

KENTUCKY RETIREMENT SYSTEMS

REQUEST FOR PROPOSAL

MEDICAL EXAMINER SERVICES

2010

KENTUCKY RETIREMENT SYSTEMS

REQUEST FOR PROPOSAL - MEDICAL EXAMINER

INTRODUCTION

The Board of Trustees of the Kentucky Retirement Systems is permitted to contract for medical examiners pursuant to the provisions of KRS 61.665. Individuals interested in providing medical examiner services to the Kentucky Employees Retirement System (KERS), the County Employees Retirement System (CERS), and the State Police Retirement System (SPRS) are being asked to submit written proposals for providing such services.

BACKGROUND

Kentucky Retirement Systems (KRS) administers three separate retirement plans for various state and local government employees. These plans include: KERS for hazardous and non-hazardous employees of the Commonwealth, CERS for hazardous and non-hazardous employees of approximately 1,000 city and county government agencies throughout the state, and SPRS for uniformed State Troopers. Members are eligible to apply for monthly disability retirement benefits after earning 60 months of service. In special cases, Members may apply for disability retirement, which is based on an injury or illness which is a direct result of a duty related injury prior to earning 60 months of service. Members in hazardous duty positions may apply for disability retirement, which is based on injury or illness which is a direct result of an act-in-line-of-duty, prior to earning 60 months of service.

Disability is determined as of the member's last day of paid employment. Application must be made within 24 months of the last day of paid employment. Before the application is processed, the member who is still employed must request reasonable accommodations, as defined in the Americans with Disabilities Act (ADA), that could allow the member to continue to perform the duties of the position. Both the member and employer must submit a job description.

FOR NONHAZARDOUS MEMBERS: Disability is determined from the objective medical evidence obtained from the member's physicians. Objective medical evidence includes test results, studies, medical reports, and the results of examinations. A physician's statement that the member is disabled is not by itself evidence of a disability. The Kentucky Retirement Systems' medical examiners review the objective medical evidence and job descriptions. If the incapacity (1) did not exist before the member was employed, (2) is expected to last at least 12 months or result in death and (3) the objective medical evidence is sufficient to prove that the incapacity prevents the member from performing his job or a job of similar duties, the member's application for disability will be approved.

NOTE: A condition or disease which was preexisting at the time of the member's employment may be considered if the condition was aggravated by accident or injury during the course of employment or if the member has 16 years service credit for work with employers participating in the Kentucky Retirement Systems.

SPECIAL DUTY-RELATED DISABILITY BENEFITS NONHAZARDOUS MEMBERS: A duty-related injury is a single catastrophic physical injury that occurs while performing his job duties or a single act of violence committed against the member related to his job duties.

FOR HAZARDOUS MEMBERS: There are two levels of disability: Total and Permanent Disability or Hazardous Disability. Total and permanent disability means the member is incapable of performing any occupation. Hazardous disability means the member is totally incapable of working in a hazardous position, but may still be capable of performing other types of work.

The procedure is as follows:

1. At least one time each week, the medical examiner or his/her staff will pick up disability case and drop off cases that were picked up the previous week. The medical examiner should make every effort to come in on the same day of each week.
2. The medical examiner reviews the medical records. The examiner either recommends approval of the application, rejection of the application or submission of additional medical evidence by the applicant.
3. The medical examiner provides the above recommendations to the retirement office weekly by dictating on cassette tapes provided by the retirement office.
4. If the medical examiner recommends approval or rejection, the recommendation must contain a detailed explanation of the reason the application was approved or rejected.
5. If the medical examiner recommends submission of additional medical information, the recommendation must state the specific medical information, tests or procedures the applicant should submit and the reason the information is required. The medical examiner may recommend a physician with expertise in the specific medical specialty to perform the examination or procedure.
6. The medical examiner is expected to complete the review and provide a recommendation within 7 days of receipt of the information. The medical examiner is expected to notify the retirement office if a review will not be completed within the prescribed time frame.
7. If the applicant is denied and appeals the denial, the medical examiner may be requested to testify or be deposed regarding his decision.

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MEDICAL EXAMINER SOUGHT

- 1) Provide recommendations regarding disability applications under the provisions of KRS 16.582, KRS 61.600 and KRS 61.621
- 2) Recommend examinations or procedures, including the type of specialist or facility that should perform the examination or procedure.
- 3) Testify or be deposed, if necessary.

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PROPOSAL REQUIREMENTS

Your proposal, at a minimum, must include the following:

1. Your name, address and telephone number.
2. The name of the institution from which you obtained your medical degree and the date of receipt.
3. Provide details regarding any complaints made to the Medical Licensure Board, or any other agency, related to your medical license or practice of medicine.
4. Your area of practice or specialty.
5. The facilities in which you practice(d).
6. The length of time you have been a licensed physician in Kentucky.
7. Whether you review disability data for any private firm or governmental entity, and if so, the name of the firm or agency.
8. Your ability to pick up and review cases on a weekly basis.
9. Your procedure for obtaining cases and informing the retirement office of the status of cases.
10. The amount of time per year you will be unavailable to review cases.

A form for providing the above is attached. Please feel free to provide any additional information that may be relevant and attach your curriculum vitae or resume.

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ACKNOWLEDGMENT OF TERMS OF PROPOSAL

TO: Board of Trustees
Kentucky Retirement Systems

In consideration for your review of this proposal for medical examiner, I acknowledge and agree:

- A) There is no express or implied obligation of Kentucky Retirement Systems (KRS) to reimburse responding individual for any expenses incurred in preparing a response submitted in accordance with this Request for Proposal.
- B) KRS reserves the right to reject any and all proposals and to negotiate the terms of any contract that may result from the proposal. KRS reserves the right to cancel the Request for Proposal, award multiple contracts for some or all service sought, or award non-bid contracts for medical examiner as well as any bid contracts. In reviewing the proposals, the Board may consider any factors it deems necessary and proper to be the most advantageous to KRS. Such factors shall include, at a minimum, expertise in providing disability determinations, experience with governmental disability determinations and availability to provide regular and continuing service for KRS.
- C) KRS reserves the right to request additional information after the proposal receiving date.
- D) An award of contract may be made upon the basis of the initial written proposals received without written or oral discussions.
- E) Contracts have no guarantees for a minimum amount of work.
- F) All proposals submitted shall become the property of KRS and shall not be subject to public inspection until the negotiation process is concluded either by award of a contract or at the discretion of the Board. All proposals will become public record thereafter.
- G) Proposing individual hereby acknowledges that he is not a member or retiree of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System.

