



EMPLOYER APPLICATION FLEXIBLE SPENDING ACCOUNT

WE MAKE
THE COMPLEX
SIMPLE

1. EMPLOYER INFORMATION

Company Name: _____ Phone: _____
(Full and complete legal business name)

Street: _____ Fax: _____

City: _____ State: _____ Zip: _____

Employer's Taxpayer Identification Number: _____

State of Organization or Incorporation: _____

Plan Sponsor Fiscal Year End Date: _____
(Month/Day)

Type of Entity:

☐ C Corporation

☐ S Corporation

☐ Non-Profit

☐ Sole Proprietorship

☐ Limited Liability Corporation

☐ Partnership

☐ Limited Liability Partnership

☐ Union

☐ Government Agency

Name of the representative of the parties who established or maintain the Plan: _____

☐ Other: _____

NOTE: S Corporation shareholders, partners, sole proprietors, and members of a Limited Liability Company generally cannot participate in the Flexible Spending Account.

The following affiliated employers will adopt this Flexible Spending Account as Participating Employers (if there is more than one, or if Affiliated Employers adopt this after the date the Adoption Agreement is executed, attach a list to this Adoption Agreement of such Affiliated Employers including their names, addresses and taxpayer identification numbers):

☐ N/A

☐ Name of Affiliated Employer(s): _____

Is this a controlled group (company owned by another company)?

☐ N/A

☐ Name of company owned by: _____

2. CONTACT INFORMATION

Primary Contact: (For contact regarding contracts, legal documents, daily administration, invoicing and plan renewal)

Contact Name: _____ Title: _____

Contact Phone: _____ Contact Email: _____

Additional day-to-day contact if applicable:

Name: _____ Title: _____

Phone: _____ Email: _____

Lead Broker/Consultant Contact:

Broker/Consultant Name: _____ General Agent: _____

Broker/Consultant Contact Phone: _____

Broker/Consultant Contact Email: _____

3. PLAN SETUP INFORMATION / ARRANGEMENT OPTIONS

Please enter the 3-digit plan number (sometimes called the health and welfare plan number) on this line:

Health & Welfare Plan Number _____

NOTE: A plan number must be assigned to each health and welfare plan that an employer has established. A health and welfare plan includes the following: Flexible Spending Account (FSA) Plan, Premium Only Plan, "Wrap" Plan and Health Reimbursement Arrangement (HRA) Plan. Each plan must have its own number and may not be repeated even if the plan is no longer in force. The plan number must be within the series of 501-599, and this 3-digit number, in conjunction with the employer identification number (EIN), is used by government agencies as a unique 12-digit plan identification number. If the employer has implemented an FSA plan in the past, please state below the plan number that was assigned to it. We will use the same plan number for the FSA that we will administer. However, if an FSA has not been previously established, Sterling will assign a new plan number to the FSA. To do this, we will need to know what the next number in the sequence would be for the new FSA.

☐ New FSA ☐ Renewal FSA

Effective Date: _____

☐ Restatement of previously adopted Plan:

Original effective date: _____

Effective date of transition to Sterling: _____

Plan Year – plan year means each 12 consecutive month period during which expenses can be incurred.

Plan Year Dates _____ to _____

The plan has a short plan year: ☐ Yes, the short plan year begins _____ and ends on _____
☐ No

Total number of employees in your company: _____

If you reach 20 employees or 50 employees prior to your next Plan renewal period, it is your responsibility to notify Sterling so we may add newly applicable COBRA or FMLA language to your Plan Documents.

Total number of FSA eligible employees in your company: _____

Open Enrollment Start Date _____ Open Enrollment End Date _____

Do you offer a company-sponsored medical plan to your employees? ☐ Yes ☐ No

Will your FSA plan include employees who are not eligible for your company sponsored medical plan?

☐ Yes ☐ No **NOTE: Employees do not have to be enrolled in the company sponsored medical plan to participate in the FSA, but they must be eligible for the company sponsored medical plan.**

4. SECTION 125 OPTIONS

Will Employer establish a Premium Conversion Account for pretax payroll redirection of employee portions of group premiums? If so, select the types of insurance plans offered to employees through the Premium Conversion Account:

☐ EMPLOYER GROUP MEDICAL ☐ EMPLOYER VISION ☐ HEALTH SAVINGS ACCOUNT
☐ EMPLOYER DENTAL ☐ EMPLOYER GROUP TERM LIFE ☐ DO NOT INCLUDE IN CAFETERIA PLAN DOCS
☐ EMPLOYER DISABILITY

(However if disability premiums are paid pre-tax, benefits received are subject to taxation. Therefore, it is typically preferential to apply taxes to the premiums.)

