



The Office of Secretary of State
Independent Contractor Agreement

This agreement ("Agreement") is made as of this 1st day of July, 2020 between the **Office of the Georgia Secretary of State**, an agency of the State of Georgia with its principal business office at 214 State Capitol, Atlanta, Georgia 30334 ("SOS") and **(Sterling Innovative Solutions LLC), a Georgia Limited Liability Company with its principle place of business at [REDACTED] Sandy Springs GA 30328** ("Independent Contractor").

1. Term and Termination of Agreement. This shall be effective from July 1, 2020 to June 30, 2021 ("Term") unless sooner terminated in accordance with the provisions of this Agreement.

(a) Contract Term. The Contract between SOS and the Independent Contractor shall begin and end on the dates specified unless terminated earlier in accordance with the applicable terms and conditions. Pursuant to O.C.G.A. Section 50-5-64, this Contract shall not be deemed to create a debt to the State for the payment of any sum beyond the fiscal year of execution or, in the event of renewal, beyond the fiscal year of renewal.

(b) Contract Renewal. SOS shall have the option, in its sole discretion, to renew the Contract for additional terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least (60) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of the State, funding, and Independent Contractor's performance. Renewal will be accomplished through written amendment to this Agreement. Upon SOS's election, in its sole discretion, to renew any part of this Contract, Independent Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the State Entity and the Independent Contractor.

(c) Contract Extension. In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the Services, the State Entity may, with the written consent of Independent Contractor, extend this Contract for such period as may be necessary to afford the State a continuous supply of the Services.

2. Scope of Services.

(a) SOS agrees to engage Independent Contractor and Independent Contractor agrees to provide **expertise and consultative services related to project management, vendor management, project implementation, as well as conducting Statewide Voting System policy and strategy review on behalf of SOS.** Independent Contractor agrees that the scope of work covered by this Agreement also includes any project(s) or assignments regularly and on an as-needed basis to the Independent Contractor by SOS during the term of this Agreement. Independent Contractor agrees to accept such engagements with SOS as assigned.

(b) Independent Contractor acknowledges that in performing services pursuant to this Agreement, Independent Contractor is acting solely as an independent contractor, and not as an employee or agent of

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SOS or any other entity except when specifically authorized by SOS to act as its agent. Independent Contractor acknowledges that Independent Contractor and its employees, if any, have no employee benefits or privileges (including but not limited to workers' and unemployment compensation, insurance, pension, medical coverage or other fringe benefits) from SOS or the State of Georgia.

(c) Independent Contractor agrees to devote such of Independent Contractor's time, skills and best efforts to complete the projects designated by SOS and to perform faithfully for SOS in accordance with this Agreement. Independent Contractor agrees to exert Independent Contractor's best efforts to preserve for the benefit of SOS the goodwill and relationships of SOS' customers and of those who may have business relations with SOS. Independent Contractor shall not engage in any activity that is materially detrimental to the business or reputation of SOS during the term of this Agreement.

(d) The days and hours of work and the manner by which work is performed by Independent Contractor under this Agreement are solely within the discretion of Independent Contractor, consistent with SOS's general standards and particular customer requirements; however, in all events, Independent Contractor agrees to promptly perform all work for project(s) assigned to Independent Contractor by SOS under this Agreement, and to meet any dates for completion of Independent Contractor's performance which may be dictated by the circumstances or as specified by SOS. Independent Contractor agrees that Independent Contractor shall perform all such project(s) assigned to Independent Contractor under this Agreement in full compliance with the standards adopted by SOS applicable to such project(s) and warrants that all such project(s) shall fully meet all such standards. It is estimated that Contractor will need to spend two hours per work day at the SOS office to accomplish his assigned projects.

(e) Independent Contractor shall furnish all proper tools, equipment, materials and vehicles needed in performing the required work for the project(s) covered by this Agreement, except that Independent Contractor shall be authorized general office equipment and supplies when working out of the SOS office.

(f) Independent Contractor further agrees that Independent Contractor shall fully comply with any and all provisions of any federal, state or local laws, including but not limited to equal employment opportunity laws and electrical and safety codes and regulations established under the federal and state occupational safety and health laws and project requirements.

(g) Independent Contractor shall not have the authority to bind SOS to any promise, contract or agreement, in the name of SOS. Independent Contractor may not represent to others that Independent Contractor has the authority to make promises or to bind SOS to any act, contract or agreement, and, when necessary, Independent Contractor shall inform them that Independent Contractor does not possess the authority to take such actions.

(h) All rights, work products or records created pursuant to this Agreement, including but limited to ideas, processes, trade secrets, service marks, writings or works of art, developed or created by Independent Contractor during the course of performing work on behalf of SOS shall belong exclusively to SOS and/or the State of Georgia.

