



GTA Direct

**Master Services Agreement
for
GTA Direct Services**

Between

Georgia Technology Authority

And

**3 Vital Solutions, LLC DBA
Big Fish Technology**

TABLE OF CONTENTS

1.	Background and Introduction.....	1
1.1	Framework.....	1
1.2	MSA Attachments.....	2
2.	MSA Term and Termination.....	2
2.1	Term.....	2
2.2	Renewal.....	3
2.3	Termination by GTA for Cause.....	3
2.4	Termination for Convenience.....	3
2.5	Return of Property.....	3
2.6	Effect of Termination.....	3
3.	Fee.....	4
3.1	General.....	4
3.2	Calculation and Payment of Fee.....	4
3.3	Services Usage and Aggregate Charges Report.....	4
4.	Taxes.....	5
5.	Confidential Information.....	5
6.	Indemnification and Infringement.....	6
6.1	Indemnification by Service Provider.....	6
6.2	Indemnification Procedures.....	6
6.3	Infringement by GTA.....	7
7.	Independent Contractor; Contractor Personnel.....	7
7.1	Independent Contractor.....	7
7.2	Trading with State Employees.....	8
7.3	Drug-Free Work Place.....	8
8.	Compliance with Laws.....	8
9.	Non-exclusivity.....	8
10.	Vendor Lobbyist Certification.....	9
11.	Immigration and Security.....	9
12.	Incorporation of Anti-BDS (Boycott, Divestment and Sanctions Campaign against Israel) Legislation.....	9
13.	Limitation of Liability.....	9
13.1	Disclaimer of Certain Damages.....	9
13.2	Cap on Liability.....	9
13.3	Exclusions and Stipulations.....	10
14.	Miscellaneous.....	10

14.1	Assignment and Delegation.....	10
14.2	Amendments.....	10
14.3	Headings.....	10
14.4	Waiver.....	10
14.5	Severability.....	11
14.6	Remedies.....	11
14.7	Publicity.....	11
14.8	Applicable Law and Venue.....	11
14.9	No Liens.....	11
14.10	Notice.....	11
14.11	Counterparts.....	12
14.12	Order of Precedence.....	12
14.13	Entire Agreement.....	12
14.14	Survival.....	12
14.15	Interpretation.....	12
14.16	Further Assurances.....	13
14.17	Protection of State Equipment.....	13

MASTER SERVICES AGREEMENT
for
GTA Direct Services

This **Master Services Agreement for GTA Direct Services** (including all exhibits and attachments hereto, this “**Master Services Agreement**” or “**MSA**”), dated as of 9/1, 2020 (the “**Effective Date**”), is made by and between the **Georgia Technology Authority (“GTA”)**, whose principal place of business is located at 47 Trinity Avenue, Atlanta, Georgia, 30334, and **3 Vital Solutions, LLC DBA Big Fish Technology**, whose principal place of business is located at 4625 Alexander Drive, STE 140 Alpharetta, GA 30022 (“**Service Provider**”) (each, a “**Party**” and collectively, the “**Parties**”).

1. Background and Introduction.

GTA is entering into this MSA as part of its “**GTA Direct Program**”. This program facilitates the accelerated procurement of services by allowing eligible entities to contract directly with the qualified service providers rather than with GTA. In addition to establishing the GTA Direct Program and confirming each service provider's continuing qualification thereunder, GTA will provide governance over the contracts to monitor conformance to the MSA's scope and terms.

1.1 Framework.

- (a) **Customers under GTA Direct Program.** A “**Customer**” may be any state or local government body or entity within the State of Georgia. GTA may publish from time to time eligibility requirements for organizations to be Customers participating in the GTA Direct Program. As part of GTA's governance role described above, GTA may discuss with Customers the status of this MSA and Service Provider's general performance under the GTA Direct Program.
- (b) **Master Services Agreement.** This MSA sets forth terms and conditions between GTA and Service Provider with respect to services that may be provided by Service Provider to Customers under the GTA Direct Program.
- (c) **Customer Purchase Agreements.** A Customer may purchase from Service Provider the services described in **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)** through an agreement between such Customer and Service Provider under this MSA (each, a “**Customer Purchase Agreement**”). **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)** may be updated or replaced by mutual written agreement of the Parties. For clarity, such changes will not impact any Customer Purchase Agreements then in effect (except to the extent the Customer and Service Provider mutually agree to amend their agreement to implement any such changes).
- (d) A form of a Customer Purchase Agreement is set forth in **Exhibit 3 (Form of Customer Purchase Agreement)**. This is a standard agreement to be proposed by Service Provider and approved by GTA. Each Customer Purchase Agreement will describe the particular services being purchased by the applicable Customer from Service Provider, including corresponding service levels and pricing. Service

