



PID: TAMUAthletics-0004-DCA/SOW

This Data Collection and Analytics subscription agreement (“Agreement”) is entered into effective as of the date listed below (“Agreement Effective Date”) by and between AmpThink LLC having a place of business at 3827 Dividend Drive, Garland, TX 75042 (“AmpThink”) and Texas A & M University, a member of The Texas A&M University System, an agency of the State of Texas, having a place of business at 756 Houston St., College Station, TX 77843 (“Subscriber”). AmpThink and Subscriber also being individually referred to as a "Party" and collectively as the "Parties".

Subscriber desires AmpThink to use its propriety Data Collection & Analytics System to collect on behalf of Subscriber, Network Data and make available such Network Data to Subscriber. To ensure highest performance, AmpThink desires to co-locate its Data Collection & Analytics System in Subscriber’s network operations center (“NOC”) to collect, analyze, and provide such Network Data to the Subscriber.

AmpThink desires to use the Network Data for developing tools that may help increase revenue to Subscriber, for Research and Development purposes, and for possible publication of research using aggregated and anonymized (de-identified) Network Data, and Subscriber desires to permit such use of Network Data by AmpThink, and its Research Partners. AmpThink will at all times maintain administrative, physical and technical safeguards to protect the underlying Network Data that are no less rigorous than accepted industry practices.

This Agreement sets forth the Services to which AmpThink delivers Network Data to Subscriber and to which Subscriber grants to AmpThink a limited license to use the Network Data for research and development purposes.

This Agreement consists of this signature page and the following sections, which are hereby incorporated into, and made part of, this Agreement for all purposes:

- Exhibit 1: Main Body
- Exhibit 2: Agreement Process
- Exhibit 3: Statement of Work (For Additional Creative/ Development Services)
- Exhibit 4: Service Level Agreement
- Exhibit 5: Marketing Agreement

Each Party, as evidenced by the signature below or electronic signature, as applicable, of its authorized representative, acknowledges that it has read and agrees to this Agreement in its entirety.

By: _____	By: _____
Name: Robert C. Bounds	Name: Lisa Morganelli
Title: Director, Procurement Services	Title: Vice President
Date: 8.9.2018	Date: 8-17-2018

1 DEFINITIONS

- 1.1 **AmpThink Authorized Persons** means AmpThink's employees, contractors and research partners who have a need to know or otherwise access Confidential Information and/or Personal Information to enable AmpThink to perform AmpThink's research and development, and who are bound in writing by confidentiality and other obligations sufficient to protect Confidential Information and Personal Information in accordance with this Agreement.
- 1.2 **Business Days** means the generally accepted days of operation per week within the relevant region where the Services will be performed, excluding local holidays as observed by Subscriber.
- 1.3 **Confidential Information** means information disclosed by a Party to the other Party in the course of performing this Agreement, and marked "confidential" or, even if not so marked, treated as such because its nature, or the circumstances under which it is disclosed, lead the receiving party to reasonably believe it to be confidential.
- 1.4 **Data Collection & Analytics System** means AmpThink's proprietary system for collecting Network Data and optionally aggregating other data relating to use of Subscriber's Network, and providing related Services to Subscriber.
- 1.5 **Documentation** means any policies and manuals AmpThink may adopt or provide with respect to use of the Data Collection & Analytics System.
- 1.6 **Intellectual Property** means any and all tangible and intangible rights associated with: (i) works of authorship, including copyrights, moral rights, neighboring rights, and derivative works thereof; (ii) trade names, service marks, trade dress, trademarks and other designations of origin or of authenticity; (iii) inventions, ideas, know how, tools, methodologies, processes, technologies and trade secrets; (iv) patents, design rights, and other industrial property rights; (v) rights to publicity; and all other proprietary information and intellectual property rights of every kind and nature however designated, whether arising by operation of law, treaty, contract, license, or otherwise, together with all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof.
- 1.7 **Milestone** means a specific goal, objective or event pertaining to services described under the terms of this Agreement, as applicable.
- 1.8 **Network Data** means information that AmpThink collects from and about Subscriber, Users, and/or Subscriber's Network using AmpThink's Data Collection & Analytics System. By way of example but not limitation, Network Data may include device IDs, location information, movement data, data usage, browsing information, device performance metrics, and other elements specified by the Subscriber. The scope of the Network Data shall be limited by the Subscriber to systems in which AmpThink's Data Collection & Analytics System has been granted access and/or explicitly granted read only or read/write access to other platforms generating Network Data.
- 1.9 **Personal Information** means information (including but not limited to Confidential Information): (i) obtained or created by AmpThink for Subscriber using Subscriber's Network and AmpThink's Data Collection & Analytics System; or (ii) to which access was provided to AmpThink by or at the direction of Subscriber, in the course of AmpThink's provision of data or services to Subscriber, that: (x) identifies or can be used to identify an individual (including,

without limitation, names, signatures, addresses, telephone numbers, e-mail addresses, and other unique identifiers); or (y) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or pins, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, answers to security questions, and other personal identifiers).

- 1.10 **Professional Services** means such AmpThink services as are set forth in this Agreement or in a statement of work (SOW) agreed to by the Parties.
- 1.11 **Purchase Order or PO** means a written or electronic order from Subscriber to AmpThink for the services to be provided by AmpThink under this Agreement.
- 1.12 **Remote** means the Services are to be performed from an AmpThink location, as applicable.
- 1.13 **Research and Development** means work directed toward the innovation, introduction, and improvement of products, services and processes, including but not limited to product development, service development, corporate and marketing strategy, technological and process development, Intellectual Property development and strategy, and operational improvement.
- 1.14 **Research Partner** means a Subscriber or other research provider with which AmpThink shares Network Data for purposes of (i) AmpThink's Research and Development using any Network Data or data derived or resulting therefrom; or (ii) Research Partner's or AmpThink's publication of research using de-identified aggregated Network Data and data derived or resulting therefrom.
- 1.15 **Security Breach** means (i) any act or omission that materially compromises either the security, confidentiality, or integrity of personal information or the physical, technical, administrative, or organizational safeguards put in place by a Party (or any such Party's authorized persons), or by the other Party should first Party have access to such Party's systems, that relate to the protection of the security, confidentiality, or integrity of personal information, or (ii) receipt by a Party of a complaint in relation to the privacy and data security practices of the other Party (or any of such Party's authorized persons) or a breach or alleged breach of this Agreement relating to such privacy and data security practices. Without limiting the foregoing, a material compromise will include any unauthorized access to or disclosure or acquisition of personal information.
- 1.16 **Services** means the services described in this Agreement or in an additional SOW to be provided by AmpThink to Subscriber.
- 1.17 **Site** means Subscriber's facility located at 756 Houston St, College Station, TX 77843.
- 1.18 **Subscriber's Network** means a set of interconnected and interworking Subscriber supported hardware and software that is implemented, operated, and supported by Subscriber from a single NOC.
- 1.19 **Users** means individual persons who use Subscriber's Network.
- 1.20 **Terms and Conditions** means the terms and conditions (as prepared, adopted and amended by Subscriber from time to time) that Users must accept prior to accessing Subscriber's Network.

2 PROJECT SCOPE

2.1 SERVICES

AmpThink will provide the following services:

- Co-locate AmpThink's Data Collection & Analytics System in Subscriber's NOC.



- Provide Post Deployment Validation Services.
- Collect Network Data.
- Provide Subscriber access to the collected Network Data.
- Provide Analytics on the Network Data if specified in a separate SOW.