3. Compensation.

(a) For the services rendered under this Agreement, SOS shall pay to Independent Contractor a semi-monthly installments on the 15th and last day of the month in the amount of Eight Thousand three hundred and thirty three dollars (\$8,333.00). Compensation for these services may be modified only in a written document signed by SOS and Independent Contractor. All invoices must be submitted in a timely manner. Independent Contractor is responsible for the payment of all applicable taxes, including but not limited to

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the income, withholding, unemployment, and social security taxes with respect to work done by Independent Contractor under this Agreement.

(b) It is contemplated that Independent Contractor shall be responsible for Independent Contractor's reasonable and necessary business expenses incurred in connection with this Agreement. However, to the extent that there are any reasonable and necessary business expenses incurred by Independent Contractor which SOS determines are reimbursable expenses, Independent Contractor shall then be entitled to be reimbursed in accordance with the policies of SOS, as adopted and amended from time to time by SOS, for all reasonable and necessary business expenses incurred by Independent Contractor in connection with this Agreement. Independent Contractor shall, as a condition of such reimbursement: (i) receive a prior documented approval for such business expenses from SOS and (ii) submit verification, including receipts, invoices or statements of account of the nature and amount of such expenses in accordance with the reimbursement policies adopted from time to time by SOS. Reimbursements shall be paid to Independent Contractor on a timely basis.

(c) After the conclusion of each calendar year, SOS shall provide Independent Contractor a copy of Internal Revenue Service Form 1099 indicating the gross fees paid to Independent Contractor during that calendar year.

4. Confidential Information.

"Confidential Information" shall include all information obtained through the course and in connection with the services provided pursuant to the agreements, and amendments or renewals thereto, between the parties, including but not limited to: (a) individual's government-issued identification number (including social security number, driver's license number or state-issued identified number); (b) financial account number, credit card number, debit card number, credit report information; (c) personal identification number or password, (d) biometric or health data; (e) all names, signatures, addresses, telephone numbers, e-mail addresses or contact information; (f) status of examination or application; (g) all information related to SOS IT systems or Independent Contractor's data, including drafts and test data, related to the configuration, creation, development or maintenance of SOS IT systems; and (h) all other SOS data or information with may be received by Independent Contractor in the course of providing services pursuant to the Agreement between the parties.

(a) All Confidential Information and all physical embodiments of such information either received or developed by Independent Contractor while performing services under this Agreement are confidential and shall remain the sole and exclusive property of SOS. Except to the extent necessary to perform the duties assigned by SOS, Independent Contractor shall hold such Confidential Information in trust and strictest confidence, and shall not use, reproduce, distribute, disclose or otherwise disseminate the Confidential Information or any physical embodiments of such information. In no event may Independent Contractor either (i) take any action that causes, or (ii) fail to take action necessary in order to prevent, any Confidential Information disclosed to Independent Contractor or developed by Independent Contractor to lose its character or cease to qualify as Confidential Information.

(b) Upon request by SOS, and in any event upon termination of the engagement of Independent Contractor with SOS for any reason, Independent Contractor shall promptly deliver to SOS all property belonging to SOS, including, without limitation, all Confidential Information (and all physical embodiments of such information) then in Independent Contractor's custody, control or possession.

(c) During the term of this Agreement and at all times applicable thereafter, Independent Contractor agrees to abide by the provisions of Exhibit A (Data Security and Access), which is attached to and made a part of this Agreement.

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5. Indemnification and Hold Harmless Agreement. Independent Contractor shall defend, indemnify, and hold SOS harmless from all claims of any kind made against SOS arising out of Independent Contractor's performance under this Agreement. Independent Contractor shall indemnify and hold harmless SOS and SOS's agents and employees from and against all claims, damages, losses and expenses including attorneys' fees resulting from injury to or death sustained by any person (including Independent Contractor and/or Independent Contractor's employees) or damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with, Independent Contractor's performance or failure to perform Independent Contractor's work under this Agreement.

6. Open Records Act, Record Retention and Access.

Independent Contractor shall comply with the Georgia Open Records Act, O.C.G.A. Section 50-18-70 *et seq.* in providing access to records related to this Agreement. Independent Contractor shall notify and forward to SOS immediately but in no instance later than 24 hours of any open records requests it may receive.

Independent Contractor shall maintain books, records and documents which sufficiently and properly document services and charges related to services performed on behalf of SOS for a period of at least five (5) years following the date of final payment or completion of the services. Independent Contractor shall permit auditor or any authorized representative of the State of Georgia or a representative of the government of the United States where federal funds are involved, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents and papers in whatever form they are maintained. Independent Contractor shall not impose a charge for audit or examination of such records.

