License and Maintenance Agreement

This License and Maintenance Agreement (this "Agreement") is made as of the Effective Date (as defined below) between **Astadia, Inc.** ("Astadia") and The Texas A&M University System, an agency of the state of Texas with its office at 301 Tarrow, College Station, TX 77840 ("End User" or "A&M System").

BY INDICATING ACCEPTANCE OF THIS AGREEMENT, OR BY USING THE SOFTWARE, END USER ACKNOWLEDGES THAT END USER HAS READ, UNDERSTOOD AND AGREES TO BE BOUND BY THIS AGREEMENT. If End User does not agree to this Agreement, End User may not install or use the Software.

This Agreement constitutes the entire contract between End User and Astadia relating to End User's license of the Software (as defined in Section 2.1), and supersedes all prior agreements and understandings between End User and Astadia relating to the subject matter hereof. Any proposal, quote, attempted acknowledgment of an order or similar document containing terms inconsistent with, or in addition to, this Agreement shall not be binding, and is expressly rejected.

1. Purpose and Applicability of the Agreement.

This Agreement sets out the terms and conditions under which the Software is licensed to the End User, and the conditions under which the End User can benefit from Maintenance and Support Services (as defined in Section 14) for the Software.

This Agreement applies to any use of the Software by End User.

2. End User License Grant.

2.1   Allowed Use. Subject to the terms and conditions of this Agreement, during the Term (as defined below) of this Agreement, Astadia grants the End User a perpetual, nontransferable, nonsublicensable and nonexclusive right to use, in accordance with the Documentation (as defined below) and solely for End User's internal business operations, the Software (which right to "use" includes the right to reproduce and display the Software, solely to the extent required to install and run an object code current Release (as defined below) version of the Software on computers as permitted by this Agreement). End User's ability to activate or continue using the Software may be subject to a license key that Astadia provides. "Software" means Astadia's proprietary software listed on Appendix 1 attached hereto and incorporated herein by reference and any associated Documentation that is delivered by Astadia to End User for use on End User's computers, including any upgrades, updates and new versions thereof delivered by Astadia to End User.

3. Prohibited Use; Obligations.

3.1   General Restrictions. End User may use the Software only in compliance with all applicable laws. Except as expressly permitted herein, copying of the Software is expressly forbidden. Except as expressly provided otherwise herein, End User may not, and shall not allow or assist any other person or entity to (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas,

user interface techniques or algorithms, file formats or programming or interoperability interfaces of the Software or any portion thereof by any means whatsoever, (ii) sublicense, assign, transfer, distribute, rent or sell use of or access to the Software, whether as a service bureau or otherwise, including connection of the Software to the Internet (other than as enabled by Astadia) or any other manner of making the Software available to any third party for its use (whether paid or unpaid), (iii) remove, alter or obscure any product identification, copyright or other notices on the Software, (iv) except as specified in the Documentation, modify the Software or incorporate the Software into or with other software or hardware, (v) knowingly take any action that would cause any element of the Software or Astadia's products to be placed in the public domain, (vi) copy, in whole or in part, the Software or any component thereof other than for limited back-up purposes if applicable and provided that all original proprietary marks and legends are reproduced in the copy, or (vii) develop or have developed any product or service using or based on any component of the Software. End User agrees and acknowledges that End User has been provided sufficient information such that End User does not need to reverse engineer any part of the Software in any way to permit other products or information to interoperate with the Software. In jurisdictions where prohibitions on the foregoing activities are not permitted for the Software, End User shall provide Astadia with at least thirty (30) days' notice of intent to exercise such rights, and End User may only exercise such rights as authorized by applicable law despite contractual language to the contrary and only upon the portions of the Software for which such activities are necessary.

3.2   Requirements. In order to access and use the Software, End Users shall use systems and technologies that meet the minimum standards designated in the Documentation. End User is responsible for procuring and maintaining all equipment, hardware or third-party software necessary to access and use the Software and shall be responsible for paying all charges related thereto.

3.3   Security. As a condition to End User's right to use the Software, End User shall establish security systems which, at a minimum, shall include mechanisms to (i) detect and terminate the unauthorized use of or access to the Software, (ii) safeguard the integrity and validity of all login credentials for the Software, and (iii) prevent unauthorized access to and protect all electronically stored, processed or transmitted information related to End User's use of the Software. End User shall promptly inform Astadia of any unauthorized use of or access to the Software and inform Astadia of the steps being taken to terminate such unauthorized use or access.