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ACKNOWLEDGMENT OF TERMS OF PROPOSAL (CONTINUED)

- H) Proposing individual hereby acknowledges having read the attached Contract and agrees to abide by all terms and conditions thereof.
- I) Either party shall have the privilege to terminate the contract with or without cause at anytime upon thirty (30) days prior written notice by registered mail or personal delivery.
- J) Any contract resulting from this RFP shall be governed by and in accordance with the laws of the Commonwealth of Kentucky.
- K) The term of the initial contract will be for at least one fiscal year. It is anticipated that the contract will subsequently be renewed on an annual basis, or longer period if agreed upon by both parties, with terms and conditions for such renewals being subject to negotiation.
- L) Before any work can commence under the initial contract or any subsequent contracts, final approval must be given by the Kentucky Retirement Systems' Board of Trustees.

Acknowledged and agreed to by:

Name of Physician

Signature

Date

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Inquiries concerning the Request for Proposal should be made to:

Liza Welch
Director of Disability
Kentucky Retirement Systems
Perimeter Park West
1260 Louisville Road
Frankfort, Kentucky 40601-6124

Phone: (502) 696-8494
Fax: (502) 696-8615

Proposals should be sealed in an envelope and clearly marked: "PROPOSAL—MEDICAL EXAMINER SERVICES."

KENTUCKY RETIREMENT SYSTEMS
MEDICAL EXAMINER INFORMATION

1. Name	
2. Address	
3. Telephone number	
4. Email address (if applicable)	
5. Name and address of institution from which you obtained your medical degree	
6. Date degree obtained	
7. Complaints against you related to your practice of medicine? If so, please explain. Please indicate "none" if there have no complaints.	
8. Area of practice or specialty	
9. Facilities in which you practice	
10. Length of time you have been licensed in Kentucky.	

11. Name of private firm or governmental entity for which you perform disability reviews	
12. Statement of availability to perform weekly reviews. Anticipated periods or total amount of time when not available to perform reviews	
13. Additional comments or information not addressed previously	

SAMPLE CONTRACT

THIS CONTRACT, made and entered into this ____ day of _____, 2010 by and between the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, hereinafter referred to as "Systems", and <Name>, <Address>, <City>, <State>, <Zip>, hereinafter referred to as the "Medical Examiner".

WHEREAS, SYSTEMS by action of its Board of Trustees at its meeting held on the ____ day _____, has by order pursuant to authority granted in KRS 61.645 and 61.665 selected the Medical Examiner to review applications for disability or death retirement benefits, re-examinations, or review of disability retirement recipients of the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System;

WHEREAS, the Medical Examiner is a licensed physician, practicing in Kentucky and not a member of any retirement systems administered by Systems.

NOW THEREFORE, it is hereby and herewith agreed as follows:

1. **Scope of Services.** The Medical Examiner will, as referred by Systems, perform the following services:

(a) Analyze medical records, health or medical statements and certifications, hereinafter referred to as "files," made by or on behalf of any applicant for disability or death benefits or re-examination of files regarding disability or death payments from the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System, and shall report in writing to the Board **his/her** conclusions and recommendations upon all matters referred to **him/her**. Furthermore, the Medical Examiner may recommend applicable diagnostic medical tests or procedures which are authorized by law to determine disability. The Medical Examiner shall provide a detailed report to the Board stating the reasons for his/her decision to approve or deny an application for disability retirement benefits in accordance with KRS Chapter 16, KRS Chapter 61 and KRS Chapter 78.

(b) The Medical Examiner or members of **his/her** staff will pick up all files from Systems' office and shall timely deliver subsequent reports upon completion by the Medical Examiner to Systems' office. The Medical Examiner may also use a desk and dictation equipment at Systems' office for reviewing files and completing reports.

2. **Fees.**

(a) For the services rendered by the Medical Examiner under Paragraph 1, Systems shall pay quarterly (as of September 30, December 31, March 31, and June 30) within thirty (30) days after such date, fifty dollars (\$60.00) for each case evaluated or re-evaluated during the quarter.

(b) In the event that Systems requires the deposition or testimony at a hearing of the

Medical Examiner in a disability case, Systems will pay to the Medical Examiner a fee of one hundred dollars (\$100) for each deposition or testimony at a hearing. Such fee shall be payable within thirty (30) days from the date of the deposition or hearing. However, in the event the disability applicant or any other individual requires the deposition or testimony of the Medical Examiner, the Medical Examiner's fee for such deposition or testimony shall be negotiated between the Medical Examiner and such individual, and Systems shall have no responsibility for the payment thereof.

(c) In the event that Systems requests that the Medical Examiner perform a service outside of the duties provided in Paragraph 1, Systems shall pay the medical examiner a fee of \$100.00 for the service. The Systems shall submit a written request to the Medical Examiner describing the service to be performed.

(d) Medical Examiner will be reimbursed in accordance with the Kentucky Retirement Systems Travel Policy and Procedures for normal travel expenses incurred in the performance of this contract. Travel time is hereby specifically excluded from being a chargeable service.

3. **Duration of Contract.** The period in which subject services are to be performed is _____. At the expiration of its term, this agreement may, at the option of the parties hereto, be extended by negotiation for additional periods.

4. **Termination or Cancellation.** Termination or cancellation of this Contract may be effected at any time by either party upon thirty (30) days advance written notice of its intent to terminate. The notice of intent to terminate shall be served on other party by registered or certified mail.

5. **Training.** The Medical Examiner may be required to attend up to two (2) training sessions during the term of this contract. Systems shall pay the Medical Examiner the sum of seventy-five (\$75.00) per hour for attending the training sessions.

6. **Conflict of Interest.** The Medical Examiner shall comply with the Kentucky Retirement Systems Conflict of Interest and Confidentiality Policy which is attached hereto as Exhibit 1 and is referenced in Paragraph 13 below. Consultant hereby certifies that Consultant is legally entitled to enter into the subject contract with the Commonwealth of Kentucky and certifies that PM is not and will not be violating any conflict of interest statute (KRS 121.056 or any other applicable statute) or principle by the performance of this contract. The PM shall not engage directly or indirectly in any financial or other transaction with a trustee or employee of Systems which would violate standards of the Executive Branch Ethics provisions, as set forth in KRS Chapter 11A.