2.2 EXCLUSIONS

The proposed Services do not include the items listed below:

- Any network design, troubleshooting, implementation, or remediation services that are not specified in this Agreement or an attached SOW.
- Any creative, content development, or consulting services that are not specified in this Agreement or an attached SOW.
- Any Subscriber flow downs not specifically identified within this Agreement.

2.3 SERVICE HOURS

AmpThink will provide Services on days and at times as negotiated by the Parties.

Services Schedule

Service Name	Estimated Start Date	Estimated End Date
Data Collection & Analytics System Co-location	t0	t0 + 7
Data Collection & Analytics System Integration Services	t0	t0 + 7
Post Deployment Validation Services	t0 + 7	t0 + 7

t0 = start date

2.4 SINGLE POINT-OF-CONTACT INFORMATION

Subscriber and AmpThink will designate a single point of contact to whom communications with regard to the Services may be addressed and who has the authority to act on all aspects of the services; will be available during standard business hours; and will designate a backup contact for when the primary contact is not available.

AmpThink Contact		Subscriber Contact	
Name:	Jessie Sullivan	Name:	Daniel Roberts
Title:	Customer Advocate	Title:	Contact
Telephone No:	612.810.3909	Telephone No:	979.862.5406
E-mail Address:	jessie.sullivan@ampthink.com	E-mail address:	droberts@athletics.tamu.edu

3 RESPONSIBILITIES OF THE PARTIES

3.1 AMP THINK RESPONSIBILITIES:

3.1.1 Data Collection & Analytics System Installation Services

Co-locate AmpThink's Data Collection & Analytics System in Subscriber's NOC and with the assistance of the Subscriber or the Subscriber's designated technical contact, connect the Data Collection & Analytics System to the Subscriber's network. Installation will in its simplest form, involve assigning the Data Collection & Analytics System IP addresses that are consistent with the Subscriber's IP schema, physically installing the Data Collection & Analytics System, and connecting the Data Collection & Analytics System to the Subscriber's network.

3.1.2 Data Collection & Analytics System Integration Services

Based upon Subscriber supplied network topology and network configuration information, AmpThink will when applicable to the agreed Services in this Agreement or integrated SOWs:

- Configure the Data Collection & Analytics System according to network topology
 - Configure DNS/DHCP upstream servers and static entries for portal domain
 - Configure RADIUS shared secrets, ACLs, and portal URL
 - Configure web redirects, social logins, validation features, and certificates
- Configure or direct the configuration of firewall changes required to allow for the operation of AmpThink's Data Collection & Analytics System, support services, and AmpThink tools to include Remote monitoring and support software

3.1.3 Post Deployment Portal Validation Services

After co-locating the Data Collection & Analytics System, AmpThink will perform post implementation testing to confirm network readiness via the following steps:

- Validate that the Data Collection & Analytics System is correctly configured, and operational
- Test all network integration points to include AAA integration with Subscriber's WLAN infrastructure
- Monitor performance and overall health of the Data Collection & Analytics System test configuration
- Provide Data Collection & Analytics System access-related troubleshooting and support
- Provide observations and optimization suggestions

3.2 SUBSCRIBER RESPONSIBILITIES:

3.2.1 Co-locate AmpThink's Data Collection & Analytics System in Subscriber's NOC

- Provide conditioned space in the NOC to assure appropriate ambient temperature and moisture thresholds for the Data Collection & Analytics System
- Provide AC power, Uninterruptible Power Supply (“UPS”) systems, and standby generators
- Provide rack space for the Data Collection & Analytics System and appropriate cabling to the Subscriber's network infrastructure
- Provide physical security of the NOC. Security will include controlled access doors, controlled access permissions, and managed key and/or access card for access control
- Designate a single point of contact to act as the primary technical interface to the designated project engineer
- Assist an AmpThink engineer in updating any needed implementation procedures and device-specific configurations
- Provide AmpThink with such documented Subscriber requirements (business and technical) AmpThink may reasonably require to enable AmpThink to provide the services and comply with AmpThink's responsibilities set forth herein
- Ensure key Subscriber personnel such as network engineers and network operations staff are available to AmpThink during the course of the service as necessary to provide information and participate in meetings required to enable AmpThink to provide the services and comply with AmpThink's responsibilities set forth herein
- Provide AmpThink with such access to Subscriber site(s) and facilities as required to enable AmpThink to comply with its obligations, including where applicable, computers, telecom equipment, facilities, workspace and telephones for AmpThink's use during the project
- Supply all work place policies and inform AmpThink of any conditions that would affect AmpThink's ability to deliver the Services contained in this Agreement

3.2.2 Data Collection & Analytics System Integration Services

- Provide AmpThink with such documented information on Subscriber's existing network infrastructure design as AmpThink may reasonably require to enable AmpThink to provide the services and comply with AmpThink's responsibilities set forth herein, including but not limited to: features and services, route plans, addressing schema, call/data flow, dial plans, security policies, network management and operational processes
- Provide AmpThink with access to Subscriber systems and their configuration as required to enable AmpThink to comply with its obligations, including where applicable, WLAN controllers, Firewalls, Routers, Switches, Servers, and Virtual Machines

3.2.3 Post Deployment Portal Validation Services

- Provide AmpThink with such access to Subscriber Site(s) and facilities as required to enable AmpThink to comply with its obligations, including where applicable, computers, telecom equipment, facilities, workspace and telephones for AmpThink's use during the project
- Supply access to Subscriber employees and s as AmpThink may reasonably require to enable AmpThink to provide the services and comply with AmpThink's responsibilities set forth herein

4 COLLECTION, OWNERSHIP, LICENSE AND USE OF NETWORK DATA

- a) Data Delivery. Solely during the Term of this Agreement, and subject to the terms and conditions of this Agreement and applicable law, AmpThink agrees to collect and make available to Subscriber the Network Data in the manner and form set forth in this Agreement. Neither Subscriber nor AmpThink will use the Network Data in any way inconsistent with this Agreement or applicable law.
- b) Data Ownership. The Network Data will be owned by Subscriber. AmpThink receives no right, title, or interest in or to the Network Data, except to the extent set forth in Section 4 (c) (Data License and Disclosure) and Section 4 (d) (Work Product Ownership).
- c) Data License and Disclosure. Subscriber hereby grants AmpThink a perpetual, irrevocable, non-exclusive right and license right to reproduce and modify the Network Data for purposes of AmpThink's Research and Development and for purposes of AmpThink's and its Research Partners' publication of research results; provided, however, that (i) no publication or disclosure of Subscriber's Confidential Information and/or any Personal Information will occur (instead, only summary, aggregated, anonymized data may be included); (ii) absent written consent of Subscriber, Research Partners' right to publish or otherwise publicly disclose the results of their research will be limited to academic journals or academic conferences; and (iii) AmpThink may disclose Network Data to AmpThink Authorized Persons for the foregoing purposes and subject to the foregoing restrictions. Notwithstanding the foregoing, AmpThink and AmpThink Authorized Persons may disclose Network Data as required by applicable law or by proper legal or governmental authority. AmpThink will give Subscriber prompt notice of any such legal or governmental demand and reasonably cooperate with Subscriber in any effort to seek a protective order or otherwise to contest such required disclosure, at Subscriber's expense.
- d) Work Product Ownership. To the extent AmpThink produces and furnishes a report to Subscriber based exclusively on the Network Data of Subscriber, and not including, referencing, or derived from any data collected from other sources or other customers of AmpThink, Subscriber will own the content of such report ("**Report**") – for the avoidance of doubt, AmpThink has sole discretion whether to produce and furnish one or more Reports. Except for Reports, if any, all other work product developed utilizing Network Data is and will remain the sole and exclusive property of AmpThink. By way of example but not limitation, Subscriber will not have any ownership interest in: (i) any reports or other work product generated by AmpThink and/or its Research Partners using a combination of Network Data of Subscriber and data collected from other sources such as other customers of AmpThink; (ii) any reports or other work product that AmpThink chooses, in its sole discretion, not furnish to Subscriber; and/or (iii) any Research and Development performed by or on behalf of AmpThink.