4.   Audit.

During the Term and for one (1) year thereafter, Astadia may (at Astadia's own expense, upon reasonable notice, and no more frequently than once per calendar year) conduct, or have a third party auditor subject to the same confidentiality obligations of this Agreement conduct, an inspection of End User's books and records to investigate End User's compliance (including any other persons or entities that are permitted to use or access the Software pursuant to this Agreement) with this Agreement. End User will, and shall cause any other persons or entities that are permitted to use or access the Software pursuant to this Agreement, to cooperate in good faith with such audit activities, which cooperation

shall include maintaining all pertinent books and records during the Term and for one (1) year thereafter.

5.   Intellectual Property Rights.

5.1   <u>Ownership</u>. Astadia owns and shall retain ownership of all right, title and interest in and to the Software and all other Astadia IP (as defined in Section 14), and all Astadia IP shall be treated as Astadia's Confidential Information (as defined in Section 10) under this Agreement. End User may not, and shall not allow or assist any person or entity to, modify, translate, or create derivative works of any Astadia IP.

6.   Payments.

End User agrees to timely make the payments of any fees detailed on Appendix 1 of this Agreement. End User's payment shall be made in accordance with Chapter 2251, Texas Government Code, commonly known as the Texas Prompt Payment Act, which shall govern remittance of payment and remedies for late payment and non-payment. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment. As an agency of the State of Texas, End User is tax exempt. Tax exemption certification will be furnished to Astadia upon request. Astadia may adjust the license fees for the Software under this Agreement by no more than five percent (5%) on an annual basis by providing at least thirty (30) days' advance written notice to End User.

7.   Term and Termination.

7.1   Unless earlier terminated as set forth below, the initial term of this Agreement will begin on March 22, 2023 (the "Effective Date") and shall continue in perpetuity unless terminated in accordance with this Agreement (the "Term").

If either party defaults in the performance of or compliance with any of its obligations under this Agreement and such default has not been remedied or cured within thirty (30) days after written notice of such default, the non-defaulting party may immediately terminate this Agreement in addition to its other rights and remedies under law. In the event that the End User terminates this Agreement pursuant to this Section, the End User will receive a pro-rata refund of any pre-paid fees.

7.2   This Agreement may be terminated by the End User at any time for any reason upon thirty (30) days' written notice to Astadia.

Upon termination of this Agreement for any reason, End User shall immediately cease all use of the Software and return or destroy all copies, extracts, analyses, derivatives and reflections of the Software, and, upon Astadia's request, provide a written notice certifying that End User has fully complied with this clause. Remedies for breach, rights to accrued payments and Sections 5.1 (Ownership), 7 (Term and Termination), 10 (Confidentiality), 11 (Limitation of Liability), 12 (Indemnification), and 13 (General Provisions) will survive any termination of this Agreement. Upon termination of this Agreement for any reason other than Astadia's default, End User shall immediately pay all amounts due to Astadia as of the effective date of termination.

8.   Maintenance and Support.

8.1   General. Astadia offers Maintenance and Support Services to its End Users, as part of this Agreement. In order to obtain new Release versions of the Software, End User must continue to purchase Maintenance and Support Services.

8.2   Obligations. During the term of the Maintenance and Support Services detailed below (the "Maintenance Period"), Astadia will attempt to troubleshoot all fixable software errors reported by an End User designated contact person, during working days, which are reported through the support line, or by e-mail in accordance with the Service Levels, as stipulated in the Service Level Agreement attached as Appendix 2 to this Agreement. During the Maintenance Period for the Maintenance and Support Services, Astadia will use commercially reasonable efforts to correct all software errors according to certain Service Levels, as stipulated in the Service Level Agreement attached as Appendix 2 to this Agreement.

8.3   Term. The Maintenance Period for the Maintenance and Support Services will commence on the Effective Date and will expire on the one-year anniversary thereof. Thereafter the term of the Maintenance and Support Services shall renew automatically for one-year renewal terms, unless terminated by End User, giving Astadia written notice of the termination not less than ninety (90) days prior to the last day of the one-year term.

8.4   Fee. The one-year fee for Maintenance and Support Services will be calculated as a certain percentage of the then-current fee for the Software, as published by Astadia in the then-current price book; provided, however, in no event shall the fee increase by more than five percent (5%) each year. The fee for Maintenance and Support Services from the Effective Date until the first anniversary is included in the fee for the Software.