7. **Relationship of the Parties.** The Medical Examiner warrants that all work performed by Medical Examiner under this Contract is and shall be performed as an independent contractor. This Contract shall not be construed so as to create an employee-employer relationship, a partnership, or joint venture between Medical Examiner and Systems.

8. **Amendments and Renewal.** Written modifications, amendments or additions to this contract shall be effective only when signed by both parties. At the expiration of its term, this contract may, at the option of the parties hereto, be renewed by negotiation for further periods not to exceed 60 months for each such renewal.

9. **Purchasing by the Commonwealth of Kentucky.** The Medical Examiner certifies by **his/her** signature hereinafter that **he/she** will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will **he/she** attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky.

10. **Controlling Law; Jurisdiction and Venue; Waiver.** All questions as to the execution, validity, interpretation, construction and performance of this Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky, without regard to conflict of laws principles thereof. The Medical Examiner hereby consents to the jurisdiction of the courts of the Commonwealth of Kentucky and further consents that venue shall lie in the Franklin Circuit Court located in Franklin County, Kentucky. To the extent that in any jurisdiction the Medical Examiner may now or hereafter be entitled to claim for himself or **his/her** assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, the Medical Examiner, to the extent he/she may effectively do so, irrevocably agrees not to claim, and **he/she** hereby waives, same.

11. **Severability.** The provisions of this Contract shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any of the other provisions. In addition, if any provision of this Contract, for any reason, is declared to be unenforceable, the parties shall substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

12. **Assignment.** This contract may not be assigned by the Medical Examiner without the written consent of the Systems. Further, the obligations of the Medical Examiner under this contract shall be considered personal obligations of the Medical Examiner, performable solely by the Medical Examiner and the Medical Examiner may not delegate **his/her** duties hereunder to any entity without the express written consent of the Systems.

13. **Confidentiality.** The Medical Examiner shall comply with the Kentucky Retirement Systems Conflict of Interest and Confidentiality Policy which is attached hereto and is incorporated by this reference. By **his/her** signature, the Medical Examiner acknowledges that files contain confidential account information and shall not be released for publication in accordance with KRS 61.661. **He/She** further agrees that **He/She** will hold all files confidential and maintain files in a secure manner while in **his/her** possession.

a. **Access to Confidential Data.** The Medical Examiner's employees, agents and subcontractors may have access to confidential data maintained by the Systems to the extent necessary to carry out its responsibilities under the Contract. The Medical Examiner shall presume

that all information received pursuant to this Contract is confidential and subject to the provisions of KRS 61.661 unless otherwise designated by the Systems. The Medical Examiner shall provide to the Systems a written description of its policies and procedures to safeguard confidential information. The Medical Examiner shall provide KRS updates or changes to these policies in a timely manner. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Medical Examiner shall provide physical and logical protection for all KRS written and electronic data. Electronic data shall be encrypted during transport and at rest utilizing KRS policy standards. The Medical Examiner is responsible for ensuring that they have reviewed all policies and policy updates. The Medical Examiner shall remain the responsible authority in charge of all data collected, used, or disseminated by the Medical Examiner in connection with the performance of the Contract. The Medical Examiner shall provide adequate supervision and training to its agents, employees and subcontractor to ensure compliance with the terms of this Contract. The Medical Examiner shall comply with all KRS and Commonwealth of Kentucky enterprise policies and standards. In absence of a policy or standard, the Medical Examiner shall implement and use Industry Best Practices at all times to protect KRS information and data. The private or confidential data shall remain the property of the Systems at all times.

b. **No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Systems either during the period of the Contract or thereafter. Any data supplied to or created by the Medical Examiner shall be considered the property of the Systems. The Medical Examiner must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Systems.

c. **Subpoena.** In the event that a subpoena or other legal process is served upon the Medical Examiner for records containing confidential information, the Medical Examiner shall promptly notify the Systems and cooperate with the Systems in any lawful effort to protect the confidential information.

d. **Reporting of Unauthorized Disclosure.** The Medical Examiner shall immediately report to the Systems any unauthorized disclosure of confidential information. KRS will manage the disclosure in accordance with our established policies. The Medical Examiner, at the sole discretion of KRS, shall provide no cost credit monitoring services for KRS members that are deemed to be part of a potential disclosure. The Medical Examiner shall bear the cost of notification to KRS members that are involved in a potential disclosure event, including individual letters and/or public notice.

e. **Survives Termination.** The Medical Examiner's obligation under this Section regarding the security, confidentiality, and ownership of data as set forth in this section shall survive termination of this Contract.

14. **Notices of Material Changes.** Medical Examiner shall notify the Board of Trustees in writing within five (5) business days of any complaints, investigations, examinations, or other proceedings commenced by any governmental regulatory agency against him. Notice required in this paragraph shall be served on Systems by registered or certified mail.

15. **Authorized Signature.** The undersigned, Robert M. Burnside, is Executive Director of Kentucky Retirement Systems and as such has been duly authorized by the Board of Trustees of the Kentucky Retirement Systems to sign this contract in behalf thereof, therefore, binding Systems to the provisions of this contract.

16. **Authorized Signature.** The undersigned, <Name>, M.D., is a licensed physician, and as such is duly authorized to sign this contract in behalf thereof, therefore, binding the Medical Examiner to the provisions of this contract.

KENTUCKY RETIREMENT SYSTEMS

BY: _____

Robert M. Burnside
Executive Director
1260 Louisville Road
Frankfort, Kentucky 40601
On behalf of Systems

BY: _____

<Name>, M.D.
Physician
<Address>
<City, State, Zip Code>
On behalf of Medical Examiner

Approved as to Form and Legality:
KENTUCKY RETIREMENT SYSTEMS

BY: _____

General Counsel

CONFIDENTIALITY AGREEMENT
Kentucky Retirement Systems

Effective this _____ day of _____, 20__, the Kentucky Retirement Systems ("SYSTEMS") and _____ ("CONTRACTOR"), agree as follows:

1. This Confidentiality Agreement outlines the responsibility of the CONTRACTOR regarding the confidential nature of access to SYSTEMS resources.