Provider is required to use only the current version of this Customer Purchase Agreement for new sales and may not supersede this agreement with other terms and conditions. Service Provider and Customers may negotiate changes to this agreement for specific sales transactions, but Service Provider must obtain GTA approval for the changes.

- (e) **Change Orders.** After execution of a Customer Purchase Agreement, Service Provider and the applicable Customer may add, remove or change services from those available under **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)** to such agreement by executing a change order, the form of which will be provided by Service Provider.
- (f) **Customer Participation Acknowledgement; Customer Responsibility.** As a precondition to the effectiveness of any Customer Purchase Agreement, Service Provider shall obtain from the Customer and deliver to GTA an executed Customer Participation Acknowledgement in the form of **Attachment A (Form of Customer Participation Acknowledgement)** to **Exhibit 3 (Form of Customer Purchase Agreement)** hereto (the “**Customer Participation Acknowledgement**”). Service Provider agrees that the Customer executing a Customer Purchase Agreement shall be acting solely on its own behalf and that neither GTA nor any other entity, including any other Customer, shall be liable under or with respect to such Customer Purchase Agreement or any of the executing Customer’s (or Service Provider’s) obligations in connection therewith.

1.2 MSA Attachments.

This MSA includes each of the following attachments, each of which is incorporated into this MSA by this reference.

Exhibit 1	Catalogue of Services, Service Levels, Pricing
Exhibit 2	Governance
Exhibit 3	Form of Customer Purchase Agreement
	Attachment A Form of Customer Participation Acknowledgement
	Attachment B Insurance
Exhibit 4	E-Verify Affidavit Service Provider
Exhibit 5	E-Verify Affidavit Subcontractor
Exhibit 6	Drug-Free Workplace Affidavit
Exhibit 7	Automated Clearing House (ACH) Authorization
Exhibit 8	Administrative Documents
	Attachment A Certificate of Insurance
	Attachment B Taxpayer Identification
	Attachment C Georgia Department of Revenue Tax Lien Certification
	Attachment D Service Provider Affirmations – Scrutinized Companies

2. MSA Term and Termination.

2.1 Term.

The term of this MSA shall begin on the Effective Date and shall expire June 30, 2023, unless earlier terminated by GTA in accordance with this MSA.

2.2 Renewal.

No later than sixty (60) days prior to the end of the then current term, GTA may renew this MSA by providing written notice to Service Provider. GTA shall have four (4) such consecutive renewal options, each for up to twelve (12) months at GTA's sole discretion.

2.3 Termination by GTA for Cause.

GTA has the right to terminate this MSA for cause, in whole or in part, if:

- (a) Service Provider breaches or is in default of any material obligation of this MSA, which default is incapable of cure, or which, being capable of cure, has not been cured within thirty (30) days after Service Provider's receipt of notice of such default (or such additional cure period as GTA may authorize);
- (b) Service Provider suspends or terminates its operation of business, becomes subject to any bankruptcy or insolvency proceeding under federal or state law, or becomes unable to pay its obligations as they accrue; or
- (c) (i) Service Provider is debarred or suspended from performing services on any public contracts; (ii) any certifications or licenses as may be required hereunder are revoked or no longer in effect for any reason; (iii) Service Provider fails to comply with confidentiality laws or provisions; or (iv) Service Provider furnished any statement, representation or certification in connection with this MSA or any applicable bidding process which is materially false, deceptive, incorrect or incomplete.

2.4 Termination for Convenience.

GTA has the right to terminate this MSA for convenience upon thirty (30) days' prior written notice to Service Provider, at no cost or penalty to GTA.