9.   Warranties and Disclaimer.

9.1   General. Astadia represents and warrants that it has all necessary rights to grant the licenses and rights herein to End User. Each party represents and warrants that it has the full right, power and authority to enter into and perform its obligations under this Agreement, and that the person signing this Agreement is duly authorized to enter into this Agreement on its behalf.

9.2   Software Warranty. Astadia warrants that, for a period of ninety (90) days following delivery of the Astadia Software ("Warranty Period"), the Release version delivered will materially perform the main functions described in the Documentation ("Limited Warranty"). To the extent permitted by the Constitution and laws of the State of Texas, End User's exclusive remedy and Astadia's entire obligation and liability for any breach of the Limited Warranty is to use commercially reasonable efforts to repair or replace the Software or refund to End User the price End User paid for the Software if a repair or replacement of the Software would in Astadia's opinion be unreasonable. The Limited Warranty will not apply if: (i) the Software is not used by End User in accordance with this Agreement or the Documentation; or (ii) a malfunction in the Software has been caused by any equipment or software not supplied by Astadia.

9.3   <u>DISCLAIMER</u>. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 9, THE SOFTWARE AND ALL RELATED SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND. ASTADIA EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING ALL SOFTWARE AND RELATED SERVICES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT, OR SYSTEM INTEGRATION. ASTADIA DOES NOT REPRESENT OR WARRANT THAT SOFTWARE WILL BE PROVIDED ERROR FREE, VIRUS FREE (ANY VIRUS CONTAINED IN THE ORIGINAL CODE WILL BE RETURNED IN THE CONVERT CODE – LIKE FOR LIKE) WITHOUT INTERRUPTION, OR WILL WORK ON ALL DEVICES OR WITH ALL COMMUNICATION PROTOCOLS. END USER ACKNOWLEDGES THAT ASTADIA HAS NO CONTROL OVER THE SPECIFIC CONDITIONS UNDER WHICH END USER USES THE SOFTWARE. ACCORDINGLY, ASTADIA CANNOT AND DOES NOT WARRANT ANY PARTICULAR RESULTS THAT MAY BE OBTAINED BY THE USE OF THE SOFTWARE. THE SOFTWARE AND SUPPORT DO NOT REPLACE END USER'S OBLIGATION TO EXERCISE END USER'S INDEPENDENT JUDGMENT IN USING THE SOFTWARE. END USER IS SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING THE ACCURACY AND ADEQUACY OF ANY OUTPUT FROM THE SOFTWARE, AND FOR ANY RELIANCE THEREON.

10.   **Confidentiality.**

During the Term of this Agreement, each party may have access to confidential, proprietary or trade secret information disclosed by the other party, including, without limitation, ideas, trade secrets, procedures, methods, systems, and concepts, whether disclosed orally or in writing or stored within the Software, or by any other media ("Confidential Information"). Without limiting the foregoing, the Software (and its underlying code, processes and algorithms, and all license keys) are Astadia's Confidential Information. Each party as a receiving party (the "Receiving Party") acknowledges that the Confidential Information of the other party (the "Disclosing Party") contains valuable trade secrets and other proprietary information of the Disclosing Party and that any such Confidential Information will remain the sole and exclusive property of the Disclosing Party. Each party will use the Confidential Information provided hereunder only for purposes directly related to the purpose for which it was provided and will further restrict disclosure of Confidential Information solely to its employees, representatives, and subcontractors with a need to know who are subject to confidentiality obligations not less restrictive than those set forth herein, and not disclose such Confidential Information to any other parties, and will otherwise protect the Confidential Information with no less restrictive measures than it uses to protect its own confidential and proprietary information. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized disclosure, misappropriation, or misuse of the Disclosing Party's Confidential Information and shall take prompt and effective steps to prevent a recurrence of such misappropriation or misuse. Information will not be deemed "Confidential Information" if such information: (i) was

generally accessible to the public at the time it was communicated to the Receiving Party, (ii) is rightfully communicated to the Receiving Party free of any obligation of confidence subsequent to the time it was communicated to the Receiving Party, (iii) was in the Receiving Party's possession free of any obligation of confidence at the time it was communicated to the Receiving Party, or (iv) was developed by the Receiving Party entirely independently of any Confidential Information of the Disclosing Party. Notwithstanding the above, the Receiving Party will not be in violation of this Section 10 with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the Receiving Party provides the Disclosing Party with prompt written notice of such disclosure where reasonably possible in order to permit the Disclosing Party to seek confidential treatment of such information. Upon the written request of the Disclosing Party, and in any event no later than thirty (30) days after the termination of this Agreement, the Receiving Party shall (i) return, destroy or erase all materials embodying Disclosing Party's Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, and (ii) provide written confirmation to this effect. The Receiving Party may also securely retain one copy of materials embodying Confidential Information in its files solely for record purposes.

