

**Contract By and Between Fringe Benefits Management
Company and the State of Wisconsin for the
Provision of Third-Party ERA Plan Administration**

January, 1995

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STATE OF WISCONSIN EMPLOYE TRUST FUNDS BOARD

Employee Reimbursement Accounts Program

Contract with Plan Administrator

This contract is entered into by and between **Fringe Benefits Management Company** (hereinafter "**FBMC**"), of Tallahassee, Florida, and the **Employee Trust Funds Board** (hereinafter the "**Board**") acting on behalf of the State of Wisconsin.

Recitals

Whereas, the Employee Trust Funds Board has selected Fringe Benefits Management Company to provide administrative services for the Employee Reimbursement Accounts Program (ERA), pursuant to Section 125 of the Internal Revenue Code, as amended, for the benefit of state employees; and

Whereas, the Board and FBMC wish to bind each other by written contract to provide the plan structure and services as set out in the Board's Employee Reimbursement Accounts Program, Administrative Services Contract Request for Proposals issued April 5, 1994 and amended by Vendor's Conference Summary (issued May 4, 1994) and as set out in FBMC's Proposal to the State of Wisconsin, Employee Reimbursement Accounts Program, received by the state on May 19, 1994; and

Whereas, the Board and FBMC wish to clarify their respective rights and obligations with respect to the establishment and administration of the plan;

Now, therefore, regarding the foregoing recitations and the mutual promises contained in this contract, the Board and FBMC (parties), intending to be legally bound, agree as follows:

ARTICLE I - DEFINITIONS

The following terms, when used and capitalized in this contract or any supplement, endorsements, or rider thereto, are defined as follows and limited to that meaning only:

- 1.1 "BOARD" means the Employee Trust Funds Board.
- 1.2 "DEPARTMENT" means the Department of Employee Trust Funds.
- 1.3 "FBMC" means Fringe Benefits Management Company.

- 1.4 "PARTIES" means the Employee Trust Funds Board and Fringe Benefits Management Company.
- 1.5 "PROPOSAL" means the proposal submitted by Fringe Benefits Management Company in response to the Employee Trust Funds Board Request for Proposals issued April 5, 1994.
- 1.6 "RFP" means the Request for Proposals issued April 5, 1994, distributed by the Employee Trust Funds Board to select a third-party plan administrator for the Employee Reimbursement Accounts program for the contract period beginning January 1, 1995.
- 1.7 "ERA" means the State of Wisconsin Employee Reimbursement Accounts program.
- 1.8 "STATE" means State of Wisconsin.

ARTICLE II - CONTRACT OFFERING

2.1 Contractor Appointed

The BOARD hereby appoints FBMC as the exclusive plan administrator of its Employee Reimbursement Account Plan, to continue for the term of this contract and any extensions to it.

ARTICLE III - CONTRACT DEFINITION

3.1 Execution of Contract

This contract becomes binding upon the BOARD and FBMC when this document is reviewed or approved by the Employee Trust Funds Board, pursuant to Wis. Stats. s.40.85(1) and (2)(b), and signed by authorized representatives for each party hereto. By their signature, each represents that they have proper and legal authority to sign and bind their principal and that each party has all required legal right and power to perform all acts called for by this contract in the state of Wisconsin and elsewhere.

3.2 Documents Constituting Contract

In addition to this document, the contract between the parties shall include the provisions of the RFP and its amendments and clarifications, and of the proposal and its addenda and amendments as specified in the Recitals of this document. All are incorporated herein by reference.

3.3 Order of Precedence

Any conflict, ambiguity, or inconsistency among these documents shall be resolved by applying the following descending order of precedence:

- A. the contract document and any amendments;
- B. FBMC's proposal and any amendments;
- C. the RFP and any amendments.

A higher order document shall supersede a lower order document to the extent necessary to resolve any inconsistencies between them, but silence on any matter in a higher order document shall not negate or modify the provisions of a lower order document as to that matter.

To the greatest extent possible, the provisions of all three documents shall be read in a manner as to comply with the applicable provisions of federal and Wisconsin state laws and any rules and regulations promulgated thereunder.

3.4 Consent

Whenever one party to this contract is called upon by the other, in accordance with the terms hereof, to give consent to some action or inaction by the other, such consent shall not be unreasonably withheld.

ARTICLE IV - CONTRACT TERM

4.1 Effective Date

The making and performance of the contract by the BOARD is subject to the appropriation and allocation of funds sufficient to discharge any BOARD obligations under the contract and to the approvals of state officials as required by statute, regulation, or administrative order. The failure to appropriate and allocate funds or to obtain required approvals discharges the BOARD from any obligations or liability under this contract.

The term of this contract shall be January 1, 1995 through December 31, 1997. By mutual agreement this contract may be extended for two one-year periods unless terminated in accordance with the terms and provisions as set forth in this contract.

4.2 Renewal

After the initial contract period, this contract shall be automatically extended for up to two successive one-year periods. The first extension period shall begin on January 1, 1998 and end on December 31, 1998; the second extension period shall begin on January 1, 1999 and end on December 31, 1999. The Board or FBMC must give written notice of contract termination to the other party by certified mail, return receipt requested, at least one hundred twenty (120) days prior to the termination date of the initial contract term or the then current term of this contract. Such notice shall clearly state such parties intent that the contract not be automatically renewed. In the event that this contract is extended, all of the conditions and provisions of this contract shall remain in full force and effect during the extended term, unless otherwise amended, modified, or supplemented in writing by agreement of the "PARTIES" either prior to or at the time of the extensions.

ARTICLE V - CONTRACT MODIFICATIONS

5.1 Amendments

This contract can be modified or amended at any time by mutual consent of FBMC and the BOARD. All such amendments shall be in writing and shall become effective only when approved by appropriate authorities and subsequently executed by the parties hereto unless another effective date is expressly agreed to between the parties and stated in such modification or amendment.