Will employer permit cash in lieu of benefits? ☐ Yes ☐ No

Will employer impose limitations? ☐ Yes ☐ No _____
specify dollar amount or percentage of the contribution.)

QUALIFYING EVENTS Allow employees whose hours are reduced to less than 30 hours per week, and do not have any other qualifying event, to revoke their election due to enrollment in another plan that provides minimum essential coverage:

☐ Yes ☐ No

Allow employees to cease coverage under the group health plan and purchase coverage through the Marketplace due to a Special Enrollment Period or during the Marketplace open enrollment period:

☐ Yes ☐ No

Will you establish a traditional, general purpose Health Care FSA? ☐ Yes ☐ No

Will you establish a Limited Purpose or Post Deductible Health Care FSA? ☐ Yes ☐ No

☐ Limited Purpose FSA for dental and vision expenses only for the entirety of the Plan Year

☐ Post Deductible FSA to allow for medical expenses after the health plan statutory deductible has been met (Dental and vision expenses will be eligible until the participant submits evidence that the deductible has been satisfied. At this time, all Section 213(d) expenses will be eligible.)

Does the Limited Purpose or Post Deductible Health Care FSA coordinate with an HSA?

☐ Yes ☐ No

Coordination with HRA Plan

☐ No HRA offered ☐ Pay benefits from FSA first ☐ Pay benefits from HRA first

5. SECTION 129 OPTIONS

Will Employer establish a separate dependent care plan (used for qualified daycare and/or elder care expenses)?

☐ Yes ☐ No

6. SECTION 132 OPTIONS

Is the intent of this Plan to satisfy the requirements of the Bay Area Commuter Benefits Program?

☐ Yes ☐ No

Plan Features:

☐ Contributions to pay for transportation in a commuter highway vehicle (i.e., vanpool with seating capacity of seven or more)

☐ Contributions to pay for qualified parking are permitted

☐ Contributions to pay for transit passes are permitted

☐ Contributions to pay for bicycle, bicycle improvements, repair and storage (100% company funded and not to exceed \$20 per month) Company contribution amount will be \$_____

☐ Will the company make contributions to the Transit or Parking plan? If yes, indicate per pay period amounts:

☐ Transit \$: _____ ☐ Parking \$: _____

7. ELIGIBILITY REQUIREMENTS

Will employees be excluded from the Plan completely or until they meet certain requirements? If no exclusions are made, all employees will be eligible as of their date of hire.

Check all that apply:

☐ Employees covered under a collectively bargained agreement.

☐ N/A - No union employees.

☐ Part-time employees - employees expected to work less than _____ hours per week.

☐ Seasonal employees - employees expected to work less than _____ days/months (*circle one*).

- ☐ Current employees until they have completed _____ hours/days/months/years (*circle one*) of service.
- ☐ Newly hired employees until they have completed _____ hours/days/months/years (*circle one*) of service.
- ☐ Employees under the age of 18/19/20/21 (*circle one*).

Upon satisfying the eligibility requirement(s) above, if any, when will employees be allowed to enter the Plan?

- ☐ Current employees will be allowed to enter the Plan as of the first day of the Plan Year.
- ☐ Newly hired employees will be allowed to enter the Plan:

- ☐ Immediately
- ☐ First day of the calendar month
- ☐ First day of the plan year

If not "immediate," select one of the following:

- ☐ Coincident with or next following ☐ Next following

(If waiting period is satisfied on the 1st,
employee will be allowed to enroll that day)

8. TRANSFERS/REHIRES

Permit Participants who are no longer Eligible Employees (for reasons other than Termination) to con-tinue to participate in the Plan until the end of the Plan Year:

- ☐ Yes ☐ No

Automatically reinstate benefit elections for Terminated Participants who are rehired within 30 days of Termination and permit new benefit elections for Terminated Participants who are rehired more than 30 days after Termination:

- ☐ Yes ☐ No

9. PLAN CONTRIBUTIONS

Minimum contribution to Healthcare FSA _____ **Maximum annual election** _____

Minimum contribution to DCA _____ **Maximum annual election** **\$5,000** _____

Will employer contribute to the Plan? ☐ Yes ☐ No

Please note that PPACA regulations limit the amount of employer funding allowed in a Healthcare FSA.

If yes, what amount will employer contribute to each employee per pay period?