11.   **Limitation of Liability.**

EXCEPT IN THE CASE OF LIABILITY UNDER SECTION 12 (INDEMNIFICATION), END USER'S BREACH OF SECTION 3.1 (GENERAL RESTRICTIONS), OR EITHER PARTY'S BREACH OF SECTION 10 (CONFIDENTIALITY), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF USE, LOSS OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE SOFTWARE AND RELATED SERVICES RENDERED HEREUNDER (HOWEVER ARISING, INCLUDING NEGLIGENCE), EVEN IF THE PARTIES ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, ASTADIA'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SOFTWARE AND RELATED SERVICES RENDERED HEREUNDER, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED ANY AMOUNTS ACTUALLY PAID BY END USER TO ASTADIA UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THAT THE CAUSE OF ACTION AROSE. THE LIMITATIONS AND DISCLAIMERS IN THIS SECTION ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND EACH PARTY ACKNOWLEDGES AND AGREES THAT, BUT FOR SUCH LIMITATIONS AND DISCLAIMERS, THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ON THE TERMS SET FORTH HEREIN.

12. Indemnification.

12.1 <u>By Astadia</u>. Astadia will indemnify and hold harmless End User against any claims, actions, suits and proceedings brought against End User by unaffiliated third parties alleging that the Software (other than any third party or open source components or elements of the Software) infringes upon such third party's patents or registered copyrights, and Astadia will pay all damages that a court finally awards to such third party, and all associated settlement amounts agreed to by Astadia in writing. This obligation does not apply with respect to the Software or portions or components thereof (i) that Astadia did not supply, (ii) that are combined by End User with other products, data, processes or materials where the infringement or misappropriation relates to such combination, unless Astadia expressly authorized such combination in writing, (iii) to the extent that End User continues alleged infringing activity after being provided modifications that would have avoided the alleged infringement, or (iv) where End User's use of the Software is not strictly in accordance with this Agreement, and such claim arises from such use by End User. If Astadia believes that the Software is, or is likely to be, the subject of an infringement claim, Astadia may, at its option, (a) procure for End User rights to continue using the Software under this Agreement, (b) replace or modify the Software so that it becomes non-infringing but is substantially equivalent in functionality and performance, or (c) terminate this Agreement and the rights granted herein and refund to End User the unamortized portion of the license fee actually paid by End User for the license to the Software (as amortized on a straight-line basis over five (5) years from the date of this Agreement). The foregoing obligations are Astadia's only obligations and liability in connection with infringement by the Software or any related technology or services provided by Astadia hereunder.

12.2 <u>Indemnification Procedures</u>. End User shall provide Astadia with: (i) prompt written notice of any claim for which indemnification is sought; and (ii) reasonable assistance and cooperation in such defense at Astadia's expense. In any proceeding End User shall have the right to retain, at its expense, its own counsel. Notwithstanding the foregoing, Astadia may not enter into a settlement of an indemnified claim without End User's written consent, which shall not be unreasonably withheld.

13. General Provisions.

13.1 <u>Relationship</u>. The parties are independent contractors under this Agreement and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary or other special relationship. Neither party intends this Agreement to benefit or create any right or cause of action in or on behalf of, any person or entity other than the parties. This Agreement is not intended to create a third-party beneficiary of any kind. Neither party shall represent to any third party that it has any right to bind the other party in any manner, and neither party will make any representations or warranties on behalf of the other party.

13.2 <u>Modifications</u>. No modification to this Agreement is valid, unless agreed to in a writing signed by authorized representatives of both parties.

13.3   Notices. Any notice, approval or consent required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, or (c) on the date of delivery if delivered personally, as follows: to Astadia, at Astadia, Inc., 12724 Gran Bay Parkway, Suite 300, Jacksonville, FL 32258, and to End User, at The Texas A&M University System, 301 Tarrow St., Suite 273, College Station, Texas 77840, Attn: Jeff Zimmermann, Phone: (979) 458-6410, Fax: (979) 458-6250, Email: jzimmermann@tamus.edu. Each party may, upon notice to the other party in accordance with this provision, change the address and person for notices.