5.2 Assignment/Subcontract

No right or duty hereunder, in whole or in part, of FBMC may be assigned or delegated or subcontracted without prior written consent of the BOARD. Any such resultant subcontract to which the BOARD has consented shall be attached to the contract and made a part thereof and shall in no way alter the contract's terms and conditions. No subcontract or delegation shall relieve or discharge FBMC from any obligation or liability under the contract. Subcontractors are subject to the same conditions as the prime contractor.

Notwithstanding the provisions of this section, FBMC may contract for incidental supplies or equipment, such as the printing of materials and forms or the purchasing of data processing equipment. Such incidental purchases do not constitute "subcontracting" as contemplated above.

5.3 Waivers

No covenant, condition, duty, obligation, or undertaking contained in or made a part of this contract shall be waived except by the written agreement of both of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Notwithstanding any such forbearance or indulgence, until complete performance or satisfaction of all such covenants, conditions, duties, obligations and undertakings, the other party shall have the right to invoke any remedy available under the contract, or under law or equity.

5.4 Changes Required by Law or Court Order

During the term of this contract, changes required in the general scope of the plan or the services provided hereunder that are necessitated by amendments to any applicable federal law or regulations or state statute or administrative rule, or federal and state court cases, promulgated or decided subsequent to the effective date of this contract, shall be considered included in the cost of normal ongoing operations as determined by this contract. The BOARD shall consider additional payments to FBMC only for systems changes, added services, or reports outside the original proposal if FBMC can document that they substantially increase the cost of operations through added staff, overtime hours, and/or computer time used.

5.5 Renegotiation

Either party may request renegotiation and the other party shall, in good faith, renegotiate appropriate sections of the contract, in the event that applicable state or federal statutes or rules and regulations, or the ERA plan documents promulgated thereunder, are, subsequent to the effective date of this contract, amended or judicially interpreted so as to:

- A. render infeasible the fulfillment of the respective rights or obligations of either of the parties under this contract;
- B. require FBMC to furnish a category, type, or amount of service not required by this contract;
- C. require the provisions of the contract to be modified in order to conform with state or federal law; or
- D. result in payments to FBMC being less than FBMC's costs in performing services under this contract.

In the event the BOARD is required to pay FBMC additional amounts as a result of such renegotiation, the BOARD may terminate this contract if the BOARD determines that it would be in the best interests of the PLAN to do so.

5.6 Existing Guidelines

Except as provided in 5.4 and 5.5, any references in this contract to state or federal statutes or the rules or regulations promulgated thereunder shall be deemed to be referring to such statutes, rules, or regulations as they exist as of the effective date of this contract.

5.7 Interpretation

This contract shall be interpreted under the laws of the state of Wisconsin.

ARTICLE VI - CONTRACT DEFAULT AND TERMINATION

6.1 Contract Termination

This contract between the parties may be terminated as follows:

- A. by mutual written agreement of the parties; or
- B. as detailed in the Default and Termination provisions of Section 4.19 of the RFP.

6.2 BOARD's Failure to Perform

Notwithstanding any other provision of this contract, FBMC shall not be deemed in default hereof where FBMC's action or inaction or failure to perform its obligations hereunder is a direct or indirect result of the BOARD's failure to meet its obligations and duties under the terms of the contract.

ARTICLE VII - COMPENSATION OF PARTIES

7.1 Compensation of FBMC

In return for the provision of all services required under this contract and attendant documents, FBMC shall be paid for its administrative services (less any liquidated damages due the DEPARTMENT under other provisions of this contract and attendant documents), projected DEPARTMENT administrative costs and compensation as follows:

A. Fees

1. Annual Fee

FBMC shall be paid an annual fee, to be paid in 12 successive equal installments.

<u>Year</u>	<u>Annual Fee</u>	<u>Monthly Installment</u>
1995	\$155,624.00	\$12,968.67
1996	\$161,331.00	\$13,444.25
1997	\$167,681.00	\$13,973.42

2. Participation Fee

In addition to the base rate, FBMC shall also be paid a monthly fee per participant enrolled in the plan's medical expense or dependent care reimbursement accounts. This additional monthly fee per participant shall vary according to the following schedule:

<u>For each participant from:</u>	<u>Per month</u>
1 - 8,000	\$1.60
8001 - +	\$1.25

The per participant fees and monthly base rate as described in 7.1 A.1 shall be paid within 30 days of DEPARTMENT receipt of a detailed invoice for each month, beginning with January, 1995. The invoice shall show the base rate and total number of plan enrollees during the current month, the amount due broken into the above participant number categories, and the total amount due from the DEPARTMENT. It shall be due to the DEPARTMENT by the 15th of the month. For the purposes of determining the total number of plan enrollees, all enrollees of record on the fifth (5th) day of the month shall be included in the month's total.

3. Enrollment Fee

FBMC shall be paid an annual fee, to be paid in 2 equal installments each year, to be used exclusively for enrollment services as follows:

<u>Year</u>	<u>Annual Fee</u>	<u>Installment</u>
Fall 1995	\$125,336.00	\$62,668.00
Fall 1996	\$134,110.00	\$67,055.00
Fall 1997	\$143,497.00	\$71,748.50

The first installment shall be payable six weeks prior to the beginning of the open enrollment period and the second shall be due to be paid within thirty (30) calendar days after the final fall enrollment tapes are received at the State's payroll processing centers. This payment shall not be due in any year in which FBMC shall not be required to provide fall enrollment services.