- ☐ Lump sum toward any FSA account(s) elected by employee _____
- ☐ Healthcare FSA _____ DCA _____

10. CONTRIBUTION FREQUENCY

Number of contributions within plan year: _____

Payroll frequency - Select all that apply:

☐ Monthly ☐ Semi-monthly: 15/last, 5th/20th, Other ☐ Biweekly ☐ Weekly

First pay period contribution date of the plan year for each payroll cycle: _____

If your pay date falls on a weekend or holiday, is it moved to the **PREVIOUS** or **NEXT** business day?

Please provide a payroll calendar for each payroll cycle if you have one available to you.

11. FSA GRACE OR ROLLOVER OPTION

You may choose to have either a Healthcare FSA grace period or a rollover option, but not both. The rollover option only applies to Healthcare FSAs.

Will employer allow a 2.5-month extension to incur claims on their Healthcare FSA plan?

☐ Yes ☐ No

Will employer allow a 2.5-month extension to incur claims on their Dependent Care FSA plan?

☐ Yes ☐ No

Will employer allow an annual rollover of unused Healthcare FSA funds?

☐ Yes ☐ No

If yes, please indicate the amount here (\$1 - \$500 maximum) _____

12. FSA RUN-OUT

A claim may be submitted up to (choose one) ☐ 30 ☐ 60 ☐ 90 ☐ Other: _____ days after

(referred to as a run-out period):

☐ The end of the Coverage Period ☐ The end of each Plan Year

(termination date or last day of Plan Year, whichever is first)

Transportation Plan Run-Out

Defaulted to 180 days after the day of the Plan Year. If an earlier run-out for terminated employees is selected above, the Transportation Plan will have the same run-out for terminated employees. Active employees will continue to have 180 days after the last day of the Plan Year.

13. FSA DEBIT CARDS

Debit cards are included in the monthly fees. One card per participant will be issued automatically when the account is set-up and additional cards can be ordered for dependents that are covered under the Plan. For each participant, the first two cards are free. Any additional cards will incur a fee of \$10 each. Replacement for lost or stolen cards will also incur a fee of \$10. These fees will be billed to the employer who may recoup the cost from the participant at their discretion. Additionally, please be advised that the debit cards will be preprogrammed based on selected criteria, however, the card's auto-adjudication may not be 100% accurate in all cases. If a debit card is used fraudulently, the employer has the right to require the participant to repay the Plan. When participants that have debit cards terminate employment, they will be de-activated upon notification from you of the termination. Employees who are terminated must file paper claims to access FSA funds available to them through the run-out or COBRA period.

Please check the box below to indicate if you want debit cards for your employees.

☐ **Debit Card**

Please initial here to confirm your full understanding of the debit card process and fees: _____

Provide underlying health plan copay amounts or attach schedule of benefits: _____

Qualified Reservist Distributions (HEART Act)

Permit Qualified Reservist Distributions *(if the Plan allows Qualified Reservist Distributions, a Participant may receive a distribution of the portion of his Health Care Reimbursement Account. The distribution will only be made if: (i) such Participant was a member of a reserve component ordered or called to active duty for a period beginning on the date of such order or call and ending on the last date that reimbursements could otherwise be made under the Plan Year which includes the date of such order or call. A Qualified Reservist Distribution may not be made based on an order or call to active duty of any individual other than the Participant, including the spouse of the Participant. The Plan shall permit a Participant to submit Health Care Reimbursement Account claims for medical expenses incurred before the date of Qualified Reservist Distribution is requested. The Participant shall not have the right to submit claims for medical expenses incurred after the date such Qualified Reservist Distribution is requested.)*

☐ Yes ☐ No

If yes, select the amount available as a Qualified Reservist Distribution

☐ Entire Amount Elected ☐ Amount Contributed ☐ Other _____

14. ADMINISTRATIVE OPTIONS

Nondiscrimination Testing:

☐ I would like Sterling Administration to conduct nondiscrimination testing as it applies to the Healthcare and/or De-pendent Care plans at no additional cost. Nondiscrimination testing will take place within the first and last quarters of my Plan Year. I understand that I will have to provide additional reports to Sterling Administration if I select this option. If my plan is found to be discriminatory, I understand that I will need to make the necessary adjustments to the elections to ensure that the plan becomes non-discriminatory.

☐ I would like Sterling Administration to conduct nondiscrimination testing that covers the entire Section 125 plan for an additional cost. This includes testing of all pre-tax contributions made by all employees through the premium conversion account that is part of the plan documents. I understand that the cost for this additional service is:

\$150 for 2-99 total employees

\$250 for 100-499 total employees

\$350 for 500+ total employees

☐ I prefer to conduct the discrimination testing as it applies to our FSA plan.

