



Berwyn Death Audit System Software License Agreement

This Berwyn Death Audit System Software License Agreement ("Agreement") is made effective as of the 1st day of October, 2012 ("Effective Date") and constitutes the agreement between **Kentucky Teachers' Retirement System** ("Customer"), and The Berwyn Group, Inc. 23215 Commerce Park Drive, Suite 215, Beachwood, Ohio 44122 ("Berwyn Group").

WHEREAS, Berwyn Group has developed and delivered to Customer software known as BDAS that will assist Customer in the performance of its audit responsibilities; and

WHEREAS, the intent of this Agreement is to provide Customer with the right to use the BDAS System in accordance with the terms set forth herein.

NOW THEREFORE, in consideration of the mutual promises contained herein, Customer and Berwyn Group agree as follows:

IMPORTANT – PLEASE READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS. THIS LEGAL AGREEMENT BETWEEN YOU, THE CUSTOMER, AND THE BERWYN GROUP, INC. GOVERNS YOUR USE OF BDAS.

IMPORTANT, PLEASE READ CAREFULLY: Please read carefully the terms and conditions of this license agreement before loading, installing and/or otherwise using this software. This license agreement contains restrictions on your use of the software, disclaimers, and limitations of liability, governing law and other important terms. This Agreement constitutes the entire agreement concerning this software between Your Organization (henceforth, referred to as "Customer") and The Berwyn Group, Inc. (henceforth, referred to as "Berwyn Group"), and this Agreement replaces any prior proposal or understanding between Customer and Berwyn Group. By installing and/or using the Berwyn Death Audit System, ("BDAS") Customer is accepting and agreeing to all the terms and conditions of this Agreement, and are thereby entering into a contractual agreement between you, Customer, and Berwyn Group. If Customer does not accept these terms and conditions, Customer should not load, install, and/or otherwise use this software. Rather, Customer is to promptly return this software and any and all associated documentation.

1. **GRANT OF LICENSE:** Subject to Customer's compliance with all the terms and conditions of this Agreement, Berwyn Group hereby grants to Customer a limited, nontransferable, non-exclusive license to use the BDAS under the terms and conditions stated in this Agreement for Customer's own use in Customer's business. The grant of rights hereunder to BDAS is not a sale of BDAS or any portion thereof, and does not convey any rights of ownership in BDAS. Berwyn Group reserves all rights not expressly granted by this Agreement and Customer hereby agrees that all title and ownership of BDAS and all associated intellectual property rights are and shall always remain with Berwyn Group.



2. TERM AND TERMINATION:

- (a) This Agreement shall commence ~~September~~ ^{October} 1, 2012, and shall continue for a period of One Year (1) and shall automatically renew for additional periods of one (1) year each, unless: (i) the contract is terminated in writing by the client within 30 days of the annual renewal date (ii) the failure of Customer to pay subscription fees.
- (b) This license and all of Berwyn Group's obligations hereunder, automatically terminate if Customer fails to comply with any provision of this Agreement. Customer is authorized to use the BDAS software for the TERM corresponding with the subscription agreement entered into between Berwyn and Customer. Upon the termination or expiration of this Agreement for any reason whatsoever: (i) the license granted hereunder shall immediately cease; and (ii) Customer shall immediately stop using BDAS in any way and, within ten (10) days after the effective date of expiration or termination, deliver to Berwyn Group, or certify that Customer has destroyed, all copies of BDAS.

3. FEES: Customer shall pay an annual license fee in the sum of Two Thousand Dollars (\$2,000.00) for the use of the software on one computer for files of approximately 45,000 records, and also 150,000 records at various times during the year. Price will be re-negotiated if customer submits files in excess of previously stated records. Customer shall pay an additional annual license fee of Five Hundred and no/100 Dollars (\$500.00) for each additional computer that the system is installed on (if any).