B. Increased Eligible Base

Should the total eligible state employe base increase by a unit of more than 3000 employes anytime after the signing of this contract, the parties agree to negotiate separate initial implementation costs and enrollment periods for such additional employes. Effective with the first period of coverage after their initial enrollment, the BOARD also agrees to increase the base rate granted in A.1 immediately above, by the amount of any actual documented increases in FBMC's costs that are due solely to the addition of these employes to the eligible base. "FBMC's costs" shall include costs for personnel, marketing material, overhead, and profit.

C. Special Charges

In the event that the BOARD or DEPARTMENT requires any special or ad hoc reports, processing, or other services not required of FBMC under the terms of this contract and its attendant documents, a mutually agreeable separate charge may be made by FBMC for such special reports or processing.

7.2 Compensation of DEPARTMENT

FBMC is hereby required to reimburse the DEPARTMENT for actual costs incurred in the development, implementation, and ongoing oversight of the ERA program according to mutually agreed upon procedures and time frames, provided, however, that the costs to be

reimbursed hereunder shall not exceed the projected administrative costs paid to FBMC under section 7.1 above.

7.3 Other Adjustments to Fees

FBMC shall be permitted to increase contract fees by a mutually agreed upon amount for any renewal year of the contract, if such increase is required to recover unforeseen costs of changes required by federal law, regulation, state statute or administrative rule, or federal or state court cases. Such fee increases must be invoiced as separate items and shall be permitted only for such time period as may be reasonably required to recover these unforeseen costs, after which such fees shall be returned to the level originally proposed.

ARTICLE VIII - RESPONSIBILITIES OF FBMC

The following description of the responsibilities of FBMC under this contract toward the BOARD and the BOARD's ERA plan does not absolve FBMC of any other or any more specific requirements delineated in the attendant documents. Under the terms of this contract FBMC shall:

8.1 Technical Assistance

- A. Provide appropriate personnel and expertise to assist the BOARD in preparing and updating as necessary a written plan document that meets all relevant federal and state regulatory or legal requirements to assure nontaxability of benefits to plan participants who adhere to the plan.**
- B. Assist the BOARD in securing any required plan approvals from all state and federal agencies or, with the consent of the BOARD, provide opinions of legal counsel that the plan is in compliance with all applicable state or federal laws and regulations.**
- C. Continuously monitor the controlling regulations and/or legislation and provide personnel and current expertise to assist participants in understanding the impact of prospective tax code changes on their plan elections and to assist the BOARD in making any necessary revisions in the plan to assure its continuing compliance.**
- D. Provide sufficient and appropriate personnel and expertise to successfully carry out its overall proposed plan for the implementation and ongoing administration of the Wisconsin ERA plan so that first participant salary reductions are accomplished for the January, 1995 paychecks, and the plan operates on a daily reimbursement cycle thereafter.**

The BOARD reserves the right to disapprove the use of any representatives or employees of FBMC who are performing services under this contract; provided however, that no such disapproval may be based on age, race religion, creed, color, handicap, physical condition, developmental disability as defined in Section 51.01(5) Wis. Stats; marital status, sex, sexual orientation, national origin, ancestry, arrest record, conviction record; or membership in the national guard, state defense force, or any reserve component of the military forces of the United States or this state.

8.2 Marketing, Communication and Enrollment

- A.** For each plan year and subject to final DEPARTMENT approval, design, produce, and distribute as mutually deemed appropriate all necessary forms, printed or video materials, and/or other marketing and enrollment tools to be used in the marketing and ongoing administration of the Employee Reimbursement Account plan. All such materials developed specifically for Wisconsin shall be at all times the property of the DEPARTMENT, and FBMC shall retain no proprietary or literary rights with respect to them and shall execute any assignment found necessary to release any proprietary rights. FBMC shall provide, all materials in timely fashion and in sufficient quantities to promote and to operate the ERA program.
- B.** Develop, as possible, individual, pre-printed enrollment materials for eligible state employees.
- C.** Institute during the ninety days preceding plan enrollment periods an aggressive, multilevel information and marketing campaign that includes, but is not limited to, use of:
- newsletters
 - posters
 - announcements
 - audiovisual aids
 - hotline
 - brochures
- D.** Develop ERA plan materials that
1. focus on the tax advantage of Wisconsin's Employee Reimbursement Accounts;
 2. emphasize that the higher the amount of known, predictable expenses, the more attractive the appropriate Employee Reimbursement Account should be;

3. clearly discuss and clarify through charts and examples the general impact of any individual social security benefits reduction due to plan participation;
 4. clearly explain that there is no impact from plan participation on an employee's anticipated level of state retirement benefits, with the exception of social security-integrated annuity options;
 5. clearly explain the premium conversion portion of the ERA plan and provide specific information on how an employee can waive conversion if desired;
 6. clearly discuss and clarify through charts and examples the issue of whether it is more advantageous to take dependent care expenses as a credit on an IRS Form 1040 or to in a dependent care Employee Reimbursement Account;
 7. clearly discuss the forfeiture requirements of Employee Reimbursement Accounts;
 8. use hypothetical examples to show how employees in different kinds of situations might make decisions about how much to set aside for each kind of Employee Reimbursement Account;
 9. describe the new Direct Deposit option of the ERA plan.
- E. Schedule informational/trouble-shooting meetings as the DEPARTMENT reasonably deems necessary during the plan year.
- F. Maintain an office in the Madison, Wisconsin area in order to fulfill its administrative and service responsibilities under the ERA plan and to provide ongoing information for participants, newly-eligible employees, and provide assistance to state agencies. In addition, FBMC shall maintain a toll-free telephone number for individual counseling of state employees that has at least an 96% answer rate Mondays through Fridays, except for legal holidays, from 7:00 a.m. until 9:00 p.m. (Central Time).
- FBMC may, however, close on a Monday or Friday where a legal holiday falls on the Tuesday following the Monday or on the Thursday preceding the Friday. Such closings, however, shall not exceed three days per calendar year.
- G. Schedule and conduct enrollment, education and orientation meetings for State employees throughout the state and participate in benefits fairs;
- H. Design, print and distribute the presentation schedule to STATE agencies;

- I. Supervise enrollment activity;
- J. Provide representative training and all training materials;
- K. Effectuate all travel arrangements and provide all travel expenses for all enrollment activities for FBMC personnel;
- L. Provide enrollment status reports and a written evaluation for the ERA at the conclusion of the enrollment.