15. CARRIER INTEGRATION

At no additional charge, FSA participants can connect their health plan explanation of benefits (EOBs) with their FSA account for automatic payment or reimbursement using funds in their FSA account. When FSA participants log in to their Sterling account, they will see "Connect to My Health Plan" as an option. Following the simple online instructions links their FSA and health plan EOB.

Please write in below the names of medical insurance carrier(s) that you offer to your employees so that we can make this free optional service available to your FSA participants who want to set it up.

16. EMPLOYER ENROLLMENT OPTIONS

Sterling offers options to make it easy to enroll your employees in the FSA. Please check the box below for your preferred method. Contact your Sterling sales representative, if you have questions:

☐ I want to use Sterling online enrollment to enroll my employees in the FSA (employees enroll online and employer must approve)

☐ I want to use an electronic file feed to enroll my employees in the FSA

☐ I want to use the Excel spreadsheet enrollment method



P.O. Box 71107
Oakland, CA 94612

1.800.617.4729
1.888.410.7361
www.sterlingadministration.com

STERLING ADMINISTRATION CLAIMS PAYMENT OPTIONS

WE MAKE
THE COMPLEX
SIMPLE

1. EMPLOYER INFORMATION

NAME OF EMPLOYER		TELEPHONE NUMBER	
ADDRESS			
CITY		STATE	ZIP
NAME OF CONTACT PERSON		EMAIL ADDRESS	

2. EMPLOYER OPTIONS

CLAIMS PAYMENT OPTIONS		<input type="checkbox"/> Pre-fund elections 50%	<input type="checkbox"/> Fund contributions: 1 month deposit
<input type="checkbox"/> Claims Invoice	<input type="checkbox"/> Pre-fund elections 100%	<input type="checkbox"/> Fund contributions: 2 month deposit	
PRE-FUND METHOD			
<input type="checkbox"/> ACH Pull	<input type="checkbox"/> Check	<input type="checkbox"/> Wire	
ONGOING FUNDING METHOD			
<input type="checkbox"/> ACH Pull**		**ACH Pull is preferred for timing, cost and ease of process; however, for alternative Ongoing Funding methods, consult with your Sterling Client Services Specialist.	

3. ACH FUNDING INFORMATION

I (we) hereby authorize Sterling Administration and/or Alegeus (debit card processor) to initiate entries to my (our) checking/savings accounts at the financial institution listed below, and, if necessary, initiate adjustments for any transactions credited/debited in error.

All entries are related to the benefits accounts our company has established with Sterling Administration. This authority will remain in effect until Sterling Administration is notified by me (us) in writing to cancel it in such time as to afford Sterling Administration and the financial institution named below a reasonable opportunity to act on it.

You may need to contact your bank to ask if they have a filter for incoming transactions to your account. You will likely need to ask them to adjust their filter to allow incoming transactions from Sterling Administration to come through. Your bank will typically need the company name and Identification number to remove the filter. You do not need to provide the routing or account number.

For Flexible Spending Accounts (FSA) related transactions:
Company Name: Sterling Health ID#: 2911925808 (Automated ACH) and ID#: 1841637046 (Manual Transactions i.e. refunds)

NAME OF FINANCIAL INSTITUTION	
ADDRESS OF FINANCIAL INSTITUTION	
FINANCIAL INSTITUTION ROUTING NUMBER	CHECKING / SAVINGS ACCOUNT NUMBER

4. EMPLOYER SIGNATURE

AUTHORIZED REPRESENTATIVE'S NAME	TITLE	
AUTHORIZED REPRESENTATIVE'S SIGNATURE		DATE

EMPLOYER FEES PAID TO STERLING

Sterling Sales Representative complete the following information regarding employer fees paid to Sterling based on the FSA plan selected and associated pricing.