2. CONTRACTOR may be interested in obtaining information related to a particular area of the SYSTEMS' operations, in order to respond to one or more requests for proposal from the SYSTEMS. All such information, including, but not limited to, specifications, technical descriptions, expertise, information relating to techniques and processes, product or services information, information regarding any inventions, discoveries, developments, methods, trade secrets, software, databases, or innovations developed by or for SYSTEMS, and information which is used in SYSTEMS' business and is proprietary to, about, or created by SYSTEMS, including but not limited to financial and other business or market information, member information, personnel information, and other technical and business data, records and information, including but not limited to information and tangible items relating thereto (whether in tangible, verbal, written, or electronic form) is collectively referred to herein as the "Information."

3. SYSTEMS may, in SYSTEMS' own discretion, provide to CONTRACTOR access to that portion of the Information which may be useful to CONTRACTOR for the sole purpose of reviewing the Information and drafting proposals in response to any request for proposal from SYSTEMS.

4. Should a contract be awarded, CONTRACTOR shall be granted appropriate access to the SYSTEMS' documents, records, programs, files, and any pertinent data resource needed to fulfill its contractual agreement or to complete the services requested by the SYSTEMS. This access shall include confidential information only as SYSTEMS deems necessary. The CONTRACTOR shall maintain confidentiality and data integrity of said documents, records, programs, and data resources.

5. Confidential Information, for purposes of this agreement, means any information specific to individual member accounts administered by the SYSTEMS including, but not limited to, Social Security numbers, names, addresses, phone numbers, birth dates, beneficiaries, health insurance information, and/or Personal Identification Numbers (PIN). Confidential Information does not include information that (a) is or becomes generally available to the public other than as a result of disclosure by the SYSTEMS, (b) was available to the CONTRACTOR on a non-confidential basis prior to its disclosure by the SYSTEMS, (c) becomes available to the CONTRACTOR on a non-confidential basis from a source other than the SYSTEMS, or (d) has been or is independently developed by the CONTRACTOR.

6. CONTRACTOR acknowledges that information regarding SYSTEMS' current,

former, and retired members is confidential pursuant to KRS 61.661 and under no circumstances shall CONTRACTOR use, disclose, or permit third party access to any information regarding SYSTEMS' current, former, and retired members.

7. CONTRACTOR shall not use any Information, except for the purposes for which CONTRACTOR is contracting, and shall not disclose to any third party such Information unless CONTRACTOR receives the prior written approval of the General Counsel of the SYSTEMS.

8. CONTRACTOR shall hold in trust and maintain as confidential all Information which has been or may hereafter be made available to CONTRACTOR, directly or indirectly, by SYSTEMS. The Information may not be copied by CONTRACTOR during the proposal process. After a contract is awarded, the CONTRACTOR to whom the contract is awarded may make copies of the information as needed with the SYSTEMS' permission.

9. This Agreement is not assignable by CONTRACTOR.

10. CONTRACTOR agrees that all developments made and works created by them, or under their direction in connection with the SYSTEMS' contractual agreement shall be the sole and complete property of the SYSTEMS and all copyrights and other proprietary interest therein shall belong to the SYSTEMS. CONTRACTOR agrees not to attempt to reverse engineer and agrees to assign all patent rights to any invention CONTRACTOR may make as a result of CONTRACTOR's receipt of the Information to SYSTEMS.

11. Upon request from SYSTEMS, and in any event, upon the rejection of the proposal of the CONTRACTOR or the termination of the contract, CONTRACTOR shall return to SYSTEMS the Information and all other written information, documentation, memoranda, records, models, drawings, photos, data, samples, notes, computer programs, and any other documents (manual or electronic) pertaining to the SYSTEMS and the like which CONTRACTOR may have received relating to the Information and all copies of the same or any portions thereof. Title to all tangible objects containing any of the Information shall belong to SYSTEMS.

12. CONTRACTOR shall remove confidential information from their computer systems when work processes on behalf of the SYSTEMS are completed. Additionally, all drive space and media shall either be protected in an encrypted manner and/or wiped using an approved industry standard to ensure that the confidential data is not able to be recovered from the media. CONTRACTOR shall certify to SYSTEMS in writing that the removal has been completed.

13. Violations of this Agreement will result in immediate termination of the CONTRACTOR. CONTRACTOR shall indemnify SYSTEMS for any and all damages or judgments resulting from a violation of this Agreement.

14. This agreement constitutes the entire understanding between the parties related to the confidentiality of Information. No amendment or modification of this Agreement will be valid unless in writing and signed by both parties.

15. A waiver of a breach of this Agreement shall not constitute a waiver as to any further breach or other breach. This Agreement shall be interpreted according to the laws of the Commonwealth of Kentucky, without regard to choice of law provisions. All disputes arising hereunder shall be litigated in the Franklin Circuit Court, situated in Franklin County, Kentucky, and CONTRACTOR hereby consents to jurisdiction and venue therein and hereby waives any right to object to jurisdiction or venue.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ, UNDERSTOOD AND AGREED TO THE TERMS AND RESTRICTIONS OF THIS AGREEMENT.

_____	KENTUCKY RETIREMENT SYSTEMS
CONTRACTOR NAME	
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
	—
Date: _____	Date: _____
	—

KENTUCKY RETIREMENT SYSTEMS
CONFLICT OF INTEREST AND CONFIDENTIALITY POLICY
Approval Date: August 17, 2006

INTRODUCTION

Adoption of Conflict of Interest and Confidentiality Policy:

Pursuant to the provisions of KRS 61.645, the Board of Trustees (“Board”) of the Kentucky Retirement Systems (“KRS”) is permitted to adopt procedures necessary to conduct the business of the Retirement Systems as needed. The law shall control if any inconsistency exists between the law and this policy.

Statement of Conflict of Interest and Confidentiality Policy:

KRS recognizes the need to maintain the public’s confidence and trust in the integrity of KRS and the Commonwealth of Kentucky. Individuals associated with KRS must not engage in activities that have the potential to become a conflict of interest with their association with KRS. Likewise, individuals associated with KRS must not release information about KRS or any of its members that would breach any duty to protect such information. KRS recognizes the need to establish procedures to prevent such conflicts or breaches.

Purpose:

The purpose of this Conflict of Interest and Confidentiality Policy is to: a) establish what individuals are subject to conflict of interest provisions of KRS; b) establish the specific standards of conduct with regard to conflict of interest; c) establish standards with regard to the confidentiality of information; and d) establish procedures for the obtaining of written conflict of interest statements and confidentiality agreements from certain individuals.