2.5 Return of Property.

Upon termination of this MSA (or, if later, any applicable Customer Purchase Agreement), each Party shall cease using and promptly return to the other Party (or destroy) all papers, materials and other property of the other Party then in its possession and applicable to this MSA; provided, however, GTA shall be entitled to retain materials associated with any continuing Customer Purchase Agreement and appropriate archival materials associated with the GTA Direct Program, including materials related to Service Provider.

2.6 Effect of Termination.

No new Customer Purchase Agreement may be executed after the termination or expiration of this MSA. However, the termination or expiration of this MSA shall not cause the termination or expiration of any Customer Purchase Agreement, which shall continue in force and effect (and the provisions of this MSA will be deemed to remain in effect with respect to such Customer Purchase Agreement) until such Customer Purchase Agreement terminates or expires in accordance with its terms; provided, however, that no new Change Orders may be executed under such Customer Purchase Agreement unless expressly approved by GTA in writing. For the avoidance of doubt, unless GTA has

stipulated that this MSA will terminate with respect to any outstanding Customer Purchase Agreement, the Fee will remain due for any Customer Purchase Agreement that survives the termination or expiration of this MSA.

3. Fee.

3.1 General.

Service Provider agrees to remit to GTA a quarterly fee as specified in this Section (the “**Fee**”) for administrative services performed by GTA with respect to this MSA. Service Provider further acknowledges that its charges under the Customer Purchase Agreements shall be sufficient to compensate Service Provider for its performance of the services and its obligation to pay the Fee to GTA. As such, Service Provider has factored the Fee into its pricing for the Customer Purchase Agreements and shall not separately itemize, invoice or charge any Customer for payment or reimbursement of all or any portion of the Fee.

3.2 Calculation and Payment of Fee.

The amount of the Fee shall equal two and one half percent (2.5%) of revenue sold through its contracts by Service Provider to Customers under all Customer Purchase Agreements in the aggregate during the applicable calendar quarter (excluding sales taxes and adjusted for applicable credits or refunds). Service Provider must pay to GTA the Fee with respect to each calendar quarter on or before the last day of the month immediately following the end of such quarter (the “**Latest Fee Payment Date**”), as follows:

Calendar Quarter During Which Work Performed	Months	Latest Fee Payment Date
Quarter 1	January 1 – March 31	April 30
Quarter 2	April 1 – June 30	July 31
Quarter 3	July 1 – September 30	October 31
Quarter 4	October 1 – December 31	January 31

Fee payments shall be submitted to GTA by Automatic Clearing House (ACH), for receipt not later than the Latest Fee Payment Date. Service Provider must complete and submit the form authorizing electronic payment, included as **Exhibit 7 (Automated Clearing House (ACH) Authorization)**, <https://sao.georgia.gov/teamworks/financials/vendor-payment-management>, as such instructions may be updated from time to time by GTA upon notice to Service Provider.

3.3 Services Usage and Aggregate Charges Report.

(a) Service Provider shall submit to GTA a report on the services usage and aggregate charges for each calendar quarter (the “**Services Usage and Aggregate Charges Report**”). Services Usage and Aggregate Charges Reports must be delivered to GTA no later than the Latest Fee Payment Date. Each Services Usage and Aggregate Charges Report shall reflect, at a minimum, the following information for the applicable calendar quarter:

- (i) Service Provider’s name;
- (ii) MSA Contract Number;

- (iii) applicable calendar quarter to which the Services Usage and Aggregate Charges Report relates;
 - (iv) listing of all Customer Purchase Agreements, by Customer name and Customer Purchase Agreement Effective Date; and
 - (v) total dollar amounts invoiced to and received (and receivable) from Customers (excluding sales taxes and adjusted for applicable credits or refunds) under all Customer Purchase Agreements during such quarter (separately stated by Customer Purchase Agreement and including aggregate total for all Customer Purchase Agreements).
- (b) Service Provider shall provide additional information in the Services Usage and Aggregate Charges Reports, as reasonably requested by GTA (including in requested formats). In addition, Service Provider shall promptly respond to GTA questions and requests for supplemental information associated with any Services Usage and Aggregate Charges Report, and shall meet with GTA upon request to discuss the GTA Direct Program, including the services and Customers' satisfaction therewith, and issues, concerns and opportunities.