4. LICENSE RESTRICTIONS: This Agreement does not include the right to perform any of the following and Customer agrees to refrain from performing any of the following:

- a. Customer may not make copies, translations, or modifications of or to BDAS or any portion thereof, except Customer may make one (1) copy of BDAS for backup, disaster recovery and/or archival purposes only. Customer must reproduce all copyright, trademark, trade secret and other proprietary notices on any such backup copy of BDAS. All copies of BDAS are subject to the terms and conditions of this Agreement.
- b. Customer may not sell, distribute, lease, rent, sublicense, modify, change, alter, assign or transfer BDAS or this license, except that: (i) Customer may transfer the license to a party that purchases all or substantially all of the assets of Customer's business, provided that Customer notifies Berwyn Group in writing prior to the transfer of BDAS to the purchasing party, and the purchasing party agrees in writing to be bound by this Agreement; or (ii) upon written permission from Berwyn Group, Customer may transfer the license to a party that agrees to be bound by this Agreement.
- c. Customer may not reverse-engineer, reverse-translate, disassemble, or decompile BDAS or any portion thereof or attempt to do so, or otherwise attempt to discover the source code, and/or techniques incorporated into BDAS. Customer may not create any derivative work based upon BDAS by altering, modifying, or translating the code or any portion thereof.



Customer may not hire, direct, influence or aid any other person or entity to do or attempt to do the same.

- d. This Agreement does not grant a license or any other right to use or disclose Berwyn Group's confidential and/or proprietary information.
 - e. Berwyn Group reserves all rights not expressly granted to Customer in this Agreement.
5. **USER ACCOUNT:** A User account ID(s) and Password(s) for Customer will be established after Customer's registration has been accepted by Berwyn Group. Customer agrees that it is Customer's sole responsibility to protect the account User ID(s) and Password(s). Any liability that results from a breach in confidentiality or security with respect to Customer's User ID(s) and Password(s) falls solely upon Customer. Customer is responsible to ensure that User accounts are used only by authorized personnel. Further, Customer is responsible for all service requests made using User ID(s) and Password(s) assigned Customer's licensed copy of BDAS. If Customer suspects and/or discovers that the confidentiality of User account information has been breached, Customer is obligated to report such suspicions and/or discovery directly to Berwyn Group as soon as Customer suspects and/or discovery such a breach. Berwyn Group shall not be responsible for any losses arising out of the unauthorized use of your Account.
6. **LIMITED WARRANTY:** The following limited warranty applies to Customer only if Customer is the original licensee of BDAS. Berwyn Group represents and warrants (i) that it holds all proper licenses to perform the services described in this Agreement; (ii) that Berwyn Group is not violating any patent and/or copyright licenses in the performances of its services under this Agreement. In the event it is discovered Berwyn Group does not have the proper licenses to perform the described services, Berwyn Group agrees to hold customer harmless and obtain said licenses.
7. **CUSTOMER WARRANTY:** Customer represents and warrants that (i) all Data submitted via BDAS to Berwyn Group for death match services shall only be related to the legally authorized purposes, as defined in this Agreement; (ii) Customer's Users will not transmit or disclose Data that is not within the legal purposes of acquiring death notifications for persons in Customer's Pension, Retirement, Benefits Plan or for locating addresses for persons in such Plans; (iii) Customer will not use any information provided by Berwyn Group for any purpose except the legal and proper purposes, as defined in this Agreement.
8. **RECOMMENDED ENVIRONMENT:** BDAS has been designed to work optimally in the environment documented within the Documentation. Any defects, inconsistencies, and/or issues arising out of operating outside the parameters set forth therein may require Customer to pay additional maintenance/upgrade costs to Berwyn Group to support and/or rectify.



9. DEATH RECORDS DISCLAIMER:

- a. The BDAS license includes access to death records from multiple State and Federal agency sources, including the Social Security Administration ("SSA") and the Death Master File ("DMF"). The death records are updated as mandated but may not contain the most recent information.
- b. Customer and User(s) is/are aware and understand(s) that all deaths are not reported and not all deaths are released by SSA, though required by law, and that the absence of a match on the file does not guarantee that non-matching individual(s) are not deceased.
- c. Customer is advised not to take any action based on a report without first independently verifying the death of the individual(s) flagged as deceased by BDAS in Customer's file audit.