PROCEDURES REGARDING CONFLICTS OF INTEREST AND CONFIDENTIALITY

Section 1: Application of Policy

1. This policy shall apply to all individuals who have a statutory, contractual or working relationship with KRS.
2. Individuals affected by this policy shall include, but are not limited to:
 - A. Employees of KRS;
 - B. The Board;
 - C. Independent contractors of KRS; and
 - D. Vendors of KRS.

Section 2: Standards of Conduct Regarding Conflicts of Interest

1. Individuals have an obligation to diligently identify, disclose, avoid, and manage conflicts of interest.
2. Potential conflicts of interest exist when an individual or an individual's family may be directly or indirectly financially impacted, whether favorably or detrimentally, by a decision made by KRS in which the individual participates.
3. Individuals and their family members should not enter into any contract with KRS or any agency doing business with KRS, for financial gain, apart from an employment contract, without full disclosure and satisfactory management of any potential conflict of interest in accordance with the Executive Branch Code of Ethics.
4. Individuals should not be involved in the decision to hire or in the supervision of any member of their immediate family.
5. Individuals should not conduct business or participate in decisions with a company or agency in which the individual or family member is employed or is actively seeking employment.
6. Individuals should not accept gifts, loans, gratuities, discounts, favors, hospitality, services, or other compensation under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the individual in the performance of their duties.
7. Individuals must avoid all conduct which in any way might lead the public to believe that the individual is using his or her position with KRS to further a professional or private interest.
8. Individuals not covered by the conflict of interest provisions under KRS Chapter 11A must not violate any conflict of interest statute or principle by the performance of their duties with KRS. These individuals must not engage directly or indirectly in any financial or other transaction with a trustee or employee of KRS that would violate the standards of the Executive Branch Ethics provisions, as set forth in KRS Chapter 11A.

Section 3: Standards of Conduct Regarding Confidentiality

1. Individuals associated with KRS may be granted access to confidential information in the course of an employment, Board or contractual relationship with KRS.
2. This information may include, but is not limited to, individual member information, including but not limited to, Social Security numbers, names, addresses, phone numbers, birth dates, beneficiaries, health insurance information, Personal Identification Numbers (PIN), as well as documents, records, programs, files, scientific or technical information, or other information made available to individuals for purposes of completing their obligations to KRS.
3. These individuals have a duty to keep confidential the information to which they are granted access as a result of their association with KRS.
4. KRS and these individuals shall also recognize that confidential member information is protected under KRS 61.661.

Section 4: Written Statements of Conflict of Interest and Confidentiality

1. On an annual basis, the Executive Director of KRS, the members of the Board, any independent contractors and vendors of KRS shall file a written conflict of interest statement on the form(s) provided by KRS and adopted by the Board of Trustees.
2. Upon proposal for contract, and continuing on an annual basis, any independent contractors and vendors of KRS shall file a written confidentiality agreement on the form provided by KRS and adopted by the Board of Trustees. This form may be amended to conform to specific needs of the individual vendor or contractor as deemed necessary.
3. Other employees of KRS may also be requested to file a written conflict of interest statement as needed or requested by the Board.
4. An individual who abstains from involvement in an official decision because of a personal or private interest must disclose that fact in writing to his or her supervisor or contact person at KRS.

ETHICS AND CONFIDENTIALITY

Individuals as set forth above shall conform to the Executive Branch Code of Ethics with regard to conflicts of interests as set forth in KRS Chapter 11A. Individuals as set forth above shall conform to the confidentiality requirements of KRS 61.661.

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“BA Agreement”), is entered into this the ____ day of _____, 2010, by and between Kentucky Retirement Systems (hereinafter referred to as “Plan Sponsor”) Plan Sponsor and <Name> (“Business Associate”).

WITNESSETH:

WHEREAS, Plan Sponsor and Business Associate have entered a contract (the “Contract”) pursuant to which Business Associate provides the services set forth in the Contract, and such services include services requested by Plan Sponsor which may involve Plan-related information to be provided for Plan Sponsor, and for the benefit of Plan Sponsor’s retirees, their spouses and dependents;

WHEREAS, Plan Sponsor’s disclosure of health benefit plan-related information to Business Associate is necessary for the parties to carry out the terms of their Contract;

WHEREAS, the Privacy Standards (as defined below) under the Health Insurance Portability and Accountability Act (“HIPAA”) permit group health plans to disclose certain Protected Health Information of Individuals to a Business Associate of such plan who performs certain functions or activities on behalf of the plan, provided that the plan enters into an agreement with the Business Associate that limits the use and disclosure of such Protected Health Information to the same extent that such limitations apply to the group health plan;

WHEREAS, pursuant to the Contract, Business Associate provides such functions or activities on behalf of the Plan Sponsor as to constitute a “business associate” of the Plan Sponsor, as defined in the Privacy Standards or as defined or required in the Recovery Act § 13400 and 13408;

WHEREAS, the American Recovery and Reinvestment Act of 2009 (“Recovery Act”) will cause Business Associate to be directly subject to many of HIPAA’s Privacy Standards and Security Standards (as defined below) and civil and criminal penalties, which were previously only applicable to Covered Entities;

WHEREAS, Plan Sponsor, , and Business Associate do hereby desire to enter into this BA Agreement as required under the Recovery Act, HIPAA and the Privacy Standards and Security Standards;

NOW, THEREFORE, for the reasons set forth above and in consideration of the mutual promises and agreements set forth herein, Plan Sponsor, and Business Associate do hereby contract and agree as follows:

- I. **Definitions.** Terms used, but not otherwise defined in this BA Agreement, shall have the same meaning as those terms in 45 CFR Parts 160 and 164, as amended and as those terms in the Recovery Act.
- A. **Breach.** “Breach” shall have the same meaning as the term “breach” as defined in the Recovery Act §13400 (1).
 - B. **Business Associate.** “Business Associate” shall mean the entity defined above.
 - C. **Data Aggregation.** “Data Aggregation” shall have the same meaning given such term in 45 CFR § 164.501.
 - D. **Designated Record Set.** “Designated Record Set” shall have the same meaning given such term in 45 CFR § 164.501.
 - E. **Disclose or Disclosure.** “Disclose” or “disclosure” shall have the same meaning given the term “disclosure in 45 CFR § 160.103.
 - F. **Effective Date.** The “effective date” shall be the date of the enactment of the Contract, unless otherwise specified in the Recovery Act.
 - G. **Electronic Protected Health Information.** “Electronic Protected Health Information” shall have the same meaning given such term in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Plan Sponsor.
 - H. **Health Care Operation.** “Health care operation” shall have the meaning given such term in 45 CFR § 164.501.
 - I. **Individual.** “Individual” shall have the same meaning given such term in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
 - J. **Payment.** “Payment” shall have the same meaning given such term in 45 CFR § 164.501.
 - K. **Person.** “Person” shall have the same meaning given such term in 45 CFR §160.103.
 - L. **Personal Health Record.** “Personal health record” (“PHR”) shall mean an electronic record of PHR identifiable health information (as defined in the Recovery Act § 13407(f)(2)) on an Individual that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the Individual.
 - M. **Plan Sponsor.** “Plan Sponsor” shall mean the entity defined above. Within the context of this Agreement, Plan Sponsor shall also be considered and construed as a “Covered Entity” as that term is defined and applied by HIPAA.

- N. **Privacy Standards.** “Privacy Standards” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- O. **Protected Health Information.** “Protected Health Information” shall have the same meaning given such term in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Plan Sponsor.
- P. **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- Q. **Security.** “Security” shall have the same meaning as such term has in 45 CFR § 164.304.
- R. **Security Standards.** “Security Standards” shall mean the Health Insurance Reform Security Standards at 45 CFR Part 164.
- S. **Treatment.** “Treatment” shall have the same meaning as given such term in 45 CFR § 164.501.
- T. **Unsecured Protected Health Information.** “Unsecured protected health information” shall have the same meaning given such term in the Recovery Act § 13402 (h) and any administrative regulations promulgated thereunder.
- U. **Use.** “Use” shall have the same meaning as given such term in 45 CFR § 160.103.

II. **Obligations and Activities of Business Associate.**

- A. **Confidentiality.** Business Associate agrees to hold Protected Health Information confidential and shall not use or disclose it other than as permitted or required by this BA Agreement or the Recovery Act or HIPAA or the Privacy Standards or the Security Standards.
- B. **Notification of Breach.** As required by the Recovery Act, Business Associate agrees that it shall, if it accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information, notify the Plan Sponsor of such breach. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been or is reasonable believed by Business Associate to have been accessed, acquired, or disclosed during such breach. A breach shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of Business Associate) or should reasonably have been known to Business Associate to have occurred. Business Associate shall notify Plan Sponsor without unreasonable delay and in no case later than 60 calendar days after the

discovery of a breach by Business Associate. Delay in notification may only be allowed under the Recovery Act § 13402 (g). Business Associate shall have the burden of demonstrating that all notifications were made as required under the Recovery Act, including evidence demonstrating the necessity of any delay. Notice from the Business Associate to the Plan Sponsor shall meet the content requirements of the Recovery Act § 13402 (f).

- C. **Safeguard PHI.** Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BA Agreement or the Recovery Act or HIPAA the Privacy Standards or the Security Standards.
- D. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BA Agreement or the Recovery Act or HIPAA or the Privacy Standards or the Security Standards. Business Associate agrees to report to Plan Sponsor any use or disclosure of the Protected Health Information not provided for by this BA Agreement or the Recovery Act or HIPAA or the Privacy Standards or the Security Standards.
- E. **Subcontractors.** Business Associate agrees to take practicable steps to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Plan Sponsor, agrees to the same restrictions and conditions that apply through this BA Agreement to Business Associate with respect to such information.
- F. **Access.** Within thirty (30) days of a request and in order to meet the requirements under 45 CFR § 164.524, Business Associate agrees to make available to Plan Sponsor the Protected Health Information, within the control of Business Associate, of participants in Plan Sponsor's Plan and to enable Plan Sponsor to provide to an individual Plan participant access to a paper or electronic copy, if maintained in that format by the Business Associate, of such Protected Health Information.
- G. **Communication.** As required by the Recovery Act § 13406, Business Associate agrees that a communication by it that is about a product or service that encourages recipients of the communication to purchase or use the product or service shall not be considered a health care operation, for purposes of 45 CFR Part 164 Subpart E, unless the communication is made as described in the definition of marketing in 45 CFR § 134.501 (1)(i) or (ii) or (iii). If Business Associate receives or has received direct or indirect payment in exchange for making such a communication, the communication is further governed by the Recovery Act § 13406. Business Associate agrees to abide by the Recovery Act § 13406 (b) fundraising communication provision allowing recipients to opt out of further fundraising communication.

- H. **Amendments.** Within thirty (30) days of a request and pursuant to 45 CFR §164.526, Business Associate agrees to make any amendments to the Protected Health Information in a Designated Record Set that the Plan Sponsor directs or agrees to at the request of Plan Sponsor or an Individual.
- I. **Internal Books and Records.** Within thirty (30) days of a request, Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Plan Sponsor available to the Plan Sponsor, or at the request of the Plan Sponsor, to the Secretary for purposes of the Secretary determining Plan Sponsor's compliance with the Privacy Standards or the Security Standards or the Recovery Act.
- J. **Accounting for Disclosures.** In accordance with the requirements of the Recovery Act §13405 (c), Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Plan Sponsor to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 or the Privacy Standards or the Security Standards or the Recovery Act or HIPAA. Business Associate agrees to provide to Plan Sponsor or as directed by the Plan Sponsor or HIPAA or the Privacy Standards or the Security Standards or the Recovery Act, to an Individual, all required information in response to such request for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 or HIPAA or the Privacy Standards or the Security Standards or the Recovery Act.
- K. **Imposition of Fees.** Business Associate may impose a reasonable, mutually-agreeable, cost-based fee on Plan Sponsor or an Individual for a request for a paper copy or electronic form of Protected Health Information under Section II (F) of this BA Agreement if such a fee is in compliance with the limitations provided in the Recovery Act § 13405 (e). Such fee shall include only the cost of copying, including the cost of supplies for and labor of copying, the requested Protected Health Information; the cost of postage, when Business Associate has been asked to mail copies; and the cost of preparing an explanation or summary of the requested Protected Health Information, if agreed to by the Individual as allowed under 45 C.F.R. § 164.524(c)(2)(ii) or as required by the Recovery Act § 13405 (e). Business Associate may also impose a fee on Plan Sponsor or an Individual for a request for an accounting of disclosures in accordance with Section II (J) of this BA Agreement, provided that Business Associate informs the Individual or Plan Sponsor in advance of the fee and provides the Individual or Plan Sponsor with an opportunity to withdraw or modify the request for an accounting in order to avoid or reduce the fee and provided the fee does not conflict with the requirements of the Recovery Act § 13405 (e).