13.4   Force Majeure. Neither party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement (other than the payment of amounts owed) if such delay or failure arises by any reason beyond its reasonable control, including any act of God, or any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delays in transportation or communications, or failures of utilities or internet infrastructure not controlled by such party; provided, however, that the affected party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

13.5   Governing Law/Venue. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Texas without reference to its choice of law rules and without reference to the United Nations Convention on Contracts for the International Sale of Goods. Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against End User shall be in the county in which the primary office of the chief executive officer of End User is located, which is Brazos County, Texas.

13.6   Assignment. Neither party may assign this Agreement without the prior written consent of the other party. Any other attempted assignment shall be void. This Agreement shall inure to the benefit of and bind each party's permitted assigns and successors.

13.7   U.S. Government End Users. As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all software and accompanying Documentation provided in connection with this Agreement are "commercial items," "commercial computer software," and or "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by the terms of this Agreement. End User will ensure that each copy used or possessed by or for the U.S. Government is labeled to reflect the foregoing.

13.8   Export. Each party shall comply with U.S. export control regulations. If either party desires to disclose to the other party any information, technology, or data that is identified on any

U.S. export control list, the disclosing party shall advise the other party at or before the time of intended disclosure and may not provide export-controlled information to the other party without the written consent of the other party. Astadia certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

13.9   Severability. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will be construed as if such unenforceable provision had never been contained herein and will continue in full force and effect.

13.10   No Waiver. A party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. A waiver of any provision of this Agreement must be in writing, specify the provision to be waived and signed by the party agreeing to the waiver.

13.11   Injunction. The parties agree that a material breach of this Agreement adversely affecting Astadia's proprietary rights in the Software would cause irreparable injury to Astadia for which monetary damages would not be an adequate remedy and that Astadia may seek temporary, preliminary and permanent equitable relief in addition to any remedies Astadia may have hereunder or at law.

13.12   No Third Party Beneficiaries. This Agreement is not intended to, and does not, create a right or cause of action in any person or entity other than the parties and the indemnitees.

13.13   Electronic and Information Resources. If determined to be applicable by End User, Astadia shall address all required technical standards (WCAG 2.0, Level AA) (the "Accessibility Standards") by providing a Voluntary Product Accessibility Template ("VPAT") attesting to the accessible features and capabilities of any electronic and information resources (as defined in Title 1, Chapter 213 of the Texas Administrative Code) and associated documentation and technical support (collectively, the "EIR") or provide a similarly formatted document as the VPAT attesting to the EIR's accessible features and capabilities. End User may test the EIR to ensure the accuracy of the VPAT response regarding conformance with the Accessibility Standards. If Astadia should have known, becomes aware, or is notified that the EIR do not comply with the Accessibility Standards, Astadia shall, in a timely manner and at no cost to End User, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, replacement, or upgrading the EIR, or providing a suitable substitute. In the event that Astadia fails or is unable to do so, End User may immediately terminate this Agreement, and Astadia will refund to End User all amounts paid by End User under this Agreement within sixty (60) days following the effective date of termination.

13.14   Access to Agency Data. Pursuant to Section 2054.138, Texas Government Code, Astadia shall implement and maintain appropriate administrative, technical, and physical security

measures, including without limitation, the security controls available at https://cyber-standards.tamus.edu, as may be amended from time to time (the "Security Controls"), to safeguard and preserve the confidentiality, integrity, and availability of End User's data. Astadia shall periodically provide End User with evidence of its compliance with the Security Controls within thirty (30) days of End User's request.

13.15   Cyber Security Training. Pursuant to Section 2054.5192, Texas Government Code, Astadia and its employees, officers, and subcontractors who have access to End User's computer system and/or database must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, and selected by End User. The cybersecurity training program must be completed by Astadia and its employees, officers, and subcontractors during the Term and any renewal period of this Agreement. Astadia shall verify completion of the program in writing to End User within the first sixty (60) calendar days of the Term and any renewal period of this Agreement. Astadia acknowledges and agrees that its failure to comply with the requirements of this Section are grounds for End User to terminate this Agreement for cause in accordance with the provisions of Section 7 of this Agreement.

13.16   Disaster Recovery Plan. Upon request of End User, Astadia shall provide the descriptions of its business continuity and disaster recovery plans.

