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Check can be mailed here in lieu of ACH

# EMPLOYER APPLICATION HEALTH REIMBURSEMENT ARRANGEMENT

WE MAKE  
THE COMPLEX  
SIMPLE

## 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 2% shareholders, partners, sole proprietors, and members of a Limited Liability Company  
generally cannot participate in the Health Reimbursement Arrangement.

**The following affiliated employers will adopt this Health Reimbursement Arrangement 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 (in Word or Excel) to this Adoption Agreement of such Affiliated Employers including their names, addresses and taxpayer identification numbers):

☐ N/A

☐ Name of Affiliated Employer(s): \_\_\_\_\_  
(Full and complete legal business name)

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

☐ N/A

☐ Name of company owned by: \_\_\_\_\_

## 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: \_\_\_\_\_

Broker Number: \_\_\_\_\_

## HEALTH & WELFARE PLAN NUMBER

Please enter the 3-digit plan number (sometimes called the health and welfare plan number self-assigned by employer) 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 HRA plan in the past, please state below the plan number that was assigned to it.** We will use the same plan number for the HRA that we will administer. However, if an HRA has not been previously established, Sterling will assign a new plan number to the HRA. To do this, we will need to know what the next number in the sequence would be for the new HRA.

## PLAN SETUP INFORMATION / ARRANGEMENT OPTIONS

Effective Date: \_\_\_\_\_

- ☐ New HRA
- ☐ Sterling Administered HRA
- ☐ Employer Administered HRA (Sterling document service only)

☐ Renewal HRA    ☐ Reinstatement of a previously adopted Plan \_\_\_\_\_

Original effective date: \_\_\_\_\_

Is this a mid HRA-plan year takeover of an existing HRA?    Yes    No

**Plan Year** - plan year means each 12 consecutive month period. Most HRA plans are established based on your medical plan deductibles, which normally accumulate on a calendar year basis. Therefore, there may be a short plan the first year to allow for this.

**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 HRA eligible employees in your company:** \_\_\_\_\_

## ELIGIBILITY REQUIREMENTS

**Choose one of the following:**    Check those that apply:    employee    spouse    children

☐ Eligibility requirements include only persons covered under the company health insurance plan

or

☐ The following eligibility requirements apply (choose all that are applicable):

- ☐ Part-time employees completing \_\_\_\_\_ hours of work per week will be included (maximum of 25 hours)
- ☐ Seasonal employees completing \_\_\_\_\_ months of work within a calendar year will be included (maximum of 7 months)
- ☐ Employees \_\_\_\_\_ years of age will be included (maximum 25 years)
- ☐ Current employees completing \_\_\_\_\_ months of service with the employer will be included (maximum 36 months)
- ☐ New employees completing \_\_\_\_\_ months of service with the employer will be included (maximum 36 months)
- ☐ Do you have union employees under a collective bargaining agreement?
- ☐ Yes    ☐ No

If yes, will they be eligible to participate?

☐ Yes    ☐ No

## HRA PLAN CHOICES

Sterling Administration offers two HRA plans – Basic and Comprehensive – both with employer funding options to make it easy and convenient for you to fund HRA accounts for your employees. Please check the boxes below to choose the plan – Basic or Comprehensive – and funding options that best suit your needs based on the number of employees covered by your HRA plan:

**Sterling HRA Plan** – This HRA will reimburse:

### **BASIC**

Only medical expenses, pharmacy and chiropractic care are available and may be customized by selecting eligible expenses. Please check the boxes below for each type of expense you wish to include in your Plan:

#### **Eligible Expenses:**

- ☐ Medical expenses (including ambulance services, doctor visits, hearing aids, home health care, hospitals, immediate care facilities, in-vitro, laboratory services, nursing facilities, orthopedic and prosthetic appliances, osteopathic physicians, outpatient facilities, podiatrists)
- ☐ Pharmacy
- ☐ Chiropractic care

### **COMPREHENSIVE**

**All Section 213(d)** expenses are available and may be customized by selecting eligible expenses.

Please check the boxes below for each type of expense you wish to include in your Plan:

#### Eligible Expenses:

- ☐ Medical expenses (including ambulance services, doctor visits, hearing aids, home health care, hospitals, immediate care facilities, in-vitro, laboratory services, nursing facilities, orthopedic and prosthetic appliances, osteopathic physicians, outpatient facilities, podiatrists)
- ☐ Pharmacy
- ☐ Chiropractic care
- ☐ **Dental** (including dental laboratories and orthodontics)
- ☐ **Vision** (including eye safety shields, eyeglass frames and lenses, ophthalmic supplies, ophthalmologists, opticians, optometrists)

**Plan will reimburse:** ☐ Deductible ☐ Coinsurance

## LIMITED PURPOSE

The Limited Purpose option covers only medically necessary dental and/or vision expenses. No other medical expenses would be covered:

- ☐ Dental (including dental laboratories and orthodontics)
- ☐ Vision (including eye safety shields, eyeglass frames and lenses, ophthalmic supplies, ophthalmologists, opticians, optometrists)

## HRA DEBIT CARDS

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 the selected eligible expenses selected above, 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 manual claims to access HRA funds available to them through the Runout or COBRA period.

**Please check the box below to indicate if you want debit cards for your employees. Remember that debit cards are included and required under the Comprehensive Plan and optional at no additional cost under the Basic Plan. Debit cards are not allowed with embedded deductible plans since they are not "smart cards" and cannot know when the deductible has been met. Debit cards are allowed with split percent plans and bridge deductible plans.**

☐ **Debit Card** - Coverage will be for participant, spouse, and children regardless of coverage under the company-sponsored health plan.

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

☐ **No Debit Card** - Coverage can be customized by selecting participant, spouse, and children regard-less of coverage under the company-sponsored health plan or participant only.

### **I Wish to Cover:**

- ☐ Employee, spouse, and children regardless of coverage under the company-sponsored health plan
- ☐ Employee only
- ☐ Employee, spouse, and children covered under the company-sponsored health plan

### **Coverage Tiers & Annual Funding Amount (Please check all that apply and note the funding amount)**

Choose the coverage tiers the employer wants to set up in the HRA plan by checking all of the boxes below that apply. Next to each coverage tier selected, write in the amount of annual funding you will make for that tier:

☐ Employee: \$ \_\_\_\_\_

☐ Employee: \$ \_\_\_\_\_

Spouse: \$ \_\_\_\_\_

Children: \$ \_\_\_\_\_

Family up to \_\_\_\_\_ number of members (example: 3, 4, 5, ALL)

## EMBEDDED DEDUCTIBLE OPTIONS

**Do you have individual embedded deductibles on your health plan? (i.e. deductible per family member)**

☐ Yes ☐ No

**If yes, will the HRA Plan provide coverage at the individual level?**

☐ Yes ☐ No, the HRA will be one lump sum per family, not an embedded amount per family member

If yes, please note that you may not use debit cards; also please reference Appendix 1 and complete the individual coverage levels. **When will employer reimburse for claims?**

☐ After employee pays the first:

☐ Employee: \$ \_\_\_\_\_

☐ Employee: \$ \_\_\_\_\_

☐ Spouse: \$ \_\_\_\_\_

☐ Children: \$ \_\_\_\_\_

Family up to \_\_\_\_\_ number of members (example: 3, 4, 5, ALL)

A) ☐ Employer pays first up to the limits described above

B) ☐ Percentage share up to employer limits: \_\_\_\_\_% employee \_\_\_\_\_% employer

*\*Debit cards not available for the Percentage Share option.*

*if you want a combination of both, additional setup and monthly fees apply.*

**Contributions for New Hires after the start of the Plan Year:**

☐ Will equal existing employees ☐ Will be prorated

## HRA ROLLOVER

**Will Employer allow HRA balance to roll over? Mark the correct box below:**

☐ Yes

☐ No

**If rollover of funds is allowed, please specify how much will rollover by checking the appropriate box below, including the dollar amount for partial rollovers:**

☐ All remaining funds

☐ Remaining funds up to \$ \_\_\_\_\_  
(i.e. flat dollar amount, twice the medical deductible, spell out what is not allowed or what is custom)

**Coordination with FSA Plan**

Discuss with your Sales Director for further details.

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

### Coordination with HSA Plan

- ☐ No HSA offered
- ☐ Limited Purpose HRA for dental and vision expenses only for the entirety of the Plan Year
- ☐ Post Deductible HRA to allow for medical expenses after the IRS minimum statutory plan 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.)