- L. **PHI and Electronic Protected Health Information.** Business Associate agrees that with regard to PHI and Electronic Protected Health Information, Business Associate shall, at all times: (i) maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of Plan Sponsor as required by HIPAA and the Privacy Standards and the Security Standards and the Recovery Act; (ii) ensure that any agent, including a subcontractor, to whom the party provides such information agrees to implement reasonable and appropriate safeguards to protect it; and (iii) notify Plan Sponsor of any security breach Business Associate discovers, as provided in the Recovery Act.
- M. **Standard Transactions.** Business Associate shall, without limitation, comply with HIPAA's Administrative Requirements for Transactions, 45 C.F.R. § 162.100 et seq., and shall not: (a) change the definition, data condition or use of a data element or segment in a standard; (b) add any data elements or segments to the maximum defined data set; (c) use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s); or (d) change the meaning or intent of the standard's implementation specifications.
- N. **Policies and Procedures.** Pursuant to the Recovery Act § 13401's application of the requirements of the security provisions of HIPAA to business associates, Business Associate affirmatively agrees to implement and update reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements that apply to it as a business associate under existing law and regulations, including but not limited to the provisions of HIPAA and the Recovery Act and any regulations issued by any federal governmental agencies interpreting HIPAA and the Recovery Act when they are effective. Such requirements, policies and procedures shall include the following:
1. Establishment and implementation of written policies and procedures for the implementation of HIPAA's Security Standards for administrative, physical and technical safeguards in the same manner that such safeguards apply to a Plan Sponsor to ensure Protected Health Information is used only for permitted purposes, with the administrative safeguards to include a security awareness and training program for all members of its workforce, identification of a security official who is responsible for the development and implementation of the required policies and procedures and implementation of procedures for the authorization and/or supervision of workforce members who work with PHI or Electronic Protected Health Information or in locations where it might be accessed. Such safeguards shall generally consist of the following, as further described in regulations issued by the Secretary, and accomplish the following steps:

- (a) Administrative safeguards (implementation of policies and procedures to prevent, detect, contain, and correct security violations; conducting (and documentation of) risk analysis and risk management);
 - (b) Physical safeguards (implementation of policies and procedures to limit physical access to PHI or Electronic Protected Health Information or electronic information systems and related facilities); and
 - (c) Technical safeguards (implementation of policies and procedures creating and tracking unique user identification, authentication processes, and transmission security, which may include encryption).
- 2. The application to the Business Associate of the additional requirements of the Recovery Act that relate to privacy and that are made with respect to covered entities, which shall be incorporated into this Agreement on the date of the enactment of the Contract or, where specified in the Recovery Act, the effective date of the Recovery Act.
- 3. As required by the Recovery Act and administrative regulations promulgated thereunder, notification of Plan Sponsor and notification of Individuals affected by a security breach and any and all other notices required by the Recovery Act.
- 4. As required by the Recovery Act and administrative regulations promulgated thereunder, maintenance of an accounting record of disclosures of Electronic Protected Health Information.
- 5. As required by the Recovery Act and administrative regulations promulgated thereunder, prohibition on the receipt of remuneration for the sale of Protected Health Information unless a written authorization from the Individual is received, subject to certain exceptions outlined in this BA Agreement and in the Recovery Act and administrative regulations promulgated thereunder.
- 6. As required by the Recovery Act and administrative regulations promulgated thereunder, provision of a copy of PHI and Electronic Protected Health Information in paper or electronic form, if maintained in that format by the Business Associate, upon request by an Individual with limitations on reimbursement of costs, as required by the Recovery Act and administrative regulations promulgated thereunder,.
- 7. As required by the Recovery Act and administrative regulations promulgated thereunder, a limitation on certain communications to Individuals to

encourage the purchase or use of products or services, and the right of Individuals to opt out of certain fundraising communications.

III. **General Use and Disclosure Provisions.** Except as otherwise limited in this BA Agreement and HIPAA and the Recovery Act and administrative regulations promulgated thereunder, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Plan Sponsor as specified in the Contract, only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR § 164.504 (e). The additional requirements of the Recovery Act that relate to privacy and that are made applicable with respect to covered entities, including Plan Sponsor, shall also be applicable to Business Associate and are hereby incorporated into this BA Agreement. 45 CFR § 164.504 (e)(1)(ii) shall apply to Business Associate with respect to compliance with the Recovery Act §13404 (a), in the same manner that such section applies to a Plan Sponsor, with respect to compliance with the standards in 45 CFR § 164.502 (e) and 164.504 (e), except that in applying 45 CFR § 164.504 (e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the Plan Sponsor involved in such contract. If Business Associate violates any provision of the Recovery Act §13404, the provisions of sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner as such provisions apply to a person who violates a provision of part C of title XI of such Act.

IV. **Specific Use and Disclosure Provisions.**

- A. As required by the Recovery Act § 13405 (a) and any administrative regulations promulgated thereunder, Business Associate agrees to restrict the disclosure of Protected Health Information of an Individual and to limit required disclosure to the limited data set or the minimum necessary, as provided in the Recovery Act § 13405 (b).
- B. As required by the Recovery Act § 13405 (c) and any administrative regulations promulgated thereunder and upon a request made by an Individual directly to Business Associate for an accounting of disclosures of Electronic Protected Health Information made by Business Associate, Business Associate agrees to provide such an accounting.
- C. As required by the Recovery Act § 13405 (d) and any administrative regulations promulgated thereunder, Business Associate agrees that it shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Plan Sponsor obtained from the Individual, in accordance with 45 CFR § 134.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the person receiving Protected Health Information of that Individual. Exceptions to this requirement are outlined in the Recovery Act § 13405 (d) and any administrative regulations promulgated thereunder.