8.3 Plan Administration

A. General

1. Maintain a complete, up-to-date data processing system with enough capacity to accomplish all plan requirements in a timely fashion.
2. Provide an opportunity for DEPARTMENT review and approval of all system components and of any system test results done prior to initial operations and after any major system changes or enhancements.
3. Maintain complete, up-to-date documentation on all programs supporting the ERA plan.
4. Schedule briefing sessions with the DEPARTMENT's contract administrator as reasonably required.
5. Submit written progress reports to the DEPARTMENT's contract administrator as reasonably required by the DEPARTMENT.
6. Attend special meetings with DEPARTMENT representatives as reasonably required.
7. Provide the DEPARTMENT with written minutes of all meetings with DEPARTMENT representatives within ten days of such meetings.
8. Honor the confidentiality requirements given in section 4.17 of the RFP and any others established by Wisconsin law and supplied by the DEPARTMENT. Questions regarding the release of confidential information shall be referred to the DEPARTMENT for resolution.

B. Enrollment System

1. Prior to the enrollment period, devise an approved multi-part, binding enrollment form that shall specify at least, though not limited to, the following information:
 - a. the Employee Reimbursement Account or Employee Reimbursement Accounts chosen,
 - b. The amount of the salary reduction per year and per regular pay check to be deposited in the separate account(s).
 - c. that the funds in one account cannot be used to reimburse expenses covered by another account, or as otherwise required by Federal law or regulations,
 - d. that, in the case of the dependent care reimbursement accounts, claims can only be paid to the limit of the balance in the account, or as otherwise required by Federal law or regulations,
 - e. that any funds remaining in an account at the close of the grace period following the plan year are forfeited,
 - f. that the funds in the account can only be paid out to reimburse payment of expenses actually incurred during the plan year.
 2. Within thirty days after receipt of a properly completed enrollment form, send one copy of each such signed enrollment form to the appropriate state payroll office for its files.
 3. Promptly enter the information from the enrollment form into its data processing system and edit it to validate data field and/or ranges, such as, though not limited to:
 - names entered correctly,
 - valid social security number consisting of nine digits, and
 - reduction amounts selected do not exceed ERA plan limits.
- (Once the required edits have been mutually agreed upon, FBMC shall not change them nor apply any overrides without written permission from the DEPARTMENT.)
4. Within a mutually agreed upon time frame, produce tapes and/or paper input in the format required by the separate state payroll systems to be entered into either the state's automated or manual payroll systems to direct the salary reductions selected by employees.

5. Promptly resolve any errors discovered either by its own edits or by any edits the state's various payroll offices may perform:
6. Promptly process any changes, additions, or deletions to the information on the enrollment forms in a similar manner, whether secured during the plan year or as a result of subsequent re-enrollment/enrollment periods.
7. Provide updates to approved payroll or other manuals detailing any responsibilities of the state's payroll or other staff, in whatever form required by the separate systems.

C. Reimbursement and Accounting System

1. Develop in a timely fashion any necessary forms and reports pursuant to the establishment of a reimbursement and accounting system.
2. Secure DEPARTMENT approval of all report formats prior to finalization, and submit report test run results as reasonably required by the DEPARTMENT.
3. Be solely responsible for receiving and verifying reimbursement claims and for issuing daily checks to plan participants.
4. Assure that 100% of claims that are able to be processed by FBMC are processed within 5 business days after submission of properly-executed forms. For purposes of this paragraph, processing shall include payment, if funds are available.
5. In the case of the dependent care reimbursement accounts, if a claim is submitted for an amount larger than an account balance, the amount in the account shall be paid immediately and the remainder of the claim shall be paid within five (5) days of the date additional funds are deposited in the account, or as otherwise required by Federal law or regulations.
6. Continue approved void, stop-pay, and stale-date check procedures that recognize that Wisconsin law does not allow the voiding of outstanding checks due to length of time held.
7. Continue approved late-^{filings} ~~billing~~ procedure to accept claims filed after the close of the grace period if the late filing was due to no fault of the participant (e.g., waiting for documentation from insurance companies).

Pay appropriate claims for any amount under the late-billing^{siding} procedure or during the 90 day grace period after the close of the plan year.

8. Provide a daily check register to trigger the release of sufficient funds from the DEPARTMENT's bank account to FBMC's to cover the issuance of reimbursement checks.
9. Within 30 days after receipt of the statement from the bank, provide a monthly reconciliation of the state's bank account with FBMC's accounting records.
10. Continue to provide the DEPARTMENT with an on-line, terminal to FBMC's processing system. This option shall be charged by FBMC to the DEPARTMENT at cost. Such charges shall be unrelated to any other compensation provisions of this contract.

The DEPARTMENT's representative shall share access with the Performance Team Leader and the Performance Team Manager of a dedicated word processing directory. The directory shall contain appropriate system-generated security controls and shall be used exclusively as a mechanism to exchange reports and memos.

D. Recordkeeping and Reporting System

1. With respect to participants
 - a. Provide reimbursement check stubs that show an ongoing summary of each of the participant's account balances.
 - b. Respond within five (5) business days of receipt of each claim with a remittance advice that contains a clear "Explanation of Reimbursement" statement showing the reasons for any claim rejections or for any differences between the amount of the claims submitted and the amount of the reimbursement check.
 - c. Within fifteen calendar days after the end of each quarter, provide each participant a quarterly transactional summary of each Employee Reimbursement Account, in a format previously approved by the DEPARTMENT.
 - d. Provide each participant a reminder three months prior to the end of the plan year of the account balance and that it shall be forfeited if not used.