5 USE OF DATA COLLECTION & ANALYTICS SYSTEM

- a) During the Term, Subscriber may access the Network Data through a web-based interface supplied by AmpThink pursuant to this Agreement and in accordance with the Documentation.



- b) Subscriber may reproduce and use the Documentation solely as necessary to support Subscriber's use of the Data Collection & Analytics System at the Site.
- c) AmpThink may revise the features and functions of the Data Collection & Analytics System at any time, provided no such revision materially reduces features or functionality under the Service Level Agreement (Exhibit 4) executed pursuant to this Agreement unless such revision is reasonably necessary to protect the security of Personal Information or Confidential Information or to comply with applicable law, governmental regulations, administrative or court orders or industry best practices.
- d) Subscriber will: (i) be solely responsible for the preparation, adoption, amendment, content and legality of the User Terms and Conditions; (ii) obtain by Users' acceptance of such Terms and Conditions, legally compliant and sufficient permission of such Users to collect and use Network Data from such Users as contemplated by this Agreement; (iii) not, by the terms of such User Terms and Conditions, subject AmpThink's use of Network Data to restrictions more restrictive than those set forth in this Agreement except as may be required by applicable law; (iv) provide AmpThink advance notice of any amendment to the User Terms and Conditions, such advance notice period being reasonably sufficient to allow AmpThink to comply with any material amendment; and (iv) indemnify AmpThink and AmpThink Authorized Persons for any liabilities resulting from or related to any failure of the User Terms and Conditions to comply with applicable law.
- e) Subscriber will not: (i) allow third parties to exploit the Data Collection & Analytics System, except as specifically authorized by this Agreement or otherwise authorized in writing by an authorized officer of AmpThink; (ii) provide Data Collection & Analytics System passwords or other log-in information to any third party, except as specifically authorized by this Agreement; (iii) share non-public Data Collection & Analytics System features or content with any third party; or (iv) access the Data Collection & Analytics System in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Data Collection & Analytics System, or to copy any ideas, features, functions or graphics of the Data Collection & Analytics System. In the event that AmpThink suspects any breach of the requirements of this Section 5(e), AmpThink may suspend Subscriber's access to the Data Collection & Analytics System without advanced notice, in addition to such other remedies as AmpThink may have. This Agreement does not require that AmpThink take any action against Subscriber or any User or other third party for violating this Section 5(e), or this Agreement, or any subsequent AmpThink acceptable use policy, but AmpThink is free to take any such action it sees fit.
- f) Subscriber will take reasonable steps to prevent unauthorized access to the Data Collection & Analytics System, including without limitation, restricting physical and electronic access to the Data Collection & Analytics System and protecting its passwords and other log-in information. Subscriber will notify AmpThink immediately of any known or suspected unauthorized access or use of the Data Collection & Analytics System or breach of its security and will use best efforts to stop such breach.



6 PROFESSIONAL SERVICES

AmpThink will provide the Professional Services agreed upon in a SOW or called for in this Agreement and Subscriber will provide any assistance and cooperation necessary or convenient to facilitate the Professional Services.

7 CONSIDERATION

As consideration for AmpThink’s collection of the Network Data and providing to Subscriber accessibility of the Network Data via the web-based interface into the Data Collection & Analytics System, Subscriber will: (i) grant to AmpThink the data license as set forth in this Agreement; and (ii) pay to AmpThink the consideration set forth in section 7.1 below.

7.1 PRICING

Service Name/Description	Price
Data Collection & Analytics System Co-location, Integration, and Year 1 Annual Subscription	\$80,000.00
Data Collection & Analytics System Year 2 Annual Subscription	\$50,000.00
Data Collection & Analytics System Year 3 Annual Subscription	\$50,000.00
Services Total	\$180,000.00
Expense (T&E) (\$1,000/year)	\$3,000.00
Grand Total	\$183,000.00

8 INTELLECTUAL PROPERTY

- a) Except as expressly set forth elsewhere in this Agreement, all Intellectual Property developed by or on behalf of AmpThink using Network Data (including all intermediate materials and information) is and will remain the sole and exclusive property of AmpThink. If it is determined that any such Intellectual Property is not the property of AmpThink, for any reason, Subscriber hereby assigns to AmpThink all of its respective right, title, and interest to such Intellectual Property. Neither ownership nor title to such Intellectual Property passes to Subscriber or any other person (whether an individual or legal entity) other than AmpThink. AmpThink hereby grants Subscriber a nonexclusive, perpetual, irrevocable license to use such Intellectual Property to the extent necessary for Subscriber to enjoy the benefits contemplated under this Agreement.
- b) Except as expressly set forth elsewhere in this Agreement, this Agreement neither grants, nor implies, ownership of a right or license in any Intellectual Property of AmpThink (including, for avoidance of doubt, the Data Collection & Analytics System and work product resulting from Research and Development) or Subscriber, any Confidential Information of AmpThink or Subscriber, and/or any Personal Information. AmpThink retains all right, title, and interest in and to the Data Collection & Analytics System, including without limitation all software used with the Data Collection & Analytics System and all graphics, user interfaces, logos, and trademarks

reproduced through the Data Collection & Analytics System, except Subscriber's logos, names and trademarks registered or in use at the Agreement Effective Date. Except as expressly set forth elsewhere in this Agreement, this Agreement does not grant Subscriber any Intellectual Property license or rights in or to the Data Collection & Analytics System, any its software, or any of its components. Subscriber recognizes that the Data Collection & Analytics System and its components are protected by copyright and other laws.

- c) Any tools, methodologies, processes or technologies known to or created, adapted or used by AmpThink in its business generally, as well as any improvements, enhancements, modifications, or derivatives thereof, including all associated Intellectual Property rights (collectively, the “Development Tools”) will be and remain the sole property of AmpThink. Neither party anticipates nor requests that any products or techniques be invented to complete the requirements of this Agreement; rather, both AmpThink and Subscriber expect that the requirements of this Agreement can and will be satisfied through AmpThink’s use and application of the Development Tools. Notwithstanding the foregoing, any products, techniques, or know-how that may be developed or acquired by AmpThink during performance of the Services will be the sole property of AmpThink and nothing herein will be construed to preclude AmpThink from marketing or implementing for itself or others similar technology performing the same or similar functions. Notwithstanding the foregoing, AmpThink and Subscriber agree that, as between them, each party is and will remain the sole and exclusive owner of all right, title, and interest in and to its Pre-Existing IP, and that this Agreement does not affect such ownership. AmpThink and Subscriber further acknowledge that neither acquires any rights under this Agreement to the other party’s Pre-Existing IP other than any limited rights that may be explicitly granted herein. As used herein, “Pre-Existing IP” means any Intellectual Property that was already known to, possessed, or owned by a party prior to the relationship described herein.
- d) Subscriber hereby grants AmpThink a nonexclusive right to reproduce and use Subscriber's trademarks, names and logos in operating the Data Collection & Analytics System on Subscriber’s network. AmpThink acknowledges that any use of TAMU’s marks, names, or logos must be preapproved by TAMU’s Office of Business Development.
- e) AmpThink has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that Subscriber or Users provide to AmpThink, and nothing in this Agreement or in the Parties’ dealings arising out of or related to this Agreement will restrict AmpThink's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Subscriber or other User in question. Subscriber hereby grants AmpThink a perpetual, irrevocable right and license to exploit Feedback in any and every way. (“Feedback” refers to any suggestion or idea for improving or otherwise modifying any of AmpThink's products or services.)