## HRA RUN-OUT

**A claim may be submitted up to \_\_\_\_\_ days after (referred to as a run-out period for claims incurred during the actual plan year):**

- ☐ The end of the Coverage Period:  
If selected, run-out period for terminated employees begins on termination date, rather than the end of the plan year
- ☐ The end of each plan year:  
If selected, run-out period for terminated employees begins on plan year date, rather than their termination date
- ☐ Other: \_\_\_\_\_

## ADMINISTRATIVE OPTIONS

### Nondiscrimination Testing:

- ☐ I would like Sterling Administration to conduct nondiscrimination testing as it applies to our HRA plan. 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 prefer to conduct the discrimination testing as it applies to our HRA plan.

## CARRIER INTEGRATION

At no additional charge, HRA participants can connect their health plan explanation of benefits (EOBs) with their HRA account for automatic payment or reimbursement using funds in their HRA account. When HRA 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 HRA 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 HRA participants who want to set it up.

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## CHOOSE FUNDING OPTIONS

Please check one of the three boxes below to indicate your choice of HRA plan funding options. The difference between the options is the deposit amount to fund the account and the process for claims and debit card use. **The Value 50/100 option offers the greatest convenience because it eliminates the need to ACH (electronic funds transfer) for claims and debit card transactions.** Note that the price per month per participant is determined by the choice of either the **Basic Plan** or the **Comprehensive Plan** that you selected above. For all three funding options, there is an annual fee that includes plan document preparation, amendments, and annual nondiscrimination testing. There is also a per participant per month charge. Other terms apply. For more information about the funding options listed below and pricing, please refer to the HRA fees and funding options information at the end of this form.

- ☐ **Value 50/100:** \$8.50 per month per participant for **Basic Plan**  
\$6 per month per participant for **Comprehensive Plan**  
50% or 100% of total liability funding. A Client Service Representative will reach out when time to replenish.
- ☐ **Value 10:** \$8.50 per month per participant for **Basic Plan**  
\$6 per month per participant for **Comprehensive Plan**  
10% of total liability funding, no less than \$5,000
- ☐ **Advantage:** \$8.50 per month per participant for **Basic Plan**  
\$6 per month per participant for **Comprehensive Plan**  
\$1,000 deposit required for account set up and then claims will be ACH'd from employer as occurred

### Employer Funding & Contributions

To fund your company's HRA account, Sterling Administration will initiate debit entries from the account. By providing the information below, you are authorizing Sterling Administration and/or Bancorp Bank (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 HRA accounts your company has established with Sterling Administration. This authority will remain in effect until Sterling Administration is notified by you in writing.

Financial Institution Name \_\_\_\_\_

Financial Institution Routing Number \_\_\_\_\_

Account Number for Debits to Fund HRA Account \_\_\_\_\_

## EMPLOYER FEES PAID TO STERLING

**Sterling Sales Representative to complete the following information regarding employer fees paid to Sterling based on the HRA plan selected and associated pricing. Please note there is a minimum monthly fee of \$125.**

HRA plan annual fee \$ \_\_\_\_\_

HRA monthly fee per participant: \$ \_\_\_\_\_

HRA plan annual renewal fee: \$ \_\_\_\_\_



## 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.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Employer: \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_

## STERLING HRA FEES & FUNDING OPTIONS

Sterling offers very competitively priced HRA plans and flexible funding options for employers. Whatever plan an employer chooses, Sterling provides a myriad of administrative services.

- **Basic Plan** - reimburses for medical expenses only (no dental or vision) - not available for embedded HRAs
- **Comprehensive Plan** - reimburses for expenses qualifying under IRS Section 213(d) and can include all qualified medical, dental and vision expenses