9. NON-PUBLIC INFORMATION:

- a. Customer recognizes that non-public personal information may be provided by Berwyn Group to its Customers and such information is governed by use, non-disclosure and privacy obligations, as well as other terms and provision of the Gramm-Leach-Bliley Act ("GLB") codified at 15 U.S.C. § 6801 et seq. and by the Federal Fair Credit Reporting Act ("FFCRA") codified at 15 U.S.C. § 1681 et seq. Customer accepts that it has its own obligations for use, non-disclosure and privacy under aforementioned acts (GLB and FFCRA).
- b. Under this Agreement, Customer and Berwyn Group agree that they will not (i) use any non-public personal information, regardless of the source of the data, for any purpose other than communication with its clients, insurers and insured's, pensioners, vested participants; beneficiaries, and for recordkeeping and record maintenance, and fraud prevention; (ii) sell, sublicense, or otherwise distribute in any manner non-public personal information to any third party; (iii) use any non-public personal information for any unlawful purpose, (iv) use any non-public personal information to identify and/or solicit potential customers for its products, or (v) use any non-public personal information for any purpose that would violate the privacy obligation policy and any other terms and provisions of the aforementioned federal acts (GLB and FFCRA).

10. BDAS PROCESS AND REPORTS:

- a. When conducting a mortality verification, BDAS compares and matches the Data file loaded and marked for Audit via a secure internet connection to Berwyn Group's own National Master Death File that has been compiled from numerous publicly available sources. BDAS then generates a Report of Findings. The time frame in which Customer will receive the report depends on numerous factors, including, but not limited to, the size



of the data file and the bandwidth of the internet connection. All Customer's electronic data files and generated Reports are retained only in Customer's computer. Customer is solely responsible for the maintenance and storage of its data and Reports. Customer shall not hold Berwyn Group liable for any loss of Customer's data files or reports as BDAS does not transfer any of Customer's data file or reports to Berwyn Group.

- b. All Reports generated by BDAS are exclusively for the use of Customer and become property of Customer under this Agreement. Specifically, Customer will own exclusively all employee, pension or any other Data or information maintained in the application's data files. Customer shall own exclusively end user reports generated by BDAS and shall not be the subject of an application for copyright or other claim of ownership by or on behalf of Berwyn Group.
- c. All software programs, procedures, methods of operations, pricing, sources of information and data bases, used by Berwyn Group to provide services pursuant to this Agreement are the exclusive property of Berwyn Group. Customer accepts Berwyn Group's and its licensors' claims of proprietary rights in preexisting works of authorship and other intellectual property Berwyn Group uses in its work pursuant to this Agreement.

11. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES:

- a. **LIMITATION OF LIABILITY:** Due to the inherent complex nature of computer software, Berwyn Group does not guarantee, represent, or warrant that Customer's use of BDAS will be uninterrupted or error-free. In order to provide dependable service, Berwyn Group may remove the service for repair, maintenance or updating for indefinite periods of time. Although Berwyn Group is covered by various types of insurance, Berwyn Group's liability to Customer for damages or losses arising hereunder, whether based in contract, tort or otherwise, shall be limited to, and shall not exceed the amount of its actual insurance coverage for any specific loss, and the license and support fees paid by Customer to Berwyn Group. However, in no case shall Berwyn Group, its directors, officers, employees, be liable for any special, consequential, incidental, punitive or indirect damages, including, but not limited to, loss of time, loss of anticipated profits, loss of revenue or loss of data or costs incurred in connection with obtaining substitute software.
- b. Customer agrees that Berwyn Group is relieved of any and all liability if any portion of BDAS has been modified, lost, stolen, damaged abused or misapplied.
- c. **DISCLAIMER OF WARRANTY:** ALL PRODUCTS AND SERVICES DELIVERED TO CUSTOMER ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.
- d. **BERWYN GROUP DOES NOT REPRESENT OR GUARANTEE THAT THE SERVICE WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES,**



INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND BERWYN GROUP DISCLAIMS ANY LIABILITY RELATING THERETO.