4. Taxes.

Each Party is responsible for payment of any taxes imposed upon it in connection with or related to this MSA.

5. Confidential Information.

- (a) Each Party (as the “**disclosing Party**”) acknowledges that, in connection with this MSA, it may be necessary to disclose to the other Party certain information relating to the disclosing Party or its business or operations (including that of its customers or other third parties with which it deals) which it maintains in a confidential manner, whether provided to the other Party in writing or otherwise, and which may include analyses, compilations, reports and other materials (“**Confidential Information**”). Each Party agrees that it will not disclose, transfer, use, copy, or allow access to any such Confidential Information to any employees or to any third parties excepting those who have a need to know such Confidential Information in order to allow Service Provider or GTA to perform its obligations or exercise its rights or receive the intended benefits under or related to this MSA, as the case may be, and who have executed a nondisclosure agreement or are otherwise bound to enforceable obligations, in each case consistent with the provisions hereof.

- (b) Neither Party will have any obligation of confidentiality with respect to information that: (i) is or becomes (through no improper action or inaction of the receiving Party or any of its affiliates, agents, consultants or employees) generally available to the public; (ii) can be demonstrated by the receiving Party to have been in its possession or known by it prior to receipt under this MSA; (iii) is rightfully disclosed to the receiving Party by a third party without restriction; (iv) is disclosed by the receiving Party with the written approval of the disclosing Party; (v) is developed independently by the receiving Party; or (vi) is obligated to be disclosed by applicable law, including order of a court of competent jurisdiction.
- (c) Notwithstanding the foregoing, GTA's obligations hereunder may be subject to the provisions of the Georgia Open Records Act (O.C.G.A. § 50-18-70 *et seq.*), as it may be amended from time to time.
- (d) Promptly following written request of the disclosing Party, the receiving Party shall return or destroy the disclosing Party's specified Confidential Information and certify that it has done so.

6. Indemnification and Infringement.

6.1 Indemnification by Service Provider.

At GTA's request, Service Provider will, at Service Provider's expense, indemnify, defend and hold harmless the State of Georgia, its agencies, departments, authorities and instrumentalities (including GTA), and their respective officers, directors, employees and agents (hereinafter collectively referred to as "**Indemnitees**"), from any and all demands, liabilities, losses, penalties, fines, fees, interest, awards, judgments, settlement payments, costs or expenses (including court costs, reasonable attorneys' fees, and reasonable value of the time spent by the Attorney General or other involved agency, office or party, as permitted herein) (collectively, "**Losses**") incurred in connection with any third party claim, suit or demand to the extent arising from or based on any of the following: (a) any breach of this MSA by Service Provider; (b) Service Provider's violation of any applicable law, rule or regulation; (c) Service Provider's damage to or destruction of tangible or real property; (d) injury to personnel (including death) caused by Service Provider; or (e) Service Provider's services, deliverables or other obligations or materials provided under or related to any Customer Purchase Agreement, including any aspect of the engagement or employment by Service Provider or its subcontractors of its or their personnel, or the termination of such employment or engagement (including claims related to non-payment of wages, discrimination/harassment, unemployment or workers' compensation benefits, employee benefits, and any other claims concerning the terms and conditions of employment under any federal, state or local law governing employment).

6.2 Indemnification Procedures.

- (a) **Notice.** Promptly after receipt by an Indemnitee of notice of the commencement or threatened commencement of any action, proceeding or other claim by a third party involving a claim in respect of which the Indemnitee may seek indemnification pursuant to the above, the Indemnitee will notify Service Provider of such claim in writing and provide to Service Provider all reasonably available information requested. No failure to so notify Service Provider will relieve it of its obligations under this **Section 6 (Indemnification)** except to the extent that it can demonstrate damages or prejudice attributable to such failure. Within thirty (30) days following receipt of notice and such reasonably available information from the

Indemnatee relating to any claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due (the applicable period referred to herein as the “**Notice Period**”), Service Provider will notify the Indemnatee in writing if Service Provider assumes responsibility to indemnify, defend and hold harmless the Indemnatee and elects to be involved in the defense and settlement of that claim (an “**Notice of Election**”). Service Provider will be responsible for all Losses related to such claim if Service Provider is obligated to indemnify the Indemnatee.