## COMPARE OUR TWO VALUE PLAN FUNDING OPTIONS – THE VALUE 50/100 AND THE VALUE 10

Basic Plan: Embedded Deductibles, Split Percent Plans, Bridge Deductible Plans		
NUMBER OF EMPLOYEES (HRA PLAN PARTICIPANTS)	BASIC PLAN FEE INCLUDES PLAN DOCUMENT PREPARATION, AMENDMENTS, ANNUAL NONDISCRIMINATION TESTING	BASIC PLAN: \$8.50 PER EMPLOYEE PER MONTH (DEBIT CARD OPTIONAL AT NO ADDITIONAL COST)
2 - 100	\$550	\$8.50 per employee/month <b>Value 50/100:</b> 50%-100% Deposit <b>Value 10:</b> 10% Deposit, \$5,000 min
101 - 200	\$600	\$8.50 per employee/month <b>Value 50/100:</b> 50%-100% Deposit <b>Value 10:</b> 10% Deposit, \$5,000 min
201+	\$650	\$8.50 per employee/month <b>Value 50/100:</b> 50%-100% Deposit <b>Value 10:</b> 10% Deposit, \$5,000 min

Not available for embedded HRAs (not the same as embedded health plan)

Comprehensive Plan: All 213(d) Plans, Medical Only, Dental Only, Vision Only		
NUMBER OF EMPLOYEES (HRA PLAN PARTICIPANTS)	COMPREHENSIVE PLAN FEE INCLUDES PLAN DOCUMENT PREPARATION, AMENDMENTS, ANNUAL NONDISCRIMINA- TION TESTING	COMPREHENSIVE PLAN: \$6.00 PER EMPLOYEE PER MONTH
2 - 100	\$550	\$6.00 per employee/month <b>Value 50/100:</b> 50%-100% Deposit <b>Value 10:</b> 10% Deposit, \$5,000 min
101 - 200	\$600	\$6.00 per employee/month <b>Value 50/100:</b> 50%-100% Deposit <b>Value 10:</b> 10% Deposit, \$5,000 min
201+	\$650	\$6.00 per employee/month <b>Value 50/100:</b> 50%-100% Deposit <b>Value 10:</b> 10% Deposit, \$5,000 min

Additional Optional Services		
SERVICES	ANNUAL FEE	MONTHLY FEES *
HRA for Dental and/or Vision (Stand Alone)	2 - 100 Employees: \$550 101 - 200 Employees: \$600 201+ Employees: \$650	\$4 pppm (Includes Debit Card)

**Other funding options and terms:**

- The **Value 50/100** funding option requires a 50% - 100% deposit and pulls all transactions (including debit cards, if selected) from the funds. It is our most convenient plan for employers because there is no ACH and less paper-work for the employer. The funds held in the account accrue interest at market interest rates and are credited to the employer.
- The **Value 10** funding option requires a 10% deposit (\$5,000 minimum). Sterling will ACH weekly or as needed to true up to a 10% funding level. Sterling will ACH debit card expenses as incurred.
- The **Advantage** funding option is another choice employers can make. The setup and renewal fees are the same as for the two **Value** plans (see chart above). Sterling will ACH all claims weekly and will ACH debit card expenses as incurred.
- **Other Terms:** A \$50 minimum monthly fee applies. If claims exceed funding, Sterling will "pend" claims or ACH transfer based on employer requirements. If there are insufficient funds at the time of ACH withdrawals, the employer will be charged \$25 and risk account closure. A minimum "floor" of \$1,000 is required at all times for claims.
- There is a \$50 per hour charge for client requested changes to plan documents after initial set-up.
- Fees are based on the total number of employees who participate in the HRA, not the total number eligible.
- Rollover administration fee is \$50 per hour (2 hour maximum).
- \$250 takeover fee (mid plan year or run-out).

## EMBEDDED DEDUCTIBLE OPTIONS

**Please complete the individual coverage levels for your HRA or health plan, or attach your Summary of Benefits and Coverage.**

Employee Coverage:

Employee \_\_\_\_\_

Employee + Spouse Coverage:

Employee \_\_\_\_\_

Spouse \_\_\_\_\_

Employee + Dependents/Children Coverage:

Employee \_\_\_\_\_

Dependents/Children \_\_\_\_\_

Employee + Family Coverage:

Employee \_\_\_\_\_

Spouse \_\_\_\_\_

Dependents/Children \_\_\_\_\_

*Amount \$\_\_\_\_\_ per person up to \_\_\_\_\_ x number of total family members including employee*

# 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 P.O. Box 71107, 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 6 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.
- e. 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.
- f. Each party shall promptly return to the other party all Confidential Information in its possession relating to the other party.
- g. 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.
- h. 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.