrence with an aggregate limit of two million dollars (\$2,000,000.00); (b) Automobile Liability insurance in an amount not less than \$1,000,000 per occurrence for hired autos and non-owned autos only; (c) Workers Compensation insurance, in such amount as may be required by the laws of the State of North Carolina and employers' liability insurance, and d) Technology Errors and Omission Cyber and Multi Media Liability insurance covering actual or alleged acts, errors or omissions committed by Company, its agents or employees. The policy shall expressly provide, but not be limited to, coverage for the following perils: unauthorized use/access of a computer system, defense of any regulatory action involving a breach of privacy; failure to protect confidential information (personal and commercial information) from disclosure, notification costs, whether or not required by statute. The Computer Security and Privacy Liability policy(s) shall have limits of liability of at least two million dollars (\$2,000,000) in the aggregate.

14. Non-solicitation.

During the Term and for one year thereafter, Client shall not, and shall not assist any other party to directly or indirectly recruit or solicit (other than by general advertisement not directed specifically to any person) for employment or engagement as an independent contractor any person who is then, or within the prior twelve months was, employed or engaged by Company and involved in any respect with the performance of this Agreement. In the event Client engages any person in violation of this Section 14, Client will pay Company liquidated damages equal to 50% of the annual compensation paid by Company to the applicable employee or contractor.

15. Notice.

Each party giving or making notice, request, demand or other communication ("Notice"), pursuant to this Agreement shall give the Notice in writing by personal delivery, facsimile, email, prepaid Registered or Certified mail, return receipt requested, or prepaid nationally recognized overnight courier. A Notice shall be deemed to be received by the addressee: one (1) business day after sending, if sent by personal or overnight delivery service, facsimile, email or other electronic means; and three (3) business days after mailing, if sent by certified or registered mail.

Each party giving a Notice shall address the Notice to the appropriate person at the address listed in the Service Order or another address as designated by a party in a Notice pursuant to this Section.

16. Governing Law and Dispute Resolution.

This Agreement shall be governed by the laws of the state as agreed to in the Service Order, without regard to any provisions pertaining to choice of law. Any dispute between the parties arising from or relating to this Agreement shall be subject to binding arbitration according to the commercial arbitration rules of the American Arbitration Association ("AAA"). Selection of one neutral arbitrator by the parties shall be from the AAA Panel list in accordance with the appointment Rules of the AAA. The arbitration will be held in a location mutually agreed upon by the parties, or if no such location can be agreed to, then as appointed by the duly selected arbitrator. Each party shall bear its own expenses associated with the arbitration; the parties shall equally share the filing and other administrative fees of the AAA and the expenses of the arbitrator.

17. Miscellaneous.**17.1 Entire Agreement.**

This Agreement, including the Exhibits and any Service Orders between the parties, sets forth the entire agreement between the parties with respect to the matters addressed herein. It supersedes any prior oral or written communications between the parties with respect to the matters addressed herein. This Agreement may be modified or amended only by a writing signed by both parties.

17.2 Severability.

If any part of this Agreement is found to be invalid, all other provisions will remain in full force and effect.

17.3 Relationship of the Parties.

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

17.4 Subcontractors.

Company shall be permitted to engage third parties as subcontractors in connection with the Services. Company shall remain fully responsible for such parties' compliance with the terms and conditions of this Agreement.

17.5 Force Majeure.

To the extent that either party's performance of any of its obligations (other than payment obligations) pursuant to this Agreement is prevented, hindered or delayed, directly or indirectly, by a Force Majeure Event, and such non-performance could not have been prevented by reasonable precautions, then the non-performing party shall be excused from any further performance of those obligations for so long as such Force Majeure Event continues. The party whose performance is prevented, hindered or delayed by a Force Majeure Event shall immediately notify the other party by telephone of the occurrence of the Force Majeure Event and describe the Force Majeure Event in reasonable detail.

17.6 Assignment.

Neither party shall have the right to assign this Agreement without the prior written consent of the other party, except that: (i) Company may, without Client's consent, assign this Agreement to any of its affiliates; and (ii) either party may, without the consent of the other party but upon prior notice, assign this Agreement to the surviving corporation with or into which such party may merge or consolidate, or an entity to which such party transfers all, or substantially all, of its voting securities or assets.

17.7 Survival.

The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: 6-11, 14, 15, 16, 17 and 18.

17.8 Publicity.

Unless otherwise indicated on a Service Order, Client agrees that Company may use Client as a reference and/or identify Client as a Company customer to third-parties; provided that such reference or disclosure does not reveal any Confidential Information or specifics about the Agreement or the relationship. Client further agrees that Company may use Client's name, mark and/or logo on Company's website or other marketing materials listing Company's customers; provided that in the event Client objects to any such use, Company agrees to promptly modify or remove such use. All rights arising from the use of Client's name, mark and/or logo will inure to the benefit of Client and Client will retain all ownership therein.

18. Piggyback Clause.

18.1. Scope of Piggybacking.

Element451 acknowledges and agrees that the terms and conditions of the contract ("Principal Contract") executed between Element451 ("Company") and Client ("Initial Contracting Party") for the provision of Element451 Platform may be extended to other educational institutions ("Piggybacking Institutions") that are similarly situated to the Initial Contracting Party. This includes, but is not limited to, universities, colleges, and educational consortia that are at a comparable stage of development and have similar needs.

18.2. Eligibility and Participation.

Educational institutions wishing to piggyback on the Principal Contract must be recognized as part of the Client's Public Higher Education System, or must be accredited institutions that have a comparable profile to the Initial Contracting Party in terms of size, scope, and academic offerings.