- (b) **Procedure Following Notice of Election.** If Service Provider delivers a Notice of Election relating to any claim within the required Notice Period, Service Provider will be involved in the defense and settlement of such claim; provided, however, that (1) the Indemnatee will be entitled to participate in the defense of such claim at its own expense and the Office of the Attorney General of the State of Georgia will represent and defend the Indemnatee, and (2) Service Provider will obtain the prior written approval of the Indemnatee and the Georgia Attorney General before entering into any settlement of such claim or ceasing to defend against such claim.
- (c) **Procedure Where No Notice of Election Is Delivered.** If Service Provider does not deliver a Notice of Election relating to any claim within the required Notice Period or otherwise comply with its obligation to defend hereunder, the Indemnatee, represented by the Office of the Attorney General of the State of Georgia (or other arrangement allowed by law), may proceed to defend the claim in such manner as it may reasonably deem appropriate, at the cost and expense of Service Provider. Service Provider will promptly reimburse the Indemnatee for all applicable Losses related to such claim. In such case, the Indemnatee represented by the Attorney General of the State of Georgia (or other party as applicable) may settle any such claim without the consent of Service Provider. If it is determined that Service Provider failed to defend a claim for which it was liable, Service Provider will not be entitled to challenge the amount of any settlement or compromise paid by the Indemnatee.
- (d) Service Provider’s obligation to indemnify any Indemnatee will survive the expiration or termination of this MSA by either Party for any reason.

6.3 Infringement by GTA.

In the event GTA infringes upon or misappropriates the intellectual property of Service Provider with respect to any item used by Service Provider to provide the Services or which is provided by Service Provider to GTA under this MSA, GTA will, without limiting any other rights and remedies Service Provider may have under this MSA, and at law or equity, be liable for any costs and expenses, including reasonable attorneys’ fees, incurred by Service Provider as a result of such infringement or misappropriation.

7. Independent Contractor; Contractor Personnel.

7.1 Independent Contractor.

In its relationships with GTA and the State of Georgia, and for all tax, liability and insurance purposes, Service Provider agrees that it is an independent contractor. Service Provider shall have the sole right to manage, control and direct the method, manner and means by which its services are performed. Service Provider shall be responsible for compliance with all applicable laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and

safety, working conditions, workers' compensation insurance, and payment of wages. Neither Service Provider nor any of its agents, servants, employees, subcontractors or suppliers shall become or be deemed to become agents, representatives, or employees of GTA or the State of Georgia. This MSA shall not be construed so as to create a partnership or joint venture between Service Provider and GTA or the State of Georgia. Service Provider shall not hold itself out to be an employee or agent of GTA or use the name of GTA in its business in any way.

7.2 Trading with State Employees.

The Parties certify that this MSA does not and will not violate the provisions of Georgia's code of ethics and conflicts of interest statutes set forth in O.C.G.A. § 45-10-20, et seq., in any respect. Service Provider agrees not to employ any individual whose employment would result in a violation of such law.

7.3 Drug-Free Work Place.

- (a) Service Provider represents, warrants and covenants that it has and shall maintain substance abuse policies, in each case in conformance with GTA rules and applicable laws, including O.C.G.A. § 50-24-1 et seq., and Service Provider personnel shall be subject to such policies.
- (b) Service Provider will obtain from any subcontractor hired to perform services for this MSA the following written certification: "As part of the subcontracting agreement with Service Provider, (subcontractor's name) certifies to Service Provider that a drug-free workplace will be provided for the subcontractor's employees during the performance of this agreement pursuant to paragraph eight (8) of subsection (b) of O.C.G.A. § 50-24-3." Service Provider will provide GTA with a copy of each such certification as soon as practicable. Service Provider may be suspended, terminated, or debarred if it is determined that Service Provider has made false certification hereinabove or has violated such certification by failure to carry out the requirements of O.C.G.A. § 50-24-3.