FSA plan annual fee \$ _____ FSA plan annual renewal fee: \$ _____

FSA monthly fee per participant: \$ _____

Employer Funding & Contributions and Monthly Invoicing

All Plan reimbursements, debit card transactions (if applicable), and monthly invoicing will be withdrawn via an ACH transaction. To fund your company's FSA account, Sterling Administration will initiate debit entries from the account. By providing the information below, you are authorizing Sterling Administration and/or Fidelity National Information Services (debit card processor) to initiate entries to your checking/savings accounts at the financial institution listed below and, if necessary, initiate adjustments for any transactions credited/debited in error. All entries are related to the FSA accounts your company has established with Sterling Administration. This authority will remain in effect until Sterling Administration is notified by you in writing to cancel it in such time as to afford Sterling Administration and the financial institution named below a reasonable opportunity to act on it. **You must attach a copy of a voided check to this application as part of this process:**

I authorize the use of this account for:

☐ All transactions ☐ Plan reimbursement and debit card transactions ☐ Monthly invoicing

Financial Institution Name _____

Financial Institution Routing Number _____

Account Number for Debits to Fund FSA Account _____

I authorize the use of this account for:

☐ All transactions ☐ Plan reimbursement and debit card transactions ☐ Monthly invoicing

Financial Institution Name _____

Financial Institution Routing Number _____

Account Number for Debits to Fund FSA Account _____

APPLICATION AGREEMENT / SIGNATURE

We, the undersigned employer, affirm the accuracy of the information we have provided on this application and further affirm that such information may be relied upon for the preparation of this service by Sterling Administration and may be used for other related purposes. We also agree to indemnify and hold harmless Sterling Administration and its officers, directors, employees and agents (each of the foregoing hereinafter referred to as an "indemnified party") from and against any and all actions, liabilities, claim, suits, damages, liens, judgments, losses, fines, penalties, costs, and expenses (including attorneys' fees) arising out of or from the indemnified party's services in connection with the preparation of this service.

We also acknowledge that we have received and reviewed the Administrative Services Agreement provided with this application.

PLEASE NOTE: There is a \$50 per hour charge for client requested changes to Plan documents after initial set-up. There is also a \$50 minimum monthly billing.

Dated this _____ day of _____ 20_____

Employer: _____

By: _____ Title: _____

ADMINISTRATIVE SERVICES AGREEMENT

THIS ADMINISTRATIVE SERVICES AGREEMENT ("Agreement"), effective the First day of your plan year is by and between Sterling Health Services, Inc. ("Sterling"), with principal business and mailing address at 475 14th Street, Oakland, California 94612, and your corporation. For purposes of this agreement the term YOUR CORPORATION will refer to the name listed on page one of the 'Employer Application'.

WITNESSED THAT

WHEREAS, YOUR CORPORATION, in the interest of providing COBRA, FSA, or HRA Services, is desirous of entering into this Agreement with Sterling;

WHEREAS, Sterling is desirous of delivering and providing qualified and competent COBRA/FSA/HRA administrative services ("Service" or "Services") through YOUR CORPORATION, as these services are more fully identified in this Agreement; and

NOW, THEREFORE, in return for the promises contained in this Agreement, and for other good and valuable consideration, the parties, intending to be legally bound, mutually agree as follows:

1. TIME OF PERFORMANCE.

- a. Your corporation and Sterling shall provide the Services required under this Agreement during the Term as defined in Section 11 (and thereafter to the limited extent provided in Section 11), unless this Agreement is sooner terminated as provided in this Agreement.

2. INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES.

- a. In the performance of the Services required by this Agreement, each party shall be an independent contractor with the authority and responsibility to control and direct its own performance and the details of the work and Services required of such party under this Agreement; however, each party shall have a general right to review the Services provided by the other to determine whether, in the reasonable opinion of the first party, the Services being performed by the other are in accordance with the provisions of this Agreement. All persons hired or used by each party shall be that party's employees and agents and the hiring party shall ensure that such persons are trained, qualified, and appropriately licensed to provide Services under this Agreement. Each party shall be responsible for the accuracy, completeness, and adequacy of any and all work and Services performed by its employees and agents and shall ensure that all applicable licensing and operating requirements of federal, state, county, and municipal governments, and all applicable accreditation and other standards of quality generally accepted in the field of such party's activities are complied with and satisfactorily met. Furthermore, each party intentionally, voluntarily, and knowingly assumes the sole and entire liability to its employees, agents, and other persons for all loss, damage, or injury caused by its employees and agents in the course of their employment or engagement. Participation by a party in the performance of Services under this Agreement shall not constitute nor be construed as employment with the other party and shall not entitle a party or its employees, agents, or subcontractors to vacation, sick leave, retirement, or other benefits afforded employees of the other party. Each party shall be responsible for payment of applicable income, social security, and any other federal, state, county, or municipal taxes and fees.

3. INSURANCE.

- a. Sterling shall obtain, maintain, and keep in force throughout the time of performance of Services under this Agreement, and shall cause its employees and agents to obtain, maintain, and keep in force throughout the time of performance of Services under this Agreement, all insurance coverage appropriate to such party's business and the Services provided under this Agreement, including liability coverage and workers' compensation coverage issued by an insurance company or indemnity company authorized to conduct business in the state of such party's incorporation. Upon a party's request, the other party shall provide documents sufficient to demonstrate compliance with the requirements of this Section 8.