12. U.S. GOVERNMENT RESTRICTED RIGHTS: If BDAS is to be provided under a U.S. government contract, the U.S. government's right to use, modify, reproduce, release or disclose BDAS is subject to the restrictions set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR-52-227.19, as applicable. The contractor/manufacturer is Berwyn Group, Inc., 23215 Commerce Park Drive, Beachwood, Ohio 44112.

13. UPDATES: Any updates licensed to Customer are considered part of BDAS and subject to the terms and conditions of this Agreement, except to the extent a separate license agreement is provided in connection with such update.

14. MISCELLANEOUS:

- a. As a User of BDAS, Customer assumes the responsibility for the selection of BDAS as being appropriate for Customer's purposes. Customer understands and agrees that: (i) Customer is solely responsible for the content and accuracy of all reports and documents prepared with BDAS; (ii) using BDAS does not relieve Customer of any professional obligation concerning the preparation and review of such reports and documents; (iii) Customer will review any report results made by using BDAS and Customer shall do whatever is necessary in order to be satisfied that those reports are correct; and (iv) if Berwyn Group offers any support service, said service is designed to offer technical support for issues regarding the features and functionality of BDAS in the recommended operating environments only.
- b. The exclusive judicial forum for any action that Customer brings to enforce this Agreement shall be an appropriate federal or state court located in the state of Ohio. The exclusive forum for any action that Berwyn Group brings to enforce this Agreement shall be an appropriate federal or state court in the state of Ohio. The exclusive and applicable law is the law of the state of Ohio.
- c. This Agreement allocates risk between Customer and Berwyn Group as authorized by applicable law, and pricing of Berwyn Group's products reflects this allocation of risk and the limitation of liability contained in this Agreement.
- d. In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties. The remainder of this Agreement shall be valid and enforceable according to its terms and conditions.



- e. The Berwyn Group logo, DeathCheckSM, AddressCheckSM, are the registered trademarks or trademarks of Berwyn Group.
- f. No failure or delay of either party to exercise any rights or remedies under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same or other rights or remedies preclude any further or other exercise of the same or other rights or remedies, nor shall any waiver of any rights or remedies with respect to any circumstances be constructed as a waiver thereof with respect to any other circumstances.
- g. This Agreement constitutes the entire agreement between Customer and Berwyn Group with respect to the subject matter hereof, and supersedes all proposals, oral or written, and all other communications between the parties with respect to such subject matter. This Agreement shall not be modified, except by written agreement signed by the parties hereto.
- h. Berwyn Group shall not be liable for and shall be excused from any failure to deliver or perform or for delay in delivery or performance due to causes beyond its reasonable control, including, but not limited to, work stoppages, shortages, civil disturbances, terrorist actions, transportation problems, interruptions of power or communications, failure of suppliers or subcontractors, natural disasters or other acts of God.
- i. Berwyn Group reserves the right to take steps Berwyn Group believes are reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement. Customer agrees that Berwyn Group has the right, without liability to you, to disclose any Account, User ID Data and/or Account information to law enforcement authorities, government officials, and/or a third party, as Berwyn Group believes is reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement (including, but not limited to, Berwyn Group's right to cooperate with any legal process relating to Customer's use of the BDAS, and/or a third-party claim that Customer's use of the BDAS is unlawful and/or infringes such third party's rights).
- j. Section 10 (Limitation of Liability and Disclaimer of Warranties); Section 11 (Waiver and Indemnity); Section 15b (Miscellaneous, Forum), shall survive the expiration and/or termination of this Agreement.
- k. All notices given hereunder shall be in writing and sent by certified mail, overnight courier, or delivered in person: (i) if to Berwyn Group, Inc., 23215 Commerce Park Drive, Beachwood, Ohio 44112, Attn: President; and (ii) if to Customer, to the address Customer indicated upon the registration of BDAS.
- l. European Union: To the fullest extent permitted by law, if Customer is located in a member state of the European Union, Customer hereby waives all notices, acknowledgments of receipt and confirmations relative to contracting by electronic means which may be required under Articles 10(1), 10(2), 11(1) and 11(2) of the EU Directive



2000/31/EC as implemented in Customer's jurisdiction in respect of this Agreement and Customer's use of this software.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date set forth above.