9 CONFIDENTIALITY & DATA SECURITY

9.1 CONFIDENTIALITY

- a) In the course of performing this Agreement, a Party (“**Receiving Party**”) is likely to receive or have access to Confidential Information owned, controlled or disclosed by the other Party

- (“**Disclosing Party**”), including Confidential Information that may have been provided prior to executing this Agreement.
- b) Unless Confidential Information was previously known to the Receiving Party free of any obligation to keep it confidential, or has been (or is subsequently) made public by the Disclosing Party or a third party without violating a confidentiality obligation, the Receiving Party will keep it confidential, use it solely to perform this Agreement, and disclose it solely to agents, contractors, employees, and officers who have a need to know such Confidential Information for purposes of performing this Agreement.
 - c) Except as expressly stated otherwise in this Agreement, neither Party is granted ownership, license, or any other rights in or to the other Party’s Confidential Information. Each Party will use at least the same degree of care to prevent disclosure as it uses with its own Confidential Information, but not less than reasonable care; provided, however, Personal Information will be protected as set forth in Section 9.2 of this Agreement. Copies of Confidential Information in written, graphic or other tangible form will be returned to the Disclosing Party on the earlier of the Disclosing Party’s request or on expiration or termination of this Agreement. Copies of Confidential Information in electronic form will be destroyed on the earlier of the Disclosing Party’s request, or on expiration or termination of this Agreement, in which case the Receiving Party will certify to the Disclosing Party the destruction of all such intangible forms of Confidential Information.

9.2 STANDARD OF CARE FOR PERSONAL INFORMATION

- a) Each Party hereto acknowledges and agrees that, in the course and as a result of its relationship with the other Party, it may create, receive, or have access to Personal Information. Each Party will comply with the terms and conditions set forth in this Agreement in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of Personal Information and will be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession. In recognition of the foregoing, each Party agrees and covenants that it will:
 - i. keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
 - ii. not create, collect, receive, access, or use Personal Information in violation of law;
 - iii. use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Agreement.

Notwithstanding the foregoing, either Party may disclose Personal Information as required by applicable law or by proper legal or governmental authority. Such disclosing Party will give the other Party prompt notice of any such legal or governmental demand and reasonably cooperate with such Party in any effort to seek a protective order or otherwise to contest such required disclosure, at such Party's expense.

- b) AmpThink acknowledges that Subscriber 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 Subscriber’s written request, AmpThink will provide specified

public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to Subscriber in a non-proprietary format acceptable to Subscriber. As used in this provision, “public information” has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which Subscriber has a right of access. AmpThink acknowledges that Subscriber 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.

9.3 INFORMATION SECURITY

- a) Each Party represents that its creation, collection, receipt, access, use, storage, disposal, and disclosure of Personal Information does and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- b) Each Party will implement and maintain a written information security program including appropriate policies, procedures, and risk assessments that are reviewed at least annually.
- c) Each Party will implement administrative, physical, and technical safeguards to protect Personal Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than accepted industry practices, and will ensure that all such safeguards, including the manner in which Personal Information is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.
- d) If, in the course of performance under this Agreement, either Party has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information, such Party will at all times remain in compliance with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at such Party’s sole cost and expense.
- e) At a minimum, each Party’s safeguards for the protection of Personal Information will include: (i) in the case of AmpThink, limiting access of Personal Information to AmpThink Authorized Persons; (ii) securing business facilities, NOCs, paper files, servers, back-up systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; and (v) implementing authentication and access controls within media, applications, operating systems, and equipment.
- f) AmpThink will at all times cause each AmpThink Authorized Person to abide strictly by AmpThink’s obligations under this Agreement. Each Party further agrees that it will maintain a disciplinary process to address any unauthorized access, use, or disclosure of Personal Information by any of such Party’s officers, partners, principals, employees, agents, or contractors. Upon Subscriber’s written request, AmpThink will promptly identify for Subscriber in writing all AmpThink Authorized Persons as of the date of such request.

9.4 SECURITY BREACH PROCEDURES

- a) Each Party will:
 - i. provide the other Party with the name and contact information for an employee who will serve as such providing Party's primary security contact and will be available to assist the other Party twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach;
 - ii. notify the other Party of a Security Breach as soon as practicable, but no later than twenty-four (24) hours after becoming aware of it; and notify the other Party of any Security Breaches by e-mailing AmpThink at lisa.morganelli@AmpThink.com, with a copy by e-mail to jim.banowsky@ampthink.com Subscriber's primary business contact within AmpThink, or emailing Subscriber at droberts@athletics.tamu.edu, AmpThink's primary business contact within Subscriber.
- b) Immediately following a Party's notification to the other Party of a Security Breach, the Parties will coordinate with each other to investigate the Security Breach in accordance with the Parties' respective policies and procedures.
- c) Each Party will at its own expense immediately contain and remedy any Security Breach and prevent any further Security Breach, including but not limited to taking any and all action necessary to comply with applicable privacy rights, laws, regulations, and standards. Each Party will, to the extent authorized by law, reimburse the other Party for all costs incurred by such other Party in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.
- d) Each Party agrees to maintain and preserve all documents, records, and other data related to any Security Breach.
- e) Each Party agrees to reasonably cooperate at its own expense with the other Party in any litigation, investigation, or other action deemed necessary by such Party to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information; except to the extent a material conflict of interest exists between the Parties and in the case of Subscriber subject to the consent of the Attorney General of the State of Texas. Neither Party is required, by virtue of this Section 9.4e, to pursue any claim, defense, cause of action, or legal process or proceeding on the other Party's behalf.
- f) In the event of any Security Breach, each Party will promptly use its best efforts to prevent a recurrence of any such Security Breach.

10 INDEMNIFICATION AND LIMITATION OF LIABILITY

Each Party ("**Indemnifying Party**") will defend, indemnify, and hold harmless the other Party, and its subsidiaries, affiliates, and its respective officers, directors, employees, agents, successors, and permitted assigns (each, an "**Indemnitee**") from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers, arising out of or resulting from any third-party claim against any Indemnitee ("**Liabilities**") arising out of or resulting from the Indemnifying Party's (or any the Indemnifying Party's Authorized Person's) failure to comply with any of its obligations under this Agreement.

EXCEPT FOR A BREACH OF A CONFIDENTIALITY OBLIGATION AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. EXCEPT FOR A BREACH OF A CONFIDENTIALITY OBLIGATION AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS, THE LIABILITIES LIMITED BY THIS SECTION 10 APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY OR OTHERWISE, AND EVEN IF THE PARTY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE.