4. INDEMNIFICATION.

- a. Each party (the "indemnifying party") shall indemnify, defend, and hold harmless the other party and the other party's officers, directors, employees, and agents, (each of the foregoing hereinafter referred to as an "indemnified party") from and against any and all actions, liabilities, claims, suits, damages, liens, judgments, losses, fines, penalties, costs, and expenses (including reasonable attorneys' fees of counsel selected by the indemnified party and costs) arising out of or from (a) the acts or omissions of the indemnifying party or the indemnifying party's officers, directors, employees, agents, or subcontractors occurring during the indemnifying party's performance under or in connection with this Agreement, or (b) breach of this Agreement by the indemnifying party or the indemnifying party's officers, directors, employees, agents, or subcontractors. The indemnifying party's obligation to indemnify the indemnified party and its officers, directors, employees, and agents shall survive the expiration or termination of this Agreement for any reason.

5. SUBCONTRACTORS AND ASSIGNMENTS.

- a. Neither party shall subcontract, delegate, assign, or otherwise transfer any part of or all of the Services to be performed under this Agreement without the prior written approval of the other party. Furthermore, no assignment of claims for money due or to become due to Sterling under this Agreement shall be effective unless the assignment of such claims is first approved in writing by Sterling.
- b. Subject to any provisions of this Agreement restricting assignment or transfer, this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective legal representatives, successors, and permitted subcontractors and assigns. This Agreement shall not be enforceable by or give rise to rights of any other third parties.

6. CONFLICTS OF INTEREST.

- a. Each party represents that it presently has no interest, and promises that it shall not acquire any interest, direct or indirect, that would substantially conflict with or jeopardize its performance of Services under this Agreement.

7. PROHIBITED DISCRIMINATION.

- a. With respect to this Agreement, each party shall comply with all applicable federal and state laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, disability, or on any other grounds proscribed under applicable state or federal law.

8. COMPLIANCE WITH ALL LAWS.

- a. Each party represents and warrants that it has and shall maintain, and that its employees, agents, and subcontractors shall have and maintain, all licenses, accreditations, and approvals that are customary to its business or that are necessary to provide Services under this Agreement. Each party shall observe and comply, and shall cause its employees, agents, and subcontractors to observe and comply, with all laws, ordinances, rules, and regulations of the federal, state, county, or municipal governments, now in force or which may hereinafter be in force.

9. CONFIDENTIALITY OF BUSINESS INFORMATION.

- a. Each party acknowledges that this Agreement, and all materials and information concerning the other party's business and operations, including, but not limited to, a party's billing and fees, employees, legal disputes, policies, procedures, and all documents and reports regarding or prepared by a party (other than those in the public domain), and any other information regarding the provision of services by, or the administration and operation of, a party (collectively, "Confidential Information"), are commercially valuable and confidential. Each party and each party's employees and agents shall hold the other party's Confidential Information in strict confidence, shall not provide, disclose, or otherwise make available any such information to any third party, and shall not use such information for any purposes other than performance in accordance with this Agreement, without the prior written approval of the other party, unless otherwise required by law.

10. COPYRIGHTS AND PATENTS.

- a. Sterling shall have complete ownership, title, and right in and to all materials, discoveries, or inventions, both finished and unfinished, which are developed, prepared, assembled, or conceived by Sterling pursuant to this Agreement. No summary, report, chart, graph, table, study, or other document, or discovery, invention, or development produced in whole or in part by Sterling under this Agreement shall be the subject of an application for copyright, trademark, or patent by or on behalf of YOUR CORPORATION or YOUR CORPORATION's officers, employees, agents, or subcontractors without prior written authorization from Sterling.

11. TERM; RENEWAL; TERMINATION.

- a. Unless earlier terminated as provided in this Section 11, this Agreement shall be effective for a term of one (1) year from the Effective Date. Thereafter, this Agreement will be renewed automatically for successive one (1) year terms commencing on the first anniversary of the Effective Date and renewing annually on that date ("Renewal Date"), unless one party gives the other written notice of non-renewal at least thirty (30) days prior to the Renewal Date.
- b. If either party breaches this Agreement, the non-breaching party may terminate this Agreement upon thirty (30) days prior written notice to the breaching party; provided, however, that such termination notice shall not be effective if the breaching party promptly seeks to cure such breach, diligently pursues cure, and does cure such breach within the thirty (30) day period following the date of the notice, or a reasonable longer period if the breach cannot reasonably be cured within such time. Notwithstanding the foregoing, either party may terminate this Agreement immediately upon written notice to the other if: (a) the other party fails to possess any license, accreditation, or approval necessary to its business or to provide the Services under this Agreement, or (b) fails to have and maintain the insurance required under Section 3 of this Agreement, or (c) the party seeking termination reasonably concludes that the other party may pose an imminent threat to the orderly administration of the terminating party's operations, or (d) the other party commits any act that reasonably may impair the reputation of the party seeking termination.