13.17   Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

13.18   Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Astadia agrees that any payments owing to Astadia under this Agreement may be applied directly toward certain debts or delinquencies that Astadia owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

13.19   Previous Employment. Astadia acknowledges and understands that Section 2252.901, Texas Government Code, prohibits End User from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Astadia is an individual, by signing this Agreement, Astadia certifies that Section 2252.901, Texas Government Code, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

13.20   Not Eligible for Rehire. Astadia is responsible for ensuring that its employees involved in any work being performed for End User under this Agreement have not been designated as "Not Eligible for Rehire" as defined in End User policy 32.02, Discipline and Dismissal of Employees, Section 4 ("NEFR Employee"). In the event End User becomes aware that Astadia has a NEFR Employee involved in any work being performed under this Agreement, End User will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by End User.

13.21   Franchise Tax Certification. If Astadia is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Astadia certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Astadia is exempt from the payment of franchise (margin) taxes.

13.22   State Auditor's Office. Astadia understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Astadia agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Astadia will include this provision in all contracts with permitted subcontractors.

13.23   HUB Subcontracting Plan. It is the policy of the state of Texas and End User to encourage the use of Historically Underutilized Businesses ("HUB") in contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in End User contracting and purchasing. Astadia has indicated it will not subcontract any of its duties or obligations under this Agreement. If Astadia will subcontract any of its duties and obligations under this Agreement, Astadia will be required to provide prior written notice to End User and make a good faith effort to submit a HUB subcontracting plan as required under Section 20.285 of the Texas Administrative Code.

13.24   Loss of Funding. Performance by End User under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, End User will issue written notice to Astadia and End User may terminate this Agreement without further duty or obligation hereunder. Astadia acknowledges that appropriation of funds is beyond the control of End User. In the event of a termination or cancellation under this Section, End User will not be liable to Astadia for any damages that are caused or associated with such termination or cancellation.

13.25   Prohibition on Contracts with Companies Boycotting Israel. To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, Astadia certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. Astadia acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

13.26 <u>Certification Regarding Business with Certain Countries and Organizations</u>. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Astadia certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, Texas Government Code. Astadia acknowledges this Agreement may be terminated if this certification is or becomes inaccurate.

13.27 <u>Prohibition on Contracts Related to Persons Involved in Human Trafficking.</u> Under Section 2155.0061, Texas Government Code, Astadia certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

13.28 <u>Records Retention.</u> Astadia will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to this Agreement for the duration of this Agreement and for seven years after the conclusion of this Agreement.

13.29 <u>Firearm Entities and Trade Associations Discrimination.</u> To the extent applicable, Astadia agrees that in accordance with Section 2274.002, Texas Government Code, Astadia (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association.

13.30 <u>Energy Company Boycotts.</u> To the extent applicable, Astadia agrees that in accordance with Section 2274.002, Texas Government Code, Astadia (1) does not boycott energy companies, and (2) will not boycott energy companies during the Term of this Agreement.

13.31 <u>Use of Name</u>. Each party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that party. Neither party may use the Marks of the other without the advance written consent of that party, except that each party may use the name of the other party in factual statements that, in context, are not misleading.

13.32 <u>Dispute Resolution</u>. To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by End User and Astadia to attempt to resolve any claim for breach of contract made by Astadia that cannot be resolved in the ordinary course of business. Astadia shall submit written notice of a claim of breach of contract under this Chapter to the Deputy Chancellor and Chief Financial Officer of End User, who shall examine Astadia's claim and any counterclaim and negotiate with Astadia in an effort to resolve the claim. This provision and nothing in this Agreement waives End User's sovereign immunity to suit or liability and End User has not waived its right to seek redress in the courts.

13.33 <u>Compliance with Laws</u>. Each party hereto will comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement.

13.34 <u>Public Information Act.</u> Astadia acknowledges that End User is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon End User's written request, Astadia will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of End User to End User in a non-proprietary format acceptable to End User that is accessible by the public. Astadia acknowledges that End User may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Astadia agrees that this Agreement can be terminated if Astadia knowingly or intentionally fails to comply with a requirement of that subchapter.

13.35 <u>Limitations</u>. As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of End User to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on End User's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Terms and conditions related to the Limitations will not be binding on End User except to the extent authorized by the Constitution and the laws of the state of Texas. Neither the execution of this Agreement by End User nor any other conduct, action, or inaction of any representative of End User relating to this Agreement constitutes or is intended to constitute a waiver of End User's or the state's sovereign immunity.