8. Compliance with Laws.

- (a) Each Party shall perform its obligations under this MSA in accordance with all applicable federal, state and local laws, rules and regulations. Service Provider shall obtain and maintain, and shall cause its subcontractor to obtain and maintain all approvals, permissions, permits, professional licenses, and other documentation required to comply with all applicable laws, rules or regulations.
- (b) Service Provider certifies that neither Service Provider nor any of its subcontractors have been debarred, suspended or declared ineligible by any entities of the State of Georgia or as defined in the Federal Acquisition Regulations 48 C.F.R. Ch. 1 Subpart 9.4. Service Provider immediately shall notify GTA if Service Provider or any of its subcontractors become debarred by the State of Georgia or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by any federal entity.

9. Non-exclusivity.

This MSA is entered into solely for the convenience of GTA and the State of Georgia, and in no way precludes GTA or the State of Georgia from obtaining or arranging like goods and services from other suppliers.

10. Vendor Lobbyist Certification.

Service Provider hereby certifies that, as of the Effective Date, any lobbyist employed by Service Provider to lobby within the State of Georgia has registered with the Georgia Government Transparency and Campaign Finance Commission and complied with the requirements of the Executive Order dated October 1, 2003 ("Providing for the Registration and Disclosure of Lobbyists Employed or Retained by Vendors to State Agencies"). This MSA may be declared void at GTA's sole discretion, if it is determined that Service Provider has made false certification hereinabove or has violated such certification by failure to carry out the requirements of such Executive Order or other applicable law.

11. Immigration and Security.

Service Provider hereby certifies that it complies with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act, O.C.G.A. § 13-10-90. The e-Verify Certificate form attached hereto as **Exhibit 4 (E-Verify Affidavit – Service Provider)** shall be completed by Service Provider and notarized, certifying compliance with the foregoing as of the Effective Date, and thereafter at the request of GTA. Further, the e-Verify Certificate form attached hereto as **Exhibit 5 (E-Verify Affidavit – Subcontractor)** shall be completed by any subcontractors employed for delivery of services under this MSA or any Customer Purchase Agreement and notarized, certifying compliance with the foregoing as of the Effective Date, and thereafter at the request of GTA.

12. Incorporation of Anti-BDS (Boycott, Divestment and Sanctions Campaign against Israel) Legislation.

Service Provider certifies that Service Provider is not currently engaged in, and agrees for the duration of this MSA not to engage in, a boycott of Israel, as defined in O.C.G.A. § 50-5-85.

13. Limitation of Liability.**13.1 Disclaimer of Certain Damages.**

NEITHER SERVICE PROVIDER NOR GTA SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS MASTER SERVICES AGREEMENT, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

13.2 Cap on Liability.

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS MASTER SERVICES AGREEMENT EXCEED THE AMOUNT OF THE CHARGES PAID OR PAYABLE BY SERVICE PROVIDER DURING THE TWENTY FOUR (24) MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY; PROVIDED THAT IF THE EVENT GIVING RISE TO LIABILITY OCCURS DURING THE FIRST TWENTY FOUR (24) MONTHS AFTER THE EFFECTIVE DATE OF THIS MASTER SERVICES AGREEMENT, THE AMOUNT SHALL BE CALCULATED AS THE AMOUNT ANTICIPATED TO BE PAID BY SERVICE PROVIDER DURING THE FIRST TWENTY FOUR (24) MONTHS AFTER THE EFFECTIVE DATE OF THIS MASTER SERVICES AGREEMENT, OR TWENTY FOUR (24) TIMES THE AVERAGE

MONTHLY CHARGES THUS FAR, WHICHEVER IS MORE.