- c. In the event of termination or expiration of this Agreement for any reason, all obligations of the parties to each other shall terminate immediately, provided, however, that:
- d. Upon request of YOUR CORPORATION or Sterling, Services under this Agreement shall continue for such period (not exceeding thirty (30) days) as is reasonably necessary to transfer the provision of the Services to another service provider.
 - i. The parties shall settle all outstanding matters related to this Agreement, including financial obligations as to payment or otherwise, in good faith and in accordance with this Agreement.
 - ii. Each party shall promptly return to the other party all Confidential Information in its possession relating to the other party.
 - iii. The obligations of the parties set forth in Section 4 (Indemnification), Section 9 (Confidentiality of Business Information) and this Section 11 (Term; Renewal; Termination) shall survive the expiration or termination of this Agreement.
 - iv. Despite expiration or termination of this Agreement for any reason, neither party shall be relieved of liability to the other party or to third parties for its performance of this Agreement during the Term.

12. MODIFICATION OF AGREEMENT.

- a. Any modification, alteration, or change to this Agreement shall be made only by written supplemental agreements executed by authorized representatives of the parties.

13. WAIVERS.

- a. It is expressly understood and agreed that no waiver granted by a party of a breach or default by the other party of any of the provisions of this Agreement shall constitute or be construed in any manner as a waiver of the provision or of the right by the non-breaching party to enforce the same as to any other or further violation by the other party. Similarly, no failure or delay on the part of a party in exercising any right, power, or privilege under this Agreement, and no course of dealing between the parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege under this Agreement by either party preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

14. PERSONNEL RECRUITMENT.

- a. Each party agrees that at no time during the Term of this Agreement or during any extension or renewal thereof, and for a period of one (1) year thereafter, shall it contact any employee of the other party or any affiliate thereof for the purpose of employing, hiring, or otherwise interfering with the employment relationship between such employee and his/her employer or any affiliate thereof without the prior written approval of the employing party, nor shall either party, directly or indirectly, for itself or on behalf of or in connection with any other person, firm, partnership, corporation, or association, solicit, hire, or entice away any employee from his/her employer or any affiliate thereof.

15. FORCE MAJEURE.

- a. Should the performance of this Agreement by YOUR CORPORATION and/or Sterling be prevented or delayed by an act of God, war, civil insurrection, fire, flood, storm, strikes, lockouts, or by any law, regulation, or order of any federal, state, county, or municipal authority, or by any other cause beyond the reasonable control of YOUR CORPORATION and/or Sterling, as the case may be, such party's performance to the extent it is so prevented or delayed shall be excused, provided that the party diligently attempts to perform to the extent it is not so prevented or delayed. If any such event occurs, the nonperforming party shall make reasonable efforts to notify the other party of the nature of any such condition and the extent of the delay.

16. INVALID PROVISIONS.

- a. If any provision of this Agreement or any other document contemplated hereby is rendered illegal, invalid, or unenforceable by any judicial decision, legislative action or regulation, or other administrative ruling, whether federal or state, such provision shall be fully severable and:
 - i. This Agreement and any other document contemplated hereby shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof or thereto;
 - ii. The remaining provisions of this Agreement and any other document contemplated hereby that reasonably can be given effect apart from that which is invalidated shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision; and
 - iii. The parties shall in good faith negotiate and substitute a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid, and enforceable. If the parties cannot, within fifteen (15) days, agree on an amendment to the Agreement to cure such illegal, invalid, or unenforceable provision, either party may terminate this Agreement upon thirty (30) days prior written notice to the other party, or sooner if required by law.

17. CAPTIONS AND HEADINGS.

- a. In this Agreement, the captions and headings of paragraphs and/or subparagraphs are inserted for convenience, reference, and identification purposes only, and shall not control, define, limit, or affect any provision in this Agreement.

18. NUMBER AND GENDER.

- a. Whenever the singular is used herein, it shall include the plural where appropriate, and vice versa; and words of any gender in this Agreement shall include each gender where appropriate.