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, AMPTHINK PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) OTHER THAN WHAT IS AGREED TO IN THE SERVICE LEVEL AGREEMENT ATTACHED AS EXHIBIT 4, AMPTHINK DOES NOT REPRESENT OR WARRANT THAT THE DATA COLLECTION & ANALYTICS SYSTEM WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) WHILE AMPTHINK WILL MAINTAIN ADMINISTRATIVE, PHYSICAL AND TECHNICAL SAFEGUARDS TO PROTECT INFORMATION THAT ARE NO LESS RIGOROUS THAN ACCEPTED INDUSTRY PRACTICES FOR INFORMATION SECURITY, AMPTHINK DOES NOT REPRESENT OR WARRANT THAT THE DATA COLLECTION & ANALYTICS SYSTEM IS IMMUNE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT NETWORK DATA OR DATA PROVIDED BY SUBSCRIBER WILL REMAIN PRIVATE.

SUBSCRIBER AGREES TO THE INDEMNITY TERMS IN THE FOREGOING SECTION TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS.

11 TERM AND TERMINATION

- a) This Agreement will commence on the Agreement Effective Date and will remain in effect for three (3) years from the date of execution by both Parties, unless sooner terminated in accordance with the provisions of this Section 11 (the "Term"). Thereafter, it will automatically renew for up to two successive one (1) year Terms subject to termination pursuant to this Section 11, unless either Party refuses such renewal by written notice 30 or more days before the end of the current term.
- b) Should Subscriber elect to terminate this Agreement for convenience prior to the completion of the Services detailed in this Agreement, Subscriber will pay AmpThink for all Services rendered.
- c) This Agreement may be terminated at any time by the written agreement of all Parties.



- d) Either Party may terminate this Agreement in the event of a breach by the other Party of any material provision of this Agreement and failure of such other Party to cure such breach within 30 days after receiving written notice of such breach.
- e) Any provisions of this Agreement which by their nature extend beyond termination will survive such termination.

12 COVENANT ON USAGE AND PRIVACY LAW COMPLIANCE

Subscriber represents to maintain enforceable Terms and Conditions for Subscriber's Network such that Subscriber obtains the right to collect and license Network Data in accordance with this Agreement. Subscriber represents that the collected Network Data is compliant in all material respects with all applicable laws concerning the privacy and use of such data.

13 MISCELLANEOUS TERMS & CONDITIONS

13.1 CONFLICTS AND AMENDMENTS.

In the event of any conflict among the attachments, the following order of precedence will govern, with lower numbers governing the higher ones: (1) this Agreement with more recent statements of work (if any) taking precedence over earlier ones and (2) any policy referred to herein. For a modification of this Agreement or any attachment to be legally binding, it must be set forth in a writing signed by all Parties.

13.2 ASSIGNMENT.

This Agreement may not be assigned by any Party without the prior written consent of the other Party, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may assign this Agreement to any purchaser or transferee of all or substantially all of the transferring Party's assets or stock upon prior written notice to non-transferring Party; provided, however, that such assignee will have expressly assumed all of the obligations and liabilities of the transferring Party under this Agreement.

13.3 GOVERNING LAW, VENUE

The Laws (but not the conflicts-of-law rules) of the State of Texas govern the construction and interpretation of this Agreement. Venue for disputes not resolved by negotiation will be Brazos County, Texas and, accordingly, the Parties consent to the exclusive jurisdiction of such courts.

13.4 NOTICES

Notices under this Agreement will be in writing and deemed given when delivered by overnight courier to the address set forth herein, or to such more recent address of the addressee of which the sending party has received written notice.



13.5 INDEPENDENT CONTRACTOR

For the purposes of this Agreement and all services to be provided hereunder, the Parties will be, and will be deemed to be, independent contractors and not agents or employees of the other Parties. No Party will have authority to make any statements, representations nor commitments of any kind, or to take any action which will be binding on any other Party.

13.6 SEVERABILITY

If a provision is held to be illegal, invalid, or unenforceable, it will be severed and, to the extent that doing so does not materially and adversely affect any Party's economic rationale for entering into this Agreement, the remaining provisions will remain in force. In such instance, the Parties will use their best efforts to replace the invalid provision(s) with legally valid provision(s) having an economic, data privacy, and security effect as close as possible to the original intent of the Parties.

13.7 ENTIRE AGREEMENT

This Agreement constitutes the entire and only agreement between the Parties relating to the Data Collection & Analytics System and Network Data, and all prior negotiations, representations, agreements and understandings are superseded hereby.

14. STATE CONTRACTING LANGUAGE

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."

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, AmpThink agrees that any payments owing to AmpThink under this Agreement may be applied directly toward certain debts or delinquencies that AmpThink 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.

Prohibited Bids and Agreements. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Force Majeure. Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.



Dispute Resolution. The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Subscriber and AmpThink to attempt to resolve any claim for breach of contract made by AmpThink that cannot be resolved in the ordinary course of business. AmpThink shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Subscriber, who shall examine AmpThink's claim and any counterclaim and negotiate with AmpThink in an effort to resolve the claim.

Access by Individuals with Disabilities. AmpThink represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Subscriber under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*). To the extent AmpThink becomes aware that the EIRs, or any portion thereof, do not comply then AmpThink represents and warrants that it will, at no cost to Subscriber, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

- a. **REQUIREMENT AND STANDARDS.** AmpThink certifies that each information and communication technology ("ICT") product or service furnished under this Agreement satisfies the requirements (including exceptions) specified in the regulations [36 CFR Part 1194] implementing Section 508 of the Rehabilitation Act, including the Web Content Accessibility Guidelines (WCAG) 2.0 Level A and Level AA Success Criteria and Conformance Requirements (2008) and the functional performance criteria.
- b. **DOCUMENTATION.** AmpThink shall maintain and retain, and make available to Subscriber for review upon request, records of any testing or simulations conducted and all other documentation of the measures taken to ensure compliance with the applicable requirements and functional performance criteria.
- c. **REMEDICATION.** If Subscriber notifies AmpThink that any furnished ICT product or service is not in compliance with such requirements and standards, AmpThink shall, at no cost to Subscriber, remediate or replace the non-compliant ICT products or services within the period specified by Subscriber. If AmpThink fails to complete the remediation or replacement within the specified time, Subscriber may terminate this Agreement without liability or have the necessary remediation performed on Subscriber's behalf, and AmpThink shall promptly reimburse Subscriber for any expenses incurred by Subscriber on such remediation.

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

Products and Materials Produced in Texas. AmpThink agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Agreement, AmpThink will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

Loss of Funding. Performance by Subscriber 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, Subscriber will issue written notice to AmpThink and Subscriber may terminate this Agreement without further duty or obligation hereunder. AmpThink acknowledges that appropriation of funds is beyond the control of Subscriber.



Prompt Payment Act. Payment from Subscriber will be due thirty (30) days from the date Subscriber receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

State Auditor’s Office. AmpThink 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*. AmpThink agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. AmpThink will include this provision in all contracts with permitted subcontractors.

Non-Waiver. AmpThink expressly acknowledges that Subscriber is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Subscriber of its right to claim such exemptions, privileges, and immunities as may be provided by law.

AmpThink Certification regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, AmpThink certifies AmpThink (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. AmpThink acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

AmpThink Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, AmpThink certifies AmpThink (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. AmpThink acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Conflict of Interest. By executing and/or accepting this Agreement, AmpThink and each person signing on behalf of AmpThink certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System (“TAMUS”) or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by Subscriber or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

Insurance.

AmpThink shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), 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 Texas A&M University. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to AmpThink under this Agreement. AmpThink shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. AmpThink 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 Texas A&M University at least ten days before the effective date of the cancellation.