- e. Within thirty days after the end of the plan year, provide each participant a statement of the account balance and a reminder of the 90 day grace period for the submission of claims for payment of expenses incurred during the preceding plan year. This statement shall remind employes that during the grace period, claims in any amount can be submitted for reimbursement.
- f. Provide each participant an enrollment verification statement, prior to the start of the payroll reduction cycle for each plan year, summarizing the election to participate, the amount of salary reduction elected, and the amount to be contributed to each Employee Reimbursement Account selected, both annually and per paycheck.
- g. Send each participant, in a timely manner, any informational or other forms required by the IRS, or provide information to allow the DEPARTMENT to do so.
- h. Provide each participant with a direct deposit option which allows participant reimbursement funds to be automatically deposited into the participant's designated checking or savings account.

2. With respect to the DEPARTMENT

- a. Establish a recordkeeping system that shall provide as required, at least, but not limited to, the following data:
 - 1) monthly claims disposition report showing the number of claims received and processed, or partially processed; claims pending, claims rejected, keyed by reason code, and the number of claims paid from date of receipt in:
 - 0-5 days
 - 6-10 days
 - 10+ days
 - 2) annual summary of the types of medical expenditures that were reimbursed through ERA, totaled by areas of expenditure, including, but not limited to, insurance co-pays and deductible, if known, dental related, eye-care related, prescription costs, and other medically-related reimbursements;

- 3) quarterly report of participant grievances filed per department/campus and state aggregate with a number and percentage of change comparison with the previous three years;
- 4) annual account distribution range summary identifying the ranges that contributions fall into for medical expense and dependent care accounts per state aggregate, using the following ranges:

<u>Medical</u>	<u>Dependent Care</u>
Below 501	Below 501
501 -1000	501 -1000
1001-2000	1001-2000
2001-3000	2001-3000
3001-4000	3001-4000
4001-5000	4001-5000
5001-6000	
6001-7000	
7001-7500	

- 5) Annual report of premature account terminations indicating for each type of account the number of employe accounts which were terminated, the total and average amount of contributions remaining to be made in these accounts, the number of accounts and amount of funds attributed to account forfeitures and overpayments resulting from premature accounts terminations, and the number of accounts showing no balance at the time of termination.
 - 6) As requested, and in a mutually agreed upon format, data tape extracts of FBMC's data base related to the Wisconsin Employe Reimbursement Accounts Plan.
 - 7) Annual participation report showing plan participants by state aggregate and by department campus, expressed in number and percentage of total eligible.
- b. Provide a yearly summary of the results of the participants' level of satisfaction survey.

- c. Provide an annual report, in a form and format approved by the DEPARTMENT, summarizing plan participation and activity levels, incorporating trend analysis and the data generated by the foregoing reports.
- d. For the purposes of the reports required under this section and elsewhere in this contract and its attendant documents, unless otherwise specified:
 - 1) monthly reports shall be due within 15 days of the close of the month;
 - 2) quarterly reports shall be due within 30 days of the close of the quarter; and
 - 3) annual or yearly reports shall be due as required by federal or state law or regulations or as mutually agreed upon.

3. With respect to the IRS

- a. Provide necessary information and assist in preparing any forms and returns now or subsequently required by the IRS relative to the Employee Reimbursement Account plan, specifically including, though not limited to, IRS Form 5500; provided, however, that the DEPARTMENT has provided FBMC with such additional necessary data as does not appear on the standard payroll tape, in such tape format as is consistent with the format utilized by FBMC with its other clients.
- b. Assist in collecting, preparing, and filing any statistical or other program data or IRS forms that may be required to demonstrate plan compliance relative to the requirements of the Internal Revenue Code; provided, however, that the DEPARTMENT has provided FBMC with such necessary additional data as does not appear on the standard payroll tape, in such tape format as is consistent with the format utilized by FBMC with its other clients..

8.4 System Security and Emergency Procedures

FBMC shall provide security and emergency protection for all data, records, forms, and data processing operations devoted in whole or in part to the ERA plan. Pursuant to this requirement, FBMC shall:

A. With respect to security protection

- 1. Secure all Wisconsin ERA plan data from intentional sabotage, manipulation, theft, or breach of confidentiality.**
- 2. Secure all data in Wisconsin accounts so it cannot be accessed by other clients of FBMC or of its parent or of its sister corporation.**
- 3. Control all data received through use of control numbers or another appropriate system.**
- 4. Separate personnel duties so that no single person has complete control over check issuance, accounting transactions, program changes, and data entry.**
- 5. Prior to their exposure to Wisconsin plan data, inform all personnel of the confidentiality of the data and the penalties involved in breaching confidentiality and require that each person sign a statement that they understand the requirements of confidentiality. Such statements shall be kept on file by FBMC and shall be subject to audit.**
- 6. Audit systems on a mutually agreeable time frame using a program developed to check systems for computer fraud or tampering. Audit reports can be made available to the DEPARTMENT within forty-five (45) days of their completion upon request.**
- 7. Audit the physical security of the facility on a periodic basis to be mutually agreed upon.**
- 8. Maintain sign-out procedures and dual locks requiring separated keys to get access to blank check stock and signature blocks.**
- 9. Maintain a system recovery and restart procedures.**

B. With respect to emergency protection

- 1. Establish procedures to insure that FBMC's data processing system shall be back in at least minimal operation within 30 days of a disaster, such as a fire, flood, tornado, or bomb.**
- 2. Insure complete, accurate, and up-to-date documentation of all systems and procedures used to operate the ERA program. This documentation shall include a back-up copy stored off premises.**

3. Back-up all tapes and files daily for changes.
4. Insure programs and operational procedures are duplicated with a copy stored off premise.
5. Store a supply of all forms, including checks, in a separate location so that they are available until a new supply can be printed.
6. Provide emergency procedure training for all new personnel and refresher training at least annually for all other personnel.
7. Provide procedures for designating back-up personnel to operate the system in the event of a disaster.