19. JURISDICTION; VENUE.

- a. In the event of any litigation relating to matters within the scope of this Agreement, the prevailing party on any claim or counterclaim shall be entitled to its costs and reasonable attorneys' fees. In the event of any such litigation, the parties to this Agreement agree that the courts of the State of California will have exclusive jurisdiction, the venue therefore shall be in Alameda County, California and that all matters at issue and all questions concerning the interpretation of this Agreement shall be decided and construed in accordance with California law, excluding the choice of law rules thereof. The parties agree that Alameda, California shall be deemed to be a convenient forum, and that no legal action or other legal proceeding relating to this Agreement shall be initiated in any other forum.

20. CONSTRUCTION.

- a. Each party hereto agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

21. ADDITIONAL DOCUMENTS AND ACTIONS.

- a. Each party agrees to execute and deliver or cause to be executed and delivered such agreements, instruments, and documents, and to take such actions as the other party reasonably requests to the extent such agreements, instruments, documents, and actions are necessary for the purpose of evidencing or implementing the transactions contemplated by this Agreement.

22. NOTICES.

- a. Any notice or communication given under this Agreement shall be in writing, and delivered (i) in person, or (ii) by United States mail, registered or certified, return receipt requested, and postage prepaid, or (iii) by facsimile, with a copy sent by United States mail, registered or certified, and postage prepaid, or (iv) by a recognized overnight carrier (e.g., Federal Express), postage prepaid, addressed to the other party at the address listed below or to such other address as a party may notify the other party. All notices and communications shall be deemed to have been duly given (a) upon receipt if delivered in person, (b) three (3) business days after having been deposited in the mail as set forth above, (c) on the same day as sent if delivered by facsimile with a copy sent by mail as set forth above, or (d) one (1) business day after having been delivered to a recognized overnight carrier.

If to YOUR CORPORATION , to:

YOUR CORPORATION

If to Sterling, to:
Vice President of Sales
P.O. Box 71107
Oakland, CA 94612
Phone: 800-617-4729

23. EXECUTION.

- a. This Agreement may be executed by the parties in counterparts, all of which taken together will be deemed one and the same instrument.

24. DISPUTES.

- a. In the event of any dispute arising under or relating to this Agreement, either party may request an "executive review" with respect to the dispute. Each party shall designate the appropriate person, such as its chief executive officer or its chief operating officer, as the designated executive reviewer. Either party may request executive consultation between the two executive reviewers with respect to any dispute. Any dispute not resolved by agreement of such executive reviewers to the satisfaction of both parties within thirty (30) days of the executive review may be referred to arbitration as provided below.

25. DISPUTES AND ARBITRATION.

- a. If any controversy, dispute, or claim arises between the parties with respect to this Agreement, including, without limitation, disputes concerning compensation, the parties shall make good faith efforts to resolve such matters informally. If the dispute or claim is not resolved to the satisfaction of either or both parties, then such matter shall be settled exclusively by arbitration under the Commercial Arbitration rules of the American Arbitration Association then in force. Such arbitration may be initiated by either party by serving a written demand on the other party stating the substance of the controversy and the contention of the party requesting arbitration. The American Arbitration Association shall appoint an arbitrator who shall be a fit and impartial person. The award rendered by the arbitrator shall include costs and expenses, including, without limitation, reasonable attorneys' fees, to the prevailing party and shall be final and binding on both parties. The fees and costs of the arbitrator and related expenses for arbitration shall be borne by the non-prevailing party. If the arbitrator determines that neither party has clearly prevailed, then the parties shall bear equally the fees and costs of the arbitration.

26. MONEY-BACK GUARANTEE.

- a. If Client is dissatisfied with the level of service, and attempts to remedy that dissatisfaction are considered inadequate, Sterling will refund all monthly administrative fees, not to exceed the amount paid by Client in the past twelve (12) months.

27. REMEDIES.

- a. Any remedies which the parties may have pursuant to this Agreement or by law shall be cumulative. The parties agree that if a party fails to comply with the terms and conditions of this Agreement, the harm to the other party may not be fully compensable in money damages and accordingly, the parties agree that neither party shall oppose an application by the other party seeking specific performance of any and all provisions of this Agreement or enjoining the breaching party from continuing to commit any breach, to the full extent permitted by law.

28. WARRANT OF AUTHORITY.

- a. Each party represents and warrants that the individual executing this Agreement on behalf of such party has authority to do so, and thereby to bind the party.