7. Miscellaneous.

(a) **Remedies.** Independent Contractor agrees that the provisions contained in this Agreement and any attachments are of the essence of this Agreement, that each of such provisions is reasonable and necessary to protect and preserve the interests and properties of SOS and the business of SOS and that irreparable loss and damage shall be suffered by SOS should Independent Contractor breach any of such provisions. Therefore, Independent Contractor agrees and consents that, in addition to all the remedies provided at law or in equity, SOS shall be entitled to a temporary restraining order and temporary and permanent injunctions to prevent a breach or contemplated breach of any of the covenants. The existence of any claim, demand, action or cause of action of Independent Contractor against SOS shall not constitute a defense to the enforcement by SOS of any of the covenants or agreements of this Agreement.

(b) **Notices.** Any official notices to either party must be in writing and may be delivered personally, via email or commercial courier with return receipt using the following contact information:

1. To Independent Contractor:
(Sterling Innovative Solutions LLC)
[REDACTED] Sandy Springs GA 30328

2. To SOS:
Office of the Georgia Secretary of State
Attention: Jordan Fuchs
214 Capitol Ave. SW
Atlanta, Georgia 30334
Email: jfuchs@sos.ga.gov
Tel: 470-312-2810

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Any notice given under this Agreement is deemed to have been given on the date of receipt or, if sent by email, on the verifiable date sent. The contact information in this paragraph may be changed by the respective parties upon a documented notice delivered pursuant to this paragraph.

(c) **Agreement Inclusive.** This Agreement supersedes any and all agreements, whether written or oral, by and between Independent Contractor and SOS, and any and all such prior Agreements are canceled effective as of the date of this Agreement.

(d) **No Assignment.** This Agreement and the rights and obligations under this Agreement may not be assigned by either party.

(e) **Unenforceability of Provisions.** If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

(f) **Waivers.** The waiver by SOS of any breach of this Agreement by Independent Contractor shall not be effective unless in writing, and no such waiver shall operate or be construed as a waiver of the same or another breach on a subsequent occasion.

(g) **Entire Agreement.** This Agreement contains the entire agreement of the parties, and may be amended, changed, modified, extended or rescinded only by a writing signed by both parties. No agreements or representations, unless incorporated in this agreement, shall be binding upon either party.

(h) **Insurance.** Independent Contractor is solely responsible for securing all applicable insurance (including liability and malpractice insurance, if warranted) relative to any service performed pursuant to this Agreement.

(i) **Governing Law.** This Agreement is to be deemed as having been executed in the State of Georgia; and is to be interpreted, construed and governed in accordance with the laws of the State of Georgia.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above.

INDEPENDENT CONTRACTOR

R. Gabriel Sterling
Print Name

[Signature]
Signature

7/1/2020
Date

OFFICE OF THE GEORGIA SECRETARY OF STATE

Jordan M. Suchs
Print Name

[Signature]
Signature

SOS
Title

7/1/2020
Date

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Data Security and Access

1. General.

This Data Security and Access Attachment is hereby made between (**Sterling Innovative Solutions LLC**) (“Independent Contractor”) and the Office of the Secretary of State, (“SOS”) and is made part of the Independent Contractor Agreement between the parties dated (**July 1st 2020**) and is effective as of the latter date of agreement or amendment/renewal (collectively, the agreement as amended and attachment shall be “Agreement”).

For purpose of the Data Security provisions, the following shall also apply:

All “**Authorized Persons**” shall include Independent Contractor’s employees who have a need to know or otherwise access personal information or Confidential Information (hereinafter defined) to enable Independent Contractor to perform its obligations under this Agreement, including but not limited to employees, contractors, agents auditors and persons or parties who have a need to know or otherwise access to Confidential Information. All Authorized Persons of Independent Contractor have been deemed by Independent Contractor trustworthy and been properly vetted to come into contact with Confidential Information.

In addition to any other agreement between the parties addressing any confidential information, “**Confidential Information**” is as defined in the main Independent Contractor Agreement between the parties.

A “**Security Breach**” shall include any and all acts or omissions of any nature that compromise either the security, confidentiality or integrity of Confidential Information or the physical, technical, administrative or organizational safeguards put in place that relate to the protection of the security, confidentiality or integrity of Confidential Information. Security Breach includes improper disposal, such as any action which may compromise the custody or security, of Confidential Information.

2. Standard of Care and Notification.

(a) Independent Contractor acknowledges and agrees that, in the course of its engagement, Service Provider may receive or have access to Confidential Information. Independent Contractor shall comply with the terms and conditions set forth in this Agreement in its collection, receipt, transmission, storage, disposal, use and disclosure of such Confidential Information and be responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of Confidential Information under its control or in its possession. Independent Contractor shall be responsible for, and remain liable to SOS for the actions and omissions of all Independent Contractor’s Authorized Persons as if they were Independent Contractor’s own actions and omissions.