13.36 <u>Entire Agreement</u>. This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or "side deals" which are not described in this Agreement.

13.38 <u>Insurance</u>. Insurance requirements as stated within Exhibit B, attached hereto.

14.   Definitions.

The following definitions apply:

"<u>Agreement</u>" has the meaning set forth in the preamble."<u>Astadia IP</u>" means the Astadia Software, all specifications, documentation, data and other materials and Intellectual Property that may be provided by Astadia under this Agreement; all modifications, improvements and derivative works of any of the foregoing; and all Intellectual Property rights in any of the foregoing.

"<u>Documentation</u>" means the standard product documentation, including user and technical documentation, as released by Astadia together with the Software, and which describes the standard functionalities of the Astadia Software.

"<u>End User</u>" has the meaning set forth in the preamble.

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"Intellectual Property" or "IP" means patents, designs, models, drawings, copyrights, software rights, database rights, trade marks, services marks, know-how, web domain names, trade names (all whether registered or not, and including any applications thereto) and in general all rights of a same or similar nature, anywhere in the world including all extensions, reversions, revivals and renewals thereof.

"Maintenance and Support Services" means the product update and error correction services provided from time to time by Astadia in accordance with the Service Level Agreement attached as Appendix 2 to this Agreement and Order Form.

"Order Form" has the meaning set forth in the preamble.

"Software" has the meaning set forth in Section 2.1.

"Release" means a new version of Software or Documentation, which is generally released by Astadia to its end users that are entitled to Maintenance and Support Services. Releases do not include software programs designated by Astadia as new products.

"Term" has the meaning set forth in Section 7.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

Astadia, Inc.

By: _Leslie Dickinson_

Name: Leslie Dickinson

Title: Director Contract Administration

3/23/2023

End User

The Texas A&M University System

By: _Billy Hamilton_

Name: Billy Hamilton

Title: Deputy Chancellor & CFO

3/23/2023

Licensed Products
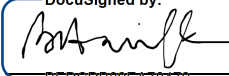
Appendix 1 to License and Maintenance Agreement

The following Software has been licensed perpetually by End User, and is subject to the terms and conditions of this License and Maintenance Agreement.

Software		Unit License Fee	Yearly Maintenance
NSupport	4.4.0		
Host Services	12.1.1		
IBM Services	4.2.0		
File Services	4.1.0		
ADABAS Services	8.2.5		
Terminal Services	1.14.0		
Process Management Service Task API	1.17.6		
Natural Services	9.0.0		
z/OS Services	5.7.1		
z/OS PGP	0.9.0.0		
ESS Services API	4.2.2		
ESS Services Client	6.0.1		
ESS Services Server for ASP.NET Core	3.1.2		
Presentation Service	4.0.4		
Process Management Service	1.17.4		
Sysout Handler Service	3.1.0		
Shadow Server Code Generation Build Task	1.6.1		
Natural Services Build Task	9.0.0		
Job & Spool Management API	5.0.0		
TOTAL		**NA**	**$165,600.--**

Astadia, Inc.

By: _Leslie Dickinson_
 9611F49076E9466...
Name: _Leslie Dickinson_
Title: _Director Contract Administration_
3/23/2023

The Texas A&M University System

By: _Billy Hamilton_
 BEDCDB89EA78479...
Name: _Billy Hamilton_
Title: _Deputy Chancellor & CFO_
3/23/2023

Appendix 1

Service Level Agreement

Appendix 2 to License and Maintenance Agreement

DEFINITIONS

Defect: means any fault, bug, error of design, execution, programming or other error in relation to the product or service object of the License and Maintenance Agreement as a whole or in part and any results that are incorrect or not compliant with the functions of the Software or Documentation while the Software is used in accordance with the License and Maintenance Agreement and the Documentation.

Defects are classified into three (3) categories. In the event of a disagreement between the parties regarding the qualification of the degree of severity of the Defect, Astadia's qualification shall prevail.

- **Severity 1 Defect**: means any Defect rendering the use of the Software impossible, in whole or in part, for the use or test of an essential function of the Software; or giving rise to limitations or restrictions in the use of the Software rendering an essential function of the Software unusable in production; or giving rise to limitations or restrictions in the testing of the Software, rendering an essential function of the Software untestable.