13.3 Exclusions and Stipulations.

THE PROVISIONS ABOVE IN THIS SECTION 13 SHALL NOT APPLY TO: (A) LOSSES ARISING OUT OF GROSS NEGLIGENCE OR WILLFUL OR INTENTIONAL MISCONDUCT; (B) LOSSES ARISING FROM A PARTY'S BREACH OF SECTION 5 (CONFIDENTIAL INFORMATION); OR (C) LOSSES ARISING OUT OF SERVICE PROVIDER'S OBLIGATIONS TO INDEMNIFY ANY INDEMNITEE. FURTHER, TO THE EXTENT THAT A CPA CONTAINS REIMBURSEMENT OR INDEMNIFICATION OBLIGATIONS RELATED TO A SERVICE PROVIDER'S BREACH OF ITS DATA SECURITY OR DATA PRIVACY OBLIGATIONS, SUCH REIMBURSEMENTS SHALL BE DEEMED TO BE DIRECT DAMAGES AND NOT ANY OF THE TYPES OF DAMAGES DESCRIBED UNDER SECTION 13.1 ABOVE AND SHALL NOT BE GOVERNED BY THE LIABILITY CAP UNDER SECTION 13.2 ABOVE.

14. Miscellaneous.

14.1 Assignment and Delegation.

Unless GTA gives its prior written consent (such consent not to be unreasonably withheld), Service Provider shall not assign any of its rights or delegate the performance of any of its duties under this MSA, regardless of whether such assignment or delegation is voluntary or involuntary, and whether it is by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment or delegation by Service Provider without such consent shall be null and void.

14.2 Amendments.

The Parties recognize and agree that it may be necessary or convenient for the Parties to amend this MSA to provide for the orderly implementation of all undertakings described herein, and the Parties agree to cooperate in good faith in connection with such amendments if and as necessary; provided, however, no change or modification or other amendment to this MSA shall be valid unless the same is reduced to writing and signed by both Parties.

14.3 Headings.

The headings in this MSA have been inserted for convenience only and shall not affect or control the meaning or construction of any of the provisions of this MSA.

14.4 Waiver.

The Parties may waive a provision of this MSA only by a writing executed by the Party or Parties against which the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this MSA, and no act, omission or course of dealing between the Parties shall operate as a waiver or estoppel of any right, remedy or condition. A waiver made in writing of a right under or provision of this MSA on one occasion shall be effective only for that instance and occasion and only for the purpose stated and a waiver once given is not to be construed as a waiver on any future occasion or against any other Party except as expressly provided in the applicable writing executed by the Party against which enforcement is sought.

14.5 Severability.

All provisions of this MSA are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. All provisions of this MSA will be construed in such a manner as to carry out the fullest intention of the Parties as is enforceable and valid.

14.6 Remedies.

No remedies or rights herein conferred upon the Parties are intended to be exclusive of any remedy or right provided by law or in equity, but each shall be cumulative and shall be in addition to every other remedy or right given hereunder or now or hereafter existing at law or in equity (including the right of specific performance).

14.7 Publicity.

Service Provider shall not release without GTA's prior written approval any publicity regarding this MSA, including but not limited to, notices, information, pamphlets, press releases, research, reports, signs and similar public notices prepared by or for Service Provider, identifying the State of Georgia or GTA; however, Service Provider may reference this MSA in proposals for other contracts, subject to reasonable confidentiality restrictions, without GTA's prior approval.

14.8 Applicable Law and Venue.

The laws of the State of Georgia, U.S.A., without regard to its conflict of laws principles, govern all matters arising out of or relating to this MSA and the transactions it contemplates, including its interpretation, construction, performance and enforcement. Any lawsuit or other action based on a claim arising from this MSA shall be brought in the Superior Court of Fulton County, Georgia.

14.9 No Liens.

Service Provider will not file, or by its action or inaction permit, any liens to be filed on or against property (including realty) of GTA. In the event that any such liens shall arise as a result of Service Provider's action or inaction, Service Provider shall promptly obtain a bond or otherwise undertake to fully and promptly satisfy such liens and remove or have such liens removed at its sole cost and expense within no more than ten (10) business days of such lien arising. If Service Provider fails to so satisfy and have removed any such lien, GTA may, in its sole discretion, pay the amount of such lien and deduct such amounts from payments due to Service Provider or, if no further payments are due, promptly recover such amount from Service Provider.