(b) Independent Contractor agrees and covenants that it shall:

- (i) keep and maintain all Confidential Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure,
- (ii) use and disclose Confidential Information solely and exclusively for the purposes for which the Confidential Information, or access to it, is provided pursuant to the terms and conditions of this Agreement, and not use, sell, rent, transfer, distribute, or otherwise directly or indirectly disclose or make available Confidential Information for Independent Contractor’s own purposes or for the benefit of anyone other than SOS, unless otherwise provided expressly by applicable law or expressly permitted by SOS,

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(iii) in the event that Independent Contractor must disclose Confidential Information as expressly required under applicable law, Independent Contractor must

- (a) immediately notify SOS of such disclosure,
- (b) disclose only portions of Confidential Information as may be legally required and agreed-to by SOS,
- (c) exercise the same level of care with respect to preserving Confidential Information at all times when handling such information.

3. Information Security.

Independent Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Confidential Information does and shall comply with all applicable federal, state and local privacy and data protection laws, as well as all other applicable regulations and directives. Independent Contractor shall implement administrative, physical and technical safeguards to protect Confidential Information that are no less rigorous than accepted industry practices and shall ensure that all such safeguards, including the manner in which Confidential Information is collected, accessed, 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. Independent Contractor procedures should include at least the following: identity and access management, infrastructure and operations security, vulnerability management, business-continuity planning, disaster-recovery planning and training. Upon SOS' request, Independent Contractor shall provide SOS an access control and activities list of all user accounts that have authority and the scope of such authority to a requested dataset. Upon SOS' request, Independent Contractor shall also provide SOS information of concerning Service security and network control devices, such as firewall, intrusion detection, network access and back-up information.

4. Security Breach Procedures.

(a) Independent Contractor shall:

(i) provide SOS with the name and contact information for an employee of Independent Contractor who shall serve as SOS's primary security contact and shall be available to assist SOS as a contact in resolving obligations associated with a Security Breach;

(ii) immediately, or as soon as possible but no later than 24 business hours, notify SOS IT CIO and Information Security Officer of Security Breach. Currently, the contact information are as follows:

SOS CIO:

Merritt Beaver

Tel: (470) 312-2727

Email: mbeaver@sos.ga.gov

(b) Immediately following Independent Contractor's notification to SOS of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. Independent Contractor agrees to fully cooperate with SOS in SOS's handling of the matter, including, without limitation:

- (i) assisting with any investigation;
- (ii) providing SOS with physical access to the facilities and operations affected;
- (iii) facilitating interviews with Independent Contractor's employees and others involved in the matter; and
- (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards or as otherwise required by SOS.

(c) Unless otherwise legally required, Independent Contractor agrees that it shall not inform any third party of any Security Breach without first notifying SOS, other than to inform a complainant that the matter has been forwarded to SOS's legal counsel.

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(d) Independent Contractor agrees to fully cooperate at its own expense with SOS in any litigation or other formal action deemed necessary by SOS to protect its rights relating to the Independent Contractor's use, disclosure, protection and maintenance of Confidential Information.

5. Oversight of Security Compliance.

Independent Contractor shall regularly monitor and conduct audits or evaluations of systems and processes to assess compliance with requirements of all systems related services provided to SOS. Upon request, Independent Contractor shall provide SOS evidence of all audits, assessments and compliance records, whether such audits or assessments are conducted by Independent Contractor or by a third party. SOS may upon request conduct its own audit or assessment of Independent Contractor's systems, policies and procedures related to custody and handling of SOS Confidential Data.

6. Return or Destruction of Confidential Information.

At any time during the term of this Agreement at the SOS's request or upon the determination or expiration of this Agreement for any reason, Independent Contractor shall, and shall instruct all Authorized Persons to, promptly return to the SOS all copies, whether in written, electronic or other form or media, of Confidential Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to the SOS that such Confidential Information has been returned to SOS or disposed of securely. Independent Contractor shall comply with all reasonable directions provided by SOS with respect to the return or disposal of Confidential Information. In all instances, disposal of Confidential Information shall be securely managed so that all such information is properly destroyed or disposed of and that no Confidential Information shall be obtainable or able to be reproduced by any party, including Authorized Persons.

7. Indemnification.

Independent Contractor shall indemnify and hold harmless the SOS, its officers, directors, employees, from and against those liabilities, damages and costs that SOS incurs or is legally obligated to pay as a result of Independent Contractor's security breach or failure to perform any duty under the Agreement, and any amendments thereto between the parties, to the extent caused by the misconduct, negligent act, error or omission of the Independent Contractor or anyone for whom the Independent Contractor is legally responsible.

-End of Attachment-

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