8.5 Grievance Procedure

Continue the DEPARTMENT approved grievance procedure, with mutually agreed upon time frames, for participants whose claims are denied, in whole or in part; or not processed in timely fashion; or whose accounts are misstated; or whose reimbursement checks may be delayed or incorrect; or who may have other grievances against FBMC. This procedure shall include appeal of FBMC decisions to the DEPARTMENT for resolution under the DEPARTMENT's administrative appeal procedures, and FBMC shall in its grievance decisions provide written notice to participants of their right to administrative appeal to the DEPARTMENT.

8.6 Turnover Plan

In order to be prepared for the cessation of FBMC's services under this contract, for whatever reason, FBMC shall:

- A. Maintain plan for complete turnover of the ERA operations to the DEPARTMENT or a successor contractor.
- B. Review annually, and update if necessary, such plan during the term of the contract and resubmit it for DEPARTMENT approval.
- C. Help tailor such plan to the requirements of a successor contractor should one be selected.

- D. Provide the DEPARTMENT with any required technical assistance and advice during a turnover period.
- E. Cooperate fully according to the turnover plan with the DEPARTMENT and any successor contractor during a turnover period.
- F. Provide the updated turnover plan with any notice to the BOARD of FBMC's intention to terminate its contract.
- G. Provide the updated turnover plan to the DEPARTMENT within 30 days of the receipt of any notice from the BOARD of the BOARD's intention to terminate the contract.
- H. Submit as part of the turnover plan, a training plan for DEPARTMENT or successor contractor staff.
- I. Provide routine inventory management during turnover to avoid any shortages of plan supplies.
- J. Attend weekly or other meetings during a turnover period, as required by the DEPARTMENT, with DEPARTMENT representatives or designees.

8.7 Evaluation

Pursuant to this section, FBMC shall:

- A. Within 90 days after the effective date of this contract, establish an approved evaluation system that encourages plan participants to express, on an ongoing basis, their level of satisfaction with plan services and personnel.
- B. Not later than 90 days before the end of each plan year, survey a statistically valid random sample of plan participants as to their level of satisfaction with plan services and personnel, and report the results to the DEPARTMENT within 45 days of the survey.

ARTICLE IX - RESPONSIBILITIES OF THE DEPARTMENT OF EMPLOYEE TRUST FUNDS

9.1 Program Policy Determination/Changes

The DEPARTMENT shall determine all program policy and approve all operating procedures. In the event that FBMC requests, in writing, that the DEPARTMENT issue

program policy determinations or operating guidelines required for proper performance of the contract, the DEPARTMENT shall acknowledge receipt of the request in writing and respond to the request within a mutually agreed upon time frame.

Likewise, if any changes are required in the Wisconsin ERA administrative and/or operative systems (other than those to the data processing operation systems such as hardware and software upgrades that do not alter the processing or communication links), they must be approved by the DEPARTMENT in writing before they are implemented.

9.2 Maintain Written Plan Document

With the assistance of the DEPARTMENT, FBMC shall write and keep on file the current plan document, rewrite or revise it promptly as necessary in response to changes in the controlling legislation and regulations, and distribute it as may be required.

9.3 Communication

The DEPARTMENT shall:

- A. Assist FBMC, as much as possible, in communicating the provisions of the ERA plan to all eligible state employees, and in scheduling enrollment sessions, and in promotional material distribution.**
- B. Provide mailing labels and/or tapes for producing labels for all eligible employees at least 30 days prior to the start of FBMC's promotional campaign.**
- C. Subject to applicable state law, make good faith efforts to provide such records or information requested by FBMC that are necessary to the implementation and/or administration of the ERA plan.**
- D. Meet as often as required elsewhere in this contract or its attendant documents with FBMC personnel to facilitate implementation activities and monitor operation schedules and materials.**

9.4 Approval of Plan Materials

The DEPARTMENT shall:

- A. Retain final editorial control over all aspects of the Employee Reimbursement Account plan, including final determination of the completeness and tone of the Wisconsin marketing and enrollment efforts of FBMC. Pursuant to this, the DEPARTMENT shall**

provide review and approval, within 10 days of submission or as soon thereafter as possible, of all print and/or other materials used in the marketing and enrollment campaigns.

- B. Provide within 10 days of submission or as soon thereafter as possible, review and approval of all other deliverables required under the terms of this contract and its attendant documents.

9.5 Administration

The DEPARTMENT shall:

- A. Make available, if possible, in a mutually agreed upon time frame any records or information needed by FBMC to:
 - 1. understand the data requirements of the various state payroll systems,
 - 2. perform necessary data edits, and
 - 3. provide a system for processing changes, additions, or deletions in enrollment forms.
- B. Accept and input enrollment and reduction authorization data via electronic media and/or paper as required by its automated or its nonautomated payroll systems.
- C. Perform edits on the data to insure that it is accurate before it is accepted on an employee's payroll record for reductions.
- D. Set up a system to deduct the designated amounts from each check and to deposit the reduction amount in a state holding account.
- E. Accept changes, additions, and deletions for the ERA deductions from FBMC.
- F. Keep a file or files of the paper copy of the enrollment form furnished by FBMC for each enrollee.
- G. Within 24 working hours of receiving a FAX of a reimbursement account invoice, release to FBMC's account a sum sufficient to cover an issuance of reimbursement checks. FBMC shall also mail the original of the invoice and the supporting check register to the DEPARTMENT.