18.3. Terms and Conditions.

The Company agrees to supply the goods or services outlined in the Principal Contract to any Piggybacking Institution under the same or more favorable terms and conditions, including service levels, and product specifications. The Company also agrees to comply with all applicable laws, regulations, and educational standards relevant to the provision of such goods or services.

18.4. Separate Contractual Agreements.

Each Piggybacking Institution that opts to procure goods or services under this clause shall enter into a separate contractual agreement with the Company. Such agreements shall reference the Principal Contract and specify that the terms and conditions of the Principal Contract, as modified by any more favorable terms offered to the Piggybacking Institution, shall govern the provision of goods or services.

18.5. Liability and Payment.

Each Piggybacking Institution will assume full responsibility for payment and liability related to its separate contractual agreement with the Contractor. The Initial Contracting Party shall bear no responsibility for the obligations, financial or otherwise, of any Piggybacking Institution.

18.6. Term of Piggybacking Option.

The option for Piggybacking Institutions to enter into a contract under this clause shall be available for the duration of the Principal Contract, including any extensions or renewals thereof, subject to the Company's agreement.

Service Level Agreement

1. System Performance and Compatibility

The Element451® system shall work with most internet browsers that support modern web standards and on all devices that support such browsers (including tablet and mobile phone devices running Android, iOS, Microsoft Mobile). At present, we believe that Google Chrome offers the best support for Web Standards and is therefore our recommended browser.

Element451® offers an unlimited number of college/university users and administrators the ability to deploy communications and collect information, to serve the purpose of recruiting potential students for the college/university. The tiered pricing structure set by the Company is based upon number of student applications.

All vanity uniform resource locators (URLs) created as part of the Element451® installation shall be Client property and shall be registered in Client's name.

2. Availability Commitment: 99.9% Uptime

The Company will use commercially reasonable efforts to make the Services available with a Monthly Uptime Percentage of at least 99.9 percent during each calendar month, subject to the SLA Exclusions.

Definitions

“Maintenance” refers to scheduled Unavailability of the Services, which, except in the case of emergencies, shall occur between the hours of 10:00 pm and 7:00 am EST.

“Monthly Uptime Percentage” is calculated by subtracting from 100% the percentage of minutes during the month in which the Services were Unavailable. Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any SLA Exclusion.

“SLA Exclusions” refers to any unavailability of Services, or any other Services performance issue that results from: Maintenance; a suspension of Services in accordance with the Agreement; factors outside of Company's reasonable control, including any Force Majeure Event, Internet connectivity issues, or problems beyond the demarcation point of the Element451® network; and/or failure, interruption, outage, or other problem with any equipment, software or other technology of Client or any third party (other than third party equipment, software or technology within our direct control).

“Unavailable” and “Unavailability” refer to the times when the Services are not available for access and use (this excludes websites and applications that are unreachable or not running because the client/user, disabled or changed the configuration such that it was not accessible).

3. Service and Support Commitments

Client is responsible to provide a reasonably detailed description of the issue and browsing environment, in order for the issue to be resolved in a timely manner. Failure to do so may result in extended resolution times.

Support claims will be segmented based on severity level, and response time will depend on which category the claim falls into as outlined below.

Company reserves the right to change the severity level reported by Client in either direction, in order to properly resolve the issue.

Company will provide support between the business hours of 9:00 AM and 5:00 PM Eastern Standard Time on Company's normal business days. This includes telephone and email customer service support to assist Client in resolving problems, obtaining clarification relative to our services and reporting suspected defects or errors in our services.

The Company will diligently work for the prompt resolution of defects and errors in the Services, and will respond to Client by using a dedicated contact telephone number or email address for each support call.

In the case of a system outage condition attributable to the Company, Company may utilize other means of communication for reporting of errors and conditions.

Company will respond to and complete correction of errors, defects, and malfunctions, in accordance with the following schedule:

Severity 1: Causes data corruption or system crash, or Client cannot make effective use of Company services

Severity 2: Feature does not work as documented, no reasonable solution exists, and Client has a critical need for the feature

Severity 3: Feature doesn't work as documented but a reasonable solution exists or Client can wait for the next release for a fix

Severity 4: Enhancement request

Company will make an initial response to a Severity 1 issue within two hours of notification by Client to Company during Company's normal hours of support. Severity 1 calls will be handled on a 24-hour, 7-day per week schedule. Company will use reasonable efforts to provide a fix, solution, or to patch Severity 1 bugs within twenty-four hours of the bug's replication and confirmation by Company.

Company will make an initial response to Severity 2 issues within four hours of notification by Client to Company during Company's normal hours of support. Company will make reasonable efforts to provide a fix or solution for Severity 2 bugs within three business days.

Company will make an initial response to Severity 3 issues within twenty-four hours of notification by Client to Company during Company's normal hours of support. Company will make reasonable efforts to identify a resolution to Severity 3 bugs within thirty days and to incorporate Severity 3 fixes in the next upcoming release of the product.

Company will make an initial response to Severity 4 items within five business days of Company's receipt of written request. Severity 4 issues will be dealt with on a case-by-case basis.

Company reserves the right to decline to make enhancements in its sole discretion.

Client agrees to appoint one person as main point of contact for the communication of bugs and errors to Company and for the receipt of bug and error fixes, workarounds and updates, if any. Additionally, Client may appoint another person as a backup of the principle contact.

Service Contact Information and Hours of Support:

Regular: Monday through Friday, 9am to 5pm EST

Extended for mission critical items: Monday through Friday: 8am to 10pm EST

Phone: 919-335-4335

Software Development Contact:

Ardis Kadiu

Email: ardis@element451.com

Office Phone: 718-644-2026



STATE OF NORTH CAROLINA

Final Audit Report

2024-07-14

Created:	2024-07-14
By:	Renee Golding (renee.golding@element451.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAATMAacVfSVwu5oEF_ZLkulPHAHvbmW5Am

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