- D. Except as otherwise limited in this BA Agreement or by HIPAA or the Recovery Act or regulations promulgated thereunder, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- E. Except as otherwise limited in this BA Agreement or HIPAA or the Recovery Act or administrative regulations promulgated thereunder, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. Except as otherwise limited in this BA Agreement or the Recovery Act or administrative regulations promulgated thereunder, Business Associate may use Protected Health Information to provide Data Aggregation services to Plan Sponsor as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- G. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

V. Obligations of Plan Sponsor.

- A. Plan Sponsor shall provide Business Associate with the notice of privacy practices that Plan Sponsor produces in accordance with 45 CFR § 164.520, as well as any changes to such notice to the extent such changes may affect Business Associate's use or disclosure of Protected Health Information.
- B. Plan Sponsor shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent such changes may affect Business Associate's permitted or required uses and disclosures of Protected Health Information.
- C. Plan Sponsor shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Plan Sponsor has agreed to in accordance with 45 CFR § 164.522 to the extent such restriction may affect Business Associate's use or disclosure of Protected Health Information.

VI. Permissible Requests by Plan Sponsor. Plan Sponsor shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Standards or Security Standards if done by Plan Sponsor.

VII. Effective Date, Term and Termination.

- A. **Effective Date.** The effective date of the obligations and rights of Business Associate, Plan Sponsor, Plan Sponsor, and the Individual under this BA Agreement is the date of the enactment of the Contract, unless otherwise specified in the Recovery Act.
- B. **Term.** Unless otherwise terminated as provided herein, this BA Agreement shall remain in effect for as long as Business Associate retains any of Plan Sponsor's Protected Health Information and shall terminate when all of the Protected Health Information provided by Plan Sponsor to Business Associate, or created or received by Business Associate on behalf of Plan Sponsor is destroyed or returned to Plan Sponsor, or if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the Effect of Termination provision in this BA Agreement.
- C. **Termination for Cause.** In the event of a breach by Business Associate under this BA Agreement, in addition to any other remedies at law or equity, Plan may terminate this Agreement upon giving BA written notice thereof.
- D. **Effect of Termination.**
 - 1. Except as provided in Section VII (D)(2) below, upon termination of this BA Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Plan Sponsor, or created or received by Business Associate on behalf of Plan Sponsor. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - 2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Plan Sponsor notification of the conditions that make return or destruction infeasible. In such case, and upon Plan Sponsor's approval of Business Associate's retention of its Protected Health Information, Business Associate shall extend the protections of this BA Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate or one of its agents maintains such Protected Health Information.

VIII. Miscellaneous.

- A. **Regulatory References.** A reference in this BA Agreement to a section in the Privacy Standards or to a section of the Security Standards means the section as in effect or as amended.
- B. **Future Amendments.** If it becomes necessary to amend the BA Agreement in the future to allow one or both of the parties to comply with the requirements of the Privacy Standards, Security Standards, HIPAA or the Recovery Act, Plan Sponsor may send notice to Business Associate of such a proposed amendment and such amendment will automatically become effective thirty (30) days after such notice is sent, absent any written objection by Business Associate that is delivered to Plan Sponsor within the thirty (30) day period.
- C. **Survival.** The respective rights and obligations of Business Associate under Section VII (D) of this BA Agreement shall survive the termination of this BA Agreement.
- D. **Interpretation.** Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Plan Sponsor to comply with the Recovery Act, HIPAA, and the Privacy Standards and the Security Standards.
- E. **Third Party Beneficiaries.** Nothing express or implied in this BA Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors and assigns of the parties any rights, remedies, obligations, or liabilities whatsoever.
- F. **Indemnification.** The Business Associate agrees to indemnify the Plan Sponsor from and against any and all liability, loss, or damage caused by or as a result of the breach of this BA Agreement by the Business Associate, or as a direct or indirect violation of law, statute or regulation by Business Associate. Pursuant to Kentucky Constitution § 177, the Plan Sponsor shall not indemnify the Business Associate, or any of its agents, against any and all liability, loss, or damage caused by or as a result of the breach of this BA Agreement, **Injunctive Relief.** The Business Associate agrees that breach of the terms and conditions of this BA Agreement shall cause irreparable harm and there exists no adequate remedy of law. Plan Sponsor retains all rights to seek injunctive relief to prevent or stop any breach of the terms of this BA Agreement, including but not limited to the unauthorized use or disclosure of Protected Health Information by Business Associate or any agent, contractor, or third-party that received Protected Health Information from Business Associate. The exercise by Plan Sponsor of its rights under this Section shall not act as a **waiver of any remedies**, whether at law or equity, that Plan Sponsor may seek against Business Associate for any breach by Business Associate of its privacy, security and confidentiality obligations under this BA Agreement.

- G. **Venue.** Any litigation resulting from this BA Agreement shall be heard in Franklin Circuit Court, unless otherwise required by HIPAA or the Recovery Act or the Social Security Act.
- H. **Controlling law.** This BA Agreement shall be interpreted under HIPAA and the Recovery Act, where required, and under Kentucky law otherwise.
- I. **Notice.** All notices, requests, demands and other communications required or permitted under this BA Agreement shall be in writing and shall be deemed to have been duly given, made and received (a) when personally delivered to a party's representative named below in this section, (b) on the day of delivery when deposited with a courier service such as Federal Express, and addressed to a party's representative named below in this section, or (c) three (3) business days following the date of mailing when sent as United States mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as set forth below:

FOR THE PLAN SPONSOR:

William Thielen
Chief Operations Officer
Kentucky Retirement Systems
1260 Louisville Road
Frankfort, Kentucky 40601

FOR BUSINESS ASSOCIATE:

Roger Strunk
1323 Pea Ridge Road
Frankfort, KY 40601

IN WITNESS WHEREOF, the parties hereto have caused this BA Agreement to be executed by their respective duly authorized officers or agents as of the __ day of _____, 2009.

PLAN SPONSOR: Kentucky Retirement
Systems, as Plan Sponsor

BUSINESS ASSOCIATE:
<Name>

BY: _____
William Thielen
Chief Operations Officer
Kentucky Retirement Systems
1260 Louisville Road
Frankfort, Kentucky 40601

BY: _____
<Name>
<Address>
<City, State, Zip Code>

Approved as to Form and Legality:
KENTUCKY RETIREMENT SYSTEMS

BY: _____
Schuyler J. Olt, Esq.
General Counsel