CUSTOMER:

THE BERWYN GROUP, INC.

By: 
(Signature)

By: 
(Signature)

Name: Eric Wampler

Name: ~~Jane Potts~~ Felix Federauer

Title: Deputy Executive Secretary

Title: ~~Regional Sales Manager~~ President

Date: 10/3/2012

Date: ~~August 21, 2012~~ 10/8/12

SECTION 203 OF THE BIPARTISAN BUDGET ACT OF 2013
CONTRACT ADDENDUM

This Contract Addendum ("Addendum") is made and entered into this 25 day of March, 2014 by and between The Berwyn Group, Inc. ("Berwyn Group"), and Kentucky Teachers' Retirement System ("Company"). This Addendum supplements the provisions contained in any agreement between Berwyn Group and Company solely to the extent required to ensure compliance with Section 203 of the Bipartisan Budget Act of 2013 (H.J. Res. 59), and the rules and regulations thereunder, as the same may be amended or superseded from time to time (the "Act"). As a condition to permitting your Company to continue receiving its existing services from Berwyn Group, you must agree to the following:

1. As a condition to accessing the Death Master File (as defined in 15 CFR § 1110.2) ("DMF"), your Company certifies that: (a) it has a legitimate fraud prevention interest, or a legitimate business purpose pursuant to a law, governmental rule, regulation, or a fiduciary duty; and (b) has systems, facilities, and procedures in place to safeguard such information, and experience in maintaining the confidentiality, security, and appropriate use of such information, pursuant to requirements similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986; and (c) it will satisfy the requirements of section 6103(p)(4) as if such section applies to it. The undersigned further certifies that it will not: (i) subsequently disclose the information contained on the DMF to any person who does not meet the requirements of (a), (b), and (c) above; (ii) disclose information contained on the DMF to any person who uses the information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law governmental rule, regulation, or fiduciary duty; (iii) disclose any information contained on the DMF with respect to any deceased individual to any person who further discloses the information to any person other than a person who meets the requirements of (a), (b), and (c); or (iv) use any information contained on the DMF with respect to any deceased individual for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty.

2. Pursuant to Section 203 of the Act, your Company acknowledges that if it discloses information from the DMF to a person(s) who does not meet the requirements of (a), (b), and (c) of Paragraph 1 above, then it may be subject to a One Thousand and 00/100 Dollar (\$1,000.00) fine for each disclosure or misuse of such information. Your Company further acknowledges that it may be held liable for disclosing information, even if it properly discloses such information to a third party, but said third party improperly discloses said information. Your Company further acknowledges that the maximum penalty that could be imposed on it for improper disclosure is Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) per calendar year, unless the improper disclosure is willful, whereby the penalty is not limited.

~~3. As a condition of permitting your Company access to information contained on the DMF, your Company agrees to defend, indemnify and hold harmless, Berwyn Group, its officers, shareholders, directors, employees, and agents, from and against, any and all claims, demands,~~

~~judgments, fines, penalties, damages, actions, causes of action, liabilities, costs and expenses, including but not limited to attorney fees and other reasonable costs arising directly or indirectly from, or out of, or by reason of the Company's violation of this Agreement.~~

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

Company: Kentucky Teachers' Retirement System

Signature: 

Print Name: Eric Wampler

Title: Deputy Executive Secretary

Date: 3/25/2014

THE BERWYN GROUP, INC.

By: _____

Title: _____

Date: _____