- H. Accept or reject within 90 days of submission any independent auditor suggested by FBMC to audit its reimbursement claims and accounting systems.
- I. In the event of turnover, consider purchasing surplus forms and supplies in FBMC's inventory at an agreed-upon price not to exceed FBMC's acquisition cost, if in the DEPARTMENT's sole determination such materials shall be of use in the continuing program.

9.6 Grievance Resolution

Under the provisions of Wis. Stats. 40 and 227, the DEPARTMENT shall make determinations of appeals of FBMC's decisions made under the grievance procedure provided in section 8.5 above.

9.7 Contract Monitoring and Assessment

The DEPARTMENT shall:

- A. Monitor contractor compliance with all the terms and conditions of the written contract between the BOARD and FBMC.
- B. Assess FBMC performance, especially in light of data trend analysis.
- C. Review all reports required under this contract and its attendant documents.

ARTICLE X - AUDIT PROVISIONS

10.1 Maintenance of Accounting Procedures

FBMC shall maintain an accounting system in accordance with governmental generally accepted account principles (Governmental GAAP), as set forth in *Miller Comprehensive Governmental GAAP Guide 1991*, including any future revisions and updates during the term and any extension(s) of this contract, for the purpose of audit and examination of any books, documents, papers, and records maintained in support of this contract. All such books, documents, papers, and records shall be maintained for a period of three full years from the termination of this contract. Should this contract be extended, all such materials pertaining to the extension period shall be maintained for three full years after its end.

All funds under this contract shall be fully accounted for separately and independently of any other funds controlled by FBMC. FBMC shall not commingle funds managed under this contract with any other funds, either those funds belonging to FBMC or their other clients. FBMC shall establish and maintain separate ledgers and checking accounts for the revenues from this contract, wherein funds shall be clearly identifiable.

10.2 Financial Statements Required

FBMC shall provide to the DEPARTMENT copies of the quarterly and audited year-end consolidated financial statements of FBMC and VISTA Management Company (a subsidiary) within 10 days of their acceptance or approval by the companies' appropriate Board of Directors.

10.3 Financial Audits Required

FBMC shall furnish the DEPARTMENT an annual audited financial statement audited by an independent Certified Public Accountant which discloses assets, liabilities, analysis of cash receipt and disbursements and other relevant data as may be reasonable requested by the DEPARTMENT.

10.4 Compliance Audit Required

FBMC shall make available all books, records, ledgers and journals relating to the Program for inspection and audit by the DEPARTMENT's Internal Audit staff, State of Wisconsin Legislative Audit Bureau, or designated agents, attorneys and accountants, at any time during normal working hours. Records requested shall be provided to the DEPARTMENT on electronic media in an acceptable format within 60 days from receipt of request.

FBMC further agrees that the DEPARTMENT may schedule and arrange for an independent auditor to assist the DEPARTMENT's Internal Audit staff with compliance audits of FBMC's program administration, claims processing system, and accounting system as they apply to Wisconsin's ERA program and accounts. The DEPARTMENT shall select the auditor and establish the scope of the audit and the audit program. FBMC shall have no authority over the selected auditor or the audit scope. The audit report shall be addressed to the BOARD and the Secretary of the DEPARTMENT. FBMC shall make payment for such audit, which shall be reimbursed to FBMC on a cost basis.

ARTICLE XI - PERFORMANCE STANDARDS/LIQUIDATED DAMAGES

All Performance Standards and Penalties shall be set forth within the Performance Standards and Guarantees attached hereto and made a part hereof as Appendix "A."

ARTICLE XII - MISCELLANEOUS PROVISIONS

12.1 Affirmative Action Plan Required

The approved affirmative action plan shall remain on file with the DEPARTMENT, and FBMC shall amend and/or update the plan from time to time upon the DEPARTMENT's request.

12.2 Americans with Disabilities Act (ADA)

As an employer and service provider, FBMC shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA) of 1990. Evidence of compliance with ADA shall be made available to the DEPARTMENT upon request.

12.3 Family Medical Leave Act

As an employer and service provider, FBMC shall comply with all applicable requirements and provisions of the Family Medical Leave Act of 1993. Evidence of compliance with FMLA shall be made available to the DEPARTMENT upon request.

12.4 Independent Capacity of FBMC

FBMC, its officers, employes, subcontractors, or any other agent in performance of this contract may not represent themselves as officers or employes of the state of Wisconsin.

12.5 Recovery of Overpayments

A. Any overpayment caused by FBMC's error shall be the responsibility of FBMC, not to be charged to the DEPARTMENT, regardless of whether or not any such overpayment can be recovered by FBMC. The DEPARTMENT shall provide reasonable cooperation to FBMC in its recovery efforts. An overpayment which results from fraud by an employe of FBMC shall be considered for purposes of this section as an overpayment caused by FBMC's error.

- B. The DEPARTMENT shall not hold FBMC responsible for any overpayments caused by DEPARTMENT or EMPLOYER errors or fraud by a person other than an employe of FBMC. FBMC shall assist the DEPARTMENT in identifying overpayments caused by such error or fraud and make reasonable efforts to recover these overpayments.
- C. Except for overpayments which are the responsibility of FBMC, the BOARD reserves the sole right to institute litigation for the purpose of recovering any overpayment. The BOARD reserves the right to join in any litigation instituted by FBMC for the purpose of recovering any overpayment which is the responsibility of FBMC.
- D. FBMC shall be given full credit for all refunds that result from recovery of any overpayment to the extent that FBMC is held financially responsible for such overpayment purpose to this contract.
- E. Any disputes as to the responsibility or fault for overpayments shall be determined in accordance with the provisions regarding mediation set forth in the Performance Standards and Guarantees document attached hereto and made a part hereof.