14.10 Notice.

Any notice required or permitted under this MSA shall be in writing sent to the addressee listed below, and will be effective upon receipt as demonstrated by reliable written confirmation (for example, certified mail receipt, courier receipt or facsimile receipt confirmation sheet). Each Party may change its addressee information by notice pursuant to this provision.

To GTA	To Service Provider
Georgia Technology Authority	Big Fish Technology
47 Trinity Avenue	4625 Alexander Drive STE 140

Atlanta, GA 30334-9006	Alpharetta, GA 30022
Attn: Contract Management	Attn: GSA Management
Telephone: (404) 463-2300	Telephone: (678) 528-7713
Fax: (404) 651-5333	Fax: (678) 928-9428

14.11 Counterparts.

The Parties may execute this MSA in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of both Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or by electronic mail shall be as effective as executing and delivering this MSA in the presence of the other Party. No Party shall be bound by this MSA until all Parties have executed it.

14.12 Order of Precedence.

In the event of any conflict or inconsistency among the terms of the various documents that collectively comprise this MSA, then to the maximum extent that the conflicting or inconsistent terms can reasonably be interpreted so that such terms are consistent with and supplemental to one another and do not conflict with each other, such consistent, non-conflicting and supplemental interpretation shall prevail, in a manner that gives effect to all of such terms. Subject to the foregoing, any conflict or inconsistency in this MSA shall be resolved by giving precedence in the following order: (a) this MSA, excluding its Exhibits; (b) the Exhibits to this MSA (including **Exhibit 3 (Form of Customer Purchase Agreement)**) and (c) the Request for Proposal and response materials.

14.13 Entire Agreement.

This MSA constitutes the final and complete agreement between the Parties as of the Effective Date, and is the complete and exclusive expression of the Parties' agreement on the subject matter and supersedes any and all other prior and contemporaneous agreements and understandings between the Parties, whether oral or written. The provisions of this MSA may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this MSA, neither Party has relied upon any statement, representation, warranty or agreement of the other Party except for those expressly contained in this MSA and the attachments incorporated herein. There are no conditions precedent to the effectiveness of this MSA, other than those expressly stated herein.

14.14 Survival.

Any provision of this MSA which contemplates performance or observance subsequent to any termination or expiration of this MSA shall survive any termination or expiration and continue in full force and effect. Additionally, all provisions of this MSA shall survive expiration or termination to the fullest extent necessary to give the Parties the full benefit of the bargain expressed therein.

14.15 Interpretation.

Unless the context requires otherwise, (a) "**including**" (and any of its derivative forms) means including but not limited to, (b) "**may**" means has the right, but not the obligation to do something, and "**may not**" means does not have the right to do something, and (c) "**will**" and "**shall**" are expressions of command, not merely expressions of future intent or expectation.

14.16 Further Assurances.

The Parties agree that they will execute and deliver such other instruments and documents, and take such other actions, as the other Party may reasonably request to evidence or effect the transactions contemplated by this MSA.

14.17 Protection of State Equipment.

A vital component of GTA's mission is ensuring that any equipment or services procured and/or offered by GTA adequately protects the security of governmental/public sector data. GTA has previously relied on the John McCain National Defense Authorization Act, H.R. 5515 (<https://www.congress.gov/bill/115th-congress/house-bill/5515/text#toc-H4350A53097BD46409287451A50C4F397>), which provided that agencies of the federal government are prohibited from procuring equipment or services from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). For similar reasons, GTA determined that suppliers utilizing equipment or services provided by these entities would be excluded from GTA contracts. At the present time, prospective suppliers are advised not to use Huawei or ZTE as components or sub-components in any of their offered technical solutions/catalogues. Lack of adherence may result in a range of actions available to GTA, up to and including disqualification/contract cancellation.

IN WITNESS WHEREOF, each Party has caused its authorized representative to execute this MSA as of the Effective Date.

GEORGIA TECHNOLOGY AUTHORITY

DocuSigned by:
By: Mark Latham
11D69D05F85B4BB...
Name: Mark Latham
Title: sourcing governance officer
Date: 10/26/2020

3 Vital Solutions, LLC DBA Big Fish Technology

By: [Signature]
Name: RYAN LEO
Title: PARTNER
Date: 9-17-2020