- **Severity 2 Defect**: means a Defect giving rise to limitations or restrictions in the use of the Software or in the testing of Software without these limitations or restrictions being sufficient for it to be qualified as a Severity 1 Defect.

- **Severity 3 Defect**: means any Defect which is not considered as a Severity 1 Defect or a Severity 2 Defect.

Response Time: for any Defect the Response Time is the time between the notification by End User of the Defect and the first return made by Astadia.

Business Hours: North American Support from 9.00 a.m to 6.00 p.m ET on Working Days, excluding Federal Holidays. European Support from 9.00 a.m to 6.00 p.m CET on Working Days, excluding Belgian Holidays.

Working Days: Monday to Friday, with the exception of Belgian public holidays.

Target Correction Time: refers to the period within which Astadia will use commercially reasonable efforts to correct the Defect as described in the Service Levels below.

SERVICE LEVELS

Severity 1 Defect: from the moment of notification of the Defect, Astadia will target a response within two (2) business hours. Astadia will target to have the Defect corrected by Astadia within a correction Time of twenty-four (24) hours.

Severity 2 Defect: from the moment of notification of the Defect, Astadia will target a response within eight (8) business hours. Astadia will target to have the Defect corrected by Astadia within a Correction Time of seventy-two (72) hours.

Severity 3 Defect: from the moment of notification of the Defect, Astadia will target a response time within sixteen (16) Business Hours Response Time. Astadia will target to have the Defect corrected within a Correction Time of five (5) Working Days.

Insurance Requirements

A. Astadia shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. All coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, the A&M System shall not be deemed or construed to have assessed the risk that may be applicable to Astadia under this Agreement. Astadia shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Astadia is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

1. **Worker's Compensation**

   Worker's compensation insurance with the following minimum limits of coverage:

Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	$1,000,000 Each Accident
	$1,000,000 Disease/Employee
	$1,000,000 Disease/Policy Limit

   Workers' compensation policy must include under Item 3.A., on the information page of the workers' compensation policy, the state in which work is to be performed for A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

   If this coverage is waived by System Risk Management, Astadia, his/her employees and subcontractors must sign a hold harmless and indemnification agreement.

2. **Automobile Liability**

   Business auto liability insurance covering all owned, non-owned or hired automobiles, with limits of not less than $1,000,000 single limit of liability per accident for bodily injury and property damage;

3. **Commercial General Liability**

   Commercial general liability insurance with the following minimum limits of coverage:

Each Occurrence Limit	$1,000,000
General Aggregate Limit	$2,000,000
Products / Completed Operations	$1,000,000
Personal / Advertising Injury	$1,000,000
Damage to rented Premises	$300,000
Medical Payments	$5,000

Exhibit A

The required commercial general liability policy must be issued on a form that insures Astadia's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

4. **Umbrella Liability Insurance** $5,000,000

5. **Professional Liability (Errors & Omissions)**

Insurance with limits of not less than $1,000,000 each occurrence, $2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of Astadia and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Astadia agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two (2) years after cancellation of this Agreement.

B. Astadia shall deliver to A&M System evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance prior to the execution and delivery of this Agreement and prior to the performance of any services by Astadia under this Agreement. Astadia shall provide additional evidence of insurance on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

C. Commercial General Liability and Auto Liability policies must be endorsed to name The Texas A&M University System Board of Regents ("Board of Regents"), The Texas A&M University System ("A&M System") and A&M System as additional insureds up to the actual liability limits of the policies maintained by Astadia. The commercial general liability additional insured endorsements must include on-going and completed operations afforded by CG 20 10 (10 01 Edition or equivalent) and CG 20 37 (10 01 Edition or equivalent). Commercial general liability and business auto liability policies must be written on a primary and non-contributory basis. Copies of each endorsement must be submitted with the certificate of insurance. The Umbrella policy, at minimum, must follow form.

D. All insurance policies must be endorsed to provide a waiver of subrogation in favor of the Board of Regents and A&M System.

E. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy.

F. Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by Astadia under this Agreement. Astadia shall pay

Exhibit A

any deductible or self-insured retention for any loss. All deductibles and self-insured retentions must be shown on the certificates of insurance.

G. Certificates of insurance and additional insured endorsements as required by this Agreement must be mailed, faxed, or emailed to the A&M System.

H. The insurance coverage required by this Agreement must be kept in force until all services have been fully performed and accepted by A&M System in writing.

Exhibit A