12.6 Form of Notices

- A. Any notice required or permitted to be given to a party to the contract shall be in writing, addressed as follows:

- 1. To the BOARD or DEPARTMENT:

Eric Stanchfield, Secretary
Department of Employee Trust Funds
Post Office Box 7931
Madison, Wisconsin 53707-7931

With a copy to:

Marcia Blumer, Manager
Employee Reimbursement Accounts Program
Post Office Box 7931
Madison, Wisconsin 53707-7931

- 2. To the contractor:

Lorraine Ritch, Senior Vice President
Fringe Benefits Management Company

1720 South Gadsden Street
Tallahassee, Florida 32301

B. Either party to this contract may change its address for the receipt of notices by notice given in accordance with this section. Notices delivered by ordinary mail or by hand shall not be sufficient unless acknowledged in writing by the addressee. For notices given by certified mail, return receipt requested shall be sufficient.

12.7 Mediation. If the parties are unable to amicably resolve amongst themselves any claims or disputes relating to their rights and responsibilities under the terms of this contract, then such disputes shall be first referred to mediation, in accordance with the commercial mediation rules of the American Arbitration Association or any successor body thereto.

IN WITNESS WHEREOF, the parties cause this contract to be executed by their duly authorized representatives as of the day and year set forth.

FRINGE BENEFITS MANAGEMENT COMPANY

Lorraine Ritch

Lorraine Ritch, Senior Vice President

Date: 2/8, 1995

STATE OF WISCONSIN

By: *Eric O. Stanchfield*

Date: 2/13, 1995

Eric O. Stanchfield, Secretary
Department of Employee Trust Funds

**FRINGE BENEFITS MANAGEMENT COMPANY
PERFORMANCE STANDARDS AND GUARANTEES**

STATE OF WISCONSIN

PART I - THE GUARANTEES

A. ADMINISTRATION AND

PLAN ACCOUNTING

Performance Standard 1. The Administrator shall provide any and all monthly, quarterly, and annual reports to the Client and to customers as requested by the Client.

Performance Guarantee 1. The Administrator shall provide such reports in a timeframe and format mutually agreed between Fringe Benefits Management Company (FBMC) and the Client. These reports include, but are not limited to:

DEPARTMENT/SECTIONS ASSIGNED:

- (1) **Reimbursement:** Reimbursement Expense Purpose Report - generated annually. The original shall be included in the annual report due 6/1 of year.
- (2) **Reimbursement:** Reimbursement Distribution Range - generated annually. The original shall be included in the annual report due 6/1 of each year.
- (3) **Reimbursement:** Premature Termination Report - generated annually. The original shall be included in the annual report due 6/1 of each year.
- (4) **Enrollment Processing:** Annual Plan Participation Report - included in the annual report provided by the Performance Team Leader.
- (5) **Reimbursement:** Disposition Report - generated monthly and due thirty (30) days after each month's end.
- (6) **Reimbursement:** Account Totals Report - generated monthly and due thirty (30) days after each month's end.
- (7) **Reimbursement & Accounting:** Quarterly Reconciliation Report - generated quarterly and due forty-five (45) days after each quarter's end.

The final reconciliation report is included in the quarterly reconciliation report that immediately follows payment of the final grace period claims.

- (8) **Reimbursement:** Quarterly Transaction Summary - generated quarterly to customers and due thirty (30) days after each quarter's end.
- (9) **Payroll Processing:** Forms 5500 - generated according to IRS rules and regulations. (These reports shall be prepared by FBMC after written instruction from the State provided that the Department provides FBMC with such additional necessary data as does not appear on the standard payroll tape, in such format as is consistent with the format utilized by FBMC with its other clients.
- (10) **Performance Team:** Quarterly Performance Report - due thirty (30) days after the close of each quarter.
- (11) **Performance Team:** Annual Report - due two (2) months after the close of the plan year grace period.
- (12) **Accounting:** Bi-Annual Third-Party Audit in a timeframe mutually determined.
- (13) **Customer Service:** Participant Grievance Report - generated quarterly. Due fifteen (15) days after each quarter's end. (Report to include information on customers affected.)
- (14) **Payroll Processing:** ETF Report - generated monthly. Due on the 5th business day of following month.
- (15) **Customer Service:** Monthly Customer Service Report. Due 15th business day of month.
- (16) **Enrollment Processing:** New Plan Year Participation Report - generated at the close of all re-enrollment form processing and prior to the start of the plan. A firm date to be established by the Client and FBMC during implementation planning.
- (17) **Enrollment Processing:** Participation Changes Report - generated quarterly and due thirty (30) days after the close of each quarter.

Performance Penalty 1. For failure to submit reports in the Agreed to timeframe and format, the Administrator shall pay \$100 dollars per business day until delivery.

Performance Standard 2. The Administrator shall process all properly executed reimbursement requests submitted by customers.

Performance Guarantee 2. The Administrator shall process all properly executed reimbursement requests according to the applicable IRS rules and regulations in a timeframe mutually agreed to by FBMC and the Client, not to exceed five (5) business days.

Performance Penalty 2. For failure to process each properly executed request, the Administrator shall pay \$10 dollars per business day for each properly executed request that is not processed within the 6th through 10th business days and \$30 dollars per business day for each properly executed request unprocessed for more than 10 business days.

DEPARTMENT/SECTION ASSIGNED: Reimbursements

Performance Standard 3. Attend meetings as requested for the operation of the plan.

Performance Guarantee 3. The Administrator shall attend all meetings necessary for successful implementation and operation of the plan as determined by the Department.

Performance Penalty 3. For failure to attend or seek re-scheduling at least two days in advance, except in emergencies any scheduled meetings, the Administrator shall pay