Insurance:

Coverage

Limit

A. Worker’s Compensation



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 Texas A&M University. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

B. 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;

C. Commercial General Liability

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

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

Additional Endorsements

The Auto and Commercial General Liability Policies shall name the following as additional insured:
Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and the Texas A&M University
Attn: Insurance Services
1182 Subscriber
College Station, TX 77843-1182

D. AmpThink will deliver to Texas A&M University:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by AmpThink under this Agreement. Additional evidence of insurance will be provided 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.

All insurance policies, with the exception of worker's compensation and employer's liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and Texas A&M University as Additional Insureds up to the actual liability limits of the policies maintained by AmpThink. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and Texas A&M University.



No policy will be canceled without unconditional written notice to Texas A&M University at least ten days before the effective date of the cancellation. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to Texas A&M University ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this section.

Any deductible or self-insured retention must be declared to and approved by Texas A&M University prior to the performance of any services by AmpThink under this Agreement. AmpThink is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following Texas A&M University contact:

Name: Texas A&M University
Insurance Services/Emily Terral
Address: 1182 Subscriber
College Station, TX 77843-1182
Fax Number: 979-862-7130
Email Address: eterral@Customer.edu

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



1 ORDERING AND COMMENCEMENT

Prior to AmpThink performing the Services, AmpThink must have:

- This Agreement fully executed, and
- Have been issued a valid Purchase Order from Subscriber for the Subscription

2 PURCHASE ORDER ISSUANCE

Subscriber will place orders for Services by issuing a written Purchase Order to AmpThink for the total amount indicated in Exhibit 1, Section 7 - Pricing. The terms and conditions of this Agreement prevail regardless of any conflicting terms on the Purchase Order, other correspondence and any and all verbal communications.

Pricing is based on AmpThink's Services as set forth in this Agreement. The parties acknowledge and agree that any change to the Services may result in an adjustment in AmpThink's pricing.

Any additional costs associated with (1) Services which are above and beyond the scope of this Agreement; or (2) costs incurred as a result of delays; or (3) Subscriber's failure to meet responsibilities specified in this Agreement will be managed per the Change Management Procedures.

3 INVOICING

Following Subscriber's acceptance of Services, AmpThink may then invoice Subscriber.

AmpThink will submit copies of invoices to Subscriber single point of contact in this Agreement for approval prior to submission for payment.

Invoices will list the project name and Purchase Order number. Invoices will be sent to the address indicated on Subscriber's Purchase Order. Subscriber will pay AmpThink for all invoiced services within 30 days of accepting any material or Service.



This Statement of Work ("SOW") is entered into by and between AmpThink LLC having a place of business at 3827 Dividend Drive, Garland, TX 75042 ("AmpThink") and Delaware North Corporation having a place of business at 250 Delaware Avenue, Buffalo, NY 14202 ("Subscriber"), and is entered into as of the date listed below ("SOW Effective Date").

This SOW defines the services that AmpThink shall provide to Subscriber under the terms of this SOW. The terms of this SOW are limited to the scope of this SOW, and shall not be applicable to any other SOWs.

This SOW consists of this signature page and the following sections, which are hereby incorporated into, and made part of, this SOW by this reference:

- Annex 1: Project Scope, Responsibilities and Pricing
- Annex 2: SOW Process, and Standard Definitions
- Appendix A: Example Service Completion Certificate
- Appendix B: Example Change Request

Each Party, as evidenced by the signature below or electronic signature, as applicable, of its authorized representative, acknowledges that it has read and agrees to this SOW in its entirety.

Subscriber	AmpThink LLC
By:	By:
Name: Robert C. Bounds	Name: Lisa Morganelli
Title: Director, Procurement Services	Title: Vice President
Date: 8.9.2018	Date: 8-7-2018

1 OVERVIEW

The material and information contained in this SOW constitutes trade secret and/or confidential information relating to AmpThink products and methods. Such information is furnished in confidence with the understanding that it will not, without prior written permission of AmpThink, be used or disclosed other than as expressly provided herein.

1.1 PROJECT SCOPE:

AmpThink shall provide the following Services to ("Subscriber"), as set forth herein, during Standard Business Hours, unless explicitly stated otherwise in this SOW.

1.2 DELIVERABLES

In performance of the services listed above, AmpThink will provide the following Deliverables in support of the completion of the relevant Service Milestone:

1.3 SUBSCRIBER SITE(S):

Kyle Field, 756 Houston St, College Station, TX 77843

1.4 WORK HOURS

All work will be completed Monday through Friday between 8:00 am and 6:00 pm in the time zone in which the work is being performed unless otherwise agreed to by AmpThink, and Subscriber in writing. After hours work may incur additional labor charges.

1.5 SINGLE POINT-OF-CONTACT

Subscriber and AmpThink shall designate a single point of contact to whom communications in regards to the services may be addressed and who has the authority to act on all aspects of the services; shall be available during standard business hours; and shall designate a backup contact for when the primary contact is not available.

AmpThink Contact		Subscriber Contact	
Name:	Jessie Sullivan	Name:	Daniel Roberts
Title:	Customer Advocate	Title:	contact
Telephone Number:	612.810.3909	Telephone Number:	979.862.5406
E-mail Address:	jessie.sullivan@ampthink.com	E-mail address:	droberts@athletics.tamu.edu

2 DESCRIPTION OF WORK

2.1 AmpThink Responsibilities

2.2 OUT OF SCOPE

The proposed Services are limited in scope to those expressly listed in this SOW. However, for the avoidance of doubt, the proposed Services included in this SOW do not include the items listed below:

- Performance of multiple iterations of a The RF Site Survey at any Site due to physical changes at the Site or changes to Customer and/or Service Provider requirements after the completion of the RF Site Survey at the site.
- Testing installed fiber optic or copper cabling at the Customer Site.
- Assessing the current load of the electrical system at the Customer Site and/or the amount of spare electrical capacity available to meet the needs of any network upgrades proposed as part of this SOW.
- Furnishing or installing any equipment not explicitly identified in the SOW above.
- Troubleshooting cabling systems or network system configurations.
- Maintenance or post-installation services with the exception of tuning and live event support.
- Any Customer flow downs not specifically identified within this document.

3 SUBSCRIBER RESPONSIBILITIES

3.1 ACCESS

- Notify AmpThink of any scheduling changes at least seventy-two (72) hours prior to the originally scheduled date.
- Supply all work place policies and inform AmpThink of any conditions that would affect AmpThink's ability to deliver the Services contained in this SOW.

3.2 GENERAL

- Unless otherwise agreed to by the Parties, Subscriber will use reasonable commercial efforts to respond within a reasonable time to AmpThink's request for any other documentation or information needed to provide the services.
- Ensure Subscriber responsibilities specified herein are performed.
- Attend project meetings as required.



4 SCHEDULE OF ACTIVITIES

Service Name	Estimated Start Date	Estimated End Date
Data Collection & Analytics System Co-location	t0	t0+7
Data Collection & Analytics System Integration Services	t0	t0+7
Post Deployment Validation Services	t0+7	t0+7

T0 = Project Initiation

Services shall not commence until this SOW has been fully executed, and Subscriber has issued a valid purchase order. The final services schedule shall be mutually determined by Subscriber and AmpThink, and documented in writing.

5 PROJECT PRICING AND PAYMENT

5.1 PRICING TABLE

Service Name/Description	Price
Data Collection & Analytics System Co-location, Integration, and Year 1 Annual Subscription	\$80,000.00
Data Collection & Analytics System Year 2 Annual Subscription	\$50,000.00
Data Collection & Analytics System Year 3 Annual Subscription	\$50,000.00
Services Total	\$180,000.00
Expense (T&E) (\$1,000/year)	\$3,000.00
Total	\$183,000.00

5.2 DEVELOPMENT FEES

No Development Fees were charged by AmpThink or paid by Subscriber for the Services and Material governed by this Agreement. Any tools, methodologies, processes or technologies known to or created, adapted or used by AmpThink in its business generally, as well as any improvements, enhancements, modifications, or derivatives thereof, including all associated intellectual property rights (collectively, the "Development Tools") shall be and remain the sole property of AmpThink. Neither party anticipates nor requests that any products or techniques be invented to complete the requirements of this Agreement; rather, both AmpThink and Subscriber expect that the requirements of this Agreement can and will be satisfied through AmpThink's use and application of the Development Tools.

5.3 OWNERSHIP OF IP

For the avoidance of doubt, any products, techniques, or know-how that may be developed or acquired by AmpThink during performance of the Services shall be the sole property of AmpThink and nothing herein shall be construed to preclude AmpThink from marketing or implementing for itself or others similar technology performing the same or similar functions. Notwithstanding the foregoing, AmpThink and Subscriber agree that, as between them, each party is and shall remain the sole and exclusive owner of all right, title, and interest in and to its Pre-Existing IP, and that this SOW does not affect such ownership. AmpThink and Subscriber further acknowledge that neither acquires any rights under this SOW to the other party's Pre-Existing IP other than any limited rights that may be explicitly granted herein. As used herein, "Pre-Existing IP" means any intellectual property that was already known to, possessed, or owned by a party prior to the relationship described herein.

5.4 OTHER PRICING ASSUMPTIONS

Pricing assumes that the equipment and information is delivered to AmpThink in a timely manner and that the Subscriber work site is ready to commence installation activities with suitable lead times to achieve the agreed upon schedule. Expenses related to expedited shipping and travel premiums incurred to meet accelerated timelines or to accommodate the late arrival of hardware, delayed information, or delayed site progress are not included in the pricing for this SOW. Pricing premised upon Services provided by non-union labor.



5.5 MILESTONE INVOICE SCHEDULE

Services will be invoiced in accordance with the following Milestone Invoice Schedule:

Milestone #	Milestone Description	Invoice Amount
1	DCA Co-location and Year 1 Annual Subscription (upon completion of co-location and system validation)	\$80,000.00
2	Year 2 Annual Subscription (beginning of Year 2)	\$50,000.00
3	Year 3 Annual Subscription (beginning of Year 3)	\$50,000.00
	Total Services	\$180,000.00
	Expense (T&E) (\$1,000/year)	\$3,000.00
	Total	\$183,000.00

5.6 TRAVEL AND SHIPPING EXPENSES

AmpThink will not invoice for any travel expenses as part of the scope required for the Evaluation Testing during the agreed upon timeframe.

AmpThink will invoice for actual travel related expenses if required for any work outside of the Evaluation Testing scope or beyond the Evaluation Test window. If requested, copies of receipts for invoiced expenses will be provided no later than ninety (90) days following the date of the request. Any undisputed amounts shall be paid timely.

Subscriber will pay or reimburse AmpThink for all actual costs for travel, lodging and meals reasonably incurred by AmpThink in accordance with the Texas Comptroller of Public Accounts' TexTravel website: <https://fmx.cpa.state.tx.us/fmx/travel/texttravel/index.php>



1 ORDERING AND COMMENCEMENT

Prior to AmpThink performing the Services, AmpThink must have:

- This SOW fully executed, and
- Have been issued a valid Purchase Order from Subscriber for the Services.

The term of each SOW shall commence on the SOW Effective Date and shall continue until last Milestone completion.

2 PURCHASE ORDER ISSUANCE

Subscriber shall place orders for Services by issuing a written Purchase Order to AmpThink for the total amount indicated. The terms and conditions of the SOW prevail regardless of any conflicting terms on the Purchase Order, other correspondence and any and all verbal communications.

Pricing is based on AmpThink's Services as set forth in this SOW. Any changes to those Services must be approved in advance by AmpThink and the Subscriber and shall be managed per the Change Management Procedures. Parties acknowledge and agree that any change to the Services may result in an adjustment in AmpThink's pricing.

Any additional costs associated with (1) Services which are above and beyond the scope of this SOW; or (2) costs incurred as a result of delays; or (3) Subscriber's failure to meet responsibilities specified in this SOW shall be managed per the Change Management Procedures.

3 COMPLETION

AmpThink shall notify Subscriber in writing of completion of a Service Milestone by submitting a Service Completion Certificate ("SCC") indicating the Service Milestone completed.

Once the completed SCC has been submitted by AmpThink, Subscriber shall review the Service Milestone listed in the SCC, and Subscriber's signing of the SCC, signifies Subscriber's acceptance that Services listed in the SCC have been performed according to this SOW.

AmpThink shall be notified of the acceptance or of declined acceptance of the SCC within five (5) Business Days.

To decline acceptance of the SCC, Subscriber will provide to AmpThink in writing: that the SCC has been declined, and provide details as to what and how the Services do not conform to the SOW.



AmpThink shall address any such non-conformance in a timely manner. Subscriber and AmpThink shall compile an action plan to correct any non-conformance and the process for acceptance detailed herein shall be repeated until such time as all non-conformances have been resolved.

4 CHANGE MANAGEMENT PROCEDURES

It may become necessary to amend this SOW for reasons including, but not limited to, the following:

- i. Changes to the scope of work and/or specifications for the Services,
- ii. Changes to the Milestone Invoice Schedule,
- iii. Changes to the project schedule due to unavailability of resources which are beyond either Party's control, and/or,
- iv. Environmental or architectural conditions not previously identified.

In the event either Party desires to change this SOW, the following procedures shall apply:

- i. The Party requesting the change will deliver a "Change Request" to the other party (an example of which is provided in Appendix B). The Change Request will describe the nature of the change, the reason for the change, and the effect the change will have on the scope of work.
- ii. A Change Request may be initiated either by AmpThink or by Subscriber for any changes to the SOW. The Parties will evaluate the Change Request and negotiate in good faith the changes to the Services and additional fees, if any, required to implement the Change Request. If both Parties agree to implement the Change Request, both Parties will sign the Change Request, indicating the acceptance of the changes by the Parties.
- iii. Upon execution of the Change Request, said Change Request will be incorporated into, and made part of, this SOW.
- iv. Subscriber is under no obligation to proceed with the Change Request until such time as the Change Request has been agreed upon in writing by both parties.

Whenever there is a conflict between the terms and conditions set forth in a fully executed Change Request and those set forth in the original SOW, or previous fully executed Change Request, the terms and conditions of the most recent fully executed Change Request shall prevail.

5 INVOICING

Following Subscriber's acceptance of the SCC, AmpThink may then invoice Subscriber for the amount indicated in the SCC.

Only milestones as indicated in the milestone invoice schedule may be included in the service completion certificate and invoiced to Subscriber. The total invoiced amount for milestones shall not exceed the total amount of the purchase order.



**Exhibit 3 - Statement of Work
Annex 2: SOW Process, and Standard Definitions
PID: TAMUAthletics-0004-DCA/SOW**

Any change to the milestone invoice schedule will be managed through the change management procedures specified in this SOW.

AmpThink will submit copies of invoices to the Subscriber's single point of contact in this SOW for approval prior to submission for payment.

Invoices will list the project name and purchase order number. Invoices will be sent to the address indicated on Subscriber's purchase order. The Subscriber will pay AmpThink for all invoiced services within 30 days of signing the applicable SCC.



**Exhibit 3 - Statement of Work
Appendix A: Example Service Completion Certificate
PID: TAMU Athletics-0004-DCA/SOW**

Pursuant to the Statement of Work ("SOW") referenced as [Project Number] between Subscriber and AmpThink, Subscriber hereby certifies, by the signature below or electronic signature, as applicable, of its authorized representative, that the Service Milestone described below has been completed on the date indicated below and in accordance with the terms of the SOW.

Milestone #	Milestone Description	Milestone Completion Date	Invoice Amount
1.	Completion of Deliverables		
	Total:		\$

Subscriber Purchase Order Number: < AB0355814 >

Total Invoice Amount of Services Completed: \$ [Amount]

Is this the last Service Completion Certificate? (Yes/No)

Subscriber SCC Submit (to Subscriber) Date:

Subscriber's signing of this SCC, or Subscriber's failure to return this SCC within five (5) Business Days, signifies Subscriber's Acceptance that Services listed above have been performed according to the SOW.

Subscriber	AmpThink LLC
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:



**Exhibit 3 - Statement of Work
Appendix B: Example Change Request
PID: TAMUAthletics-0004-DCA/SOW**

Pursuant to the Statement of Work ("SOW") referenced as Project ID: [Project Number] Subscriber and AmpThink, both Parties hereby agree that this Change Request will amend the SOW.

1. Change Request Number: CR <#>

2. Reason for Change Request:

Changes to SOW:

3. Schedule Impact:

4. Cost Impact:

SOW/Change Request	Services	T&E	Total
a. Original Value of SOW	\$0.00	\$0.00	\$0.00
b. Value of Change Request No. 1	\$0.00	\$0.00	\$0.00
c. New Value of SOW:	\$0.00	\$0.00	\$0.00

Purchase Order Issuance (if applicable): Service Provider shall issue a written Purchase Order to AmpThink for this Change Request for the total amount of \$0.00.

Except as changed herein, all terms and conditions of the SOW remain in full force and effect.

Each Party, as evidenced by the signature below or electronic signature, as applicable, by its authorized representative, acknowledges that it has read and agrees to this Change Request in its entirety.

Agreed:

Subscriber	AmpThink LLC
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:



1. Service Level Goal

AmpThink’s goal is to achieve 100% availability of Services provided by the Data Collection & Analytics System for its Subscriber, 24 hours per day, seven days a week. If uptime for the Data Collection & Analytics System is less than 99.5% for a given month in the Term, then AmpThink shall issue Subscriber a service credit (“**Service Credit**”) in accordance with the schedule below, with the credit being calculated based on the annual fee apportioned for the month of the affected Services.

2. Service Credit Procedure

To receive a Service Credit, Subscriber shall submit a request to support@ampthink.com, with the description “Request for Service Credit” in the subject line of the email. Each request must include the following information: (a) the Subscriber’s name; (b) Subscriber’s contact name, email and telephone information; (c) date and beginning and end time(s) of outage(s); and (d) a brief description of the characteristics of the failed uptime goal. Each Service Credit will be applied in the next billing cycle after AmpThink’s receipt of Subscriber’s credit request.

Uptime Commitment Failure	Service Credit
95.0% - 99.998%	15% of the apportioned fee for the month during which the failure occurred
90.0% - 94.9%	30% of the apportioned fee for the month during which the failure occurred
89.9% and below	75% of the apportioned fee for the month during which the failure occurred

3. Service Levels

AmpThink’s support team can be reached at support@ampthink.com or by calling (800) 735-6310 and pushing “1” for support, and shall be available for all Subscriber support requests on a 24x7x365 basis. Incidents will be routed and addressed according to the following service levels (each, a “**Service Level**”):

Service Level	Description	Incident Resolution
1 – Critical Priority	Incident that renders Data Collection & Analytics System inoperative or causes Data Collection & Analytics System to fail catastrophically.	Case will be opened upon receipt of request or identification of issue. Subscriber must be notified of the status of the issue within 1 hour. AmpThink shall use its best efforts (including by diligently and continuously performing such services as may be necessary) to: (a) promptly replicate and verify the reported problem; and (b) arrive at a fix as promptly as possible.
2 – High Priority	Incident that affects the operation of Data Collection & Analytics System and degrades Subscriber’s use of Data Collection & Analytics System.	Case will be opened upon receipt of request or identification of issue. Subscriber must be notified of the status of the issue within 4 hours. AmpThink shall use its best efforts (including by diligently and continuously performing



		such services as may be necessary) to: (a) promptly replicate and verify the reported problem; and (b) arrive at a fix as promptly as possible.
3 – Medium Priority	Incident that affects the operation of Data Collection & Analytics System but that does not degrade Subscriber’s use of Data Collection & Analytics System.	Case will be opened upon receipt of request. Subscriber must be notified of the status of the issue within 6 hours. AmpThink shall diligently perform, during normal business hours, such services as may be necessary to: (a) promptly begin work on error identification and verification; and (b) arrive at a fix as promptly as possible.
4 – Low Priority	Incident that causes only a minor impact on the operation of Data Collection & Analytics System.	Case will be opened upon receipt of request. Subscriber must be notified of the status of the issue within eight hours, provided notification is received the request during normal business hours between 6AM and 8PM, Monday through Friday. AmpThink shall begin work on error identification and verification or feature or functionality design within two business days of receipt of notification and provide Subscriber with a final fix as promptly as possible thereafter.

4. Service Level Failures

Notwithstanding anything contained herein to the contrary and without limiting Subscriber’s rights to receive Service Credits above or any other right or remedy which may be available hereunder, in the event (a) three or more Service Level failures occur during any consecutive 12 month period; (b) two or more Service Level failures occur in the same or any consecutive days in any 30 day period; or (c) if any single Service Level failure persists for more than four hours, Subscriber may (reserving cumulatively all other remedies and rights under the Agreement and at law and in equity) immediately terminate the Agreement, in whole or in part, upon notice to AmpThink, without obligation or liability of any kind.



5. Scheduled Maintenance.

AmpThink may perform any standard maintenance, upgrades, replacement of hardware or software or any other like activity that may result in unavailability (collectively, “**Scheduled Maintenance**”) Sundays between 11 p.m. Eastern Time and Monday 4:00 am Eastern Time; provided that AmpThink shall use commercially reasonable efforts to perform Scheduled Maintenance no more than once per calendar month. AmpThink shall notify Subscriber at least five business days in advance of any anticipated Scheduled Maintenance, and provide the proposed date, time and expected duration. Such notice will be provided by email. Notwithstanding the foregoing, Subscriber may, within two business days after receipt of such notice, require AmpThink to reschedule the time or date of the proposed Scheduled Maintenance if such Scheduled Maintenance would reasonably conflict with a major Subscriber event or function, for which Subscriber will require access to the Services provided by the Data Collection & Analytics System. Subscriber shall make itself reasonably available to discuss the matter with AmpThink, at AmpThink’s request.

6. Emergency Maintenance.

AmpThink may also perform any maintenance reasonably necessary to fix critical Service functionality, security or other vulnerabilities or material defects that may substantially impair the usability or performance of the Data Collection & Analytics System, to the extent such maintenance cannot reasonable be performed during the Scheduled Maintenance window (“**Emergency Maintenance**”). AmpThink shall notify Subscriber at least 24 hours’ notice (or at least as much notice as is reasonably possible, where 24 hours is not commercially reasonable) of any Emergency Maintenance, including its date, time and expected duration. Such notice will be provided by telephone to Subscriber’s project manager, with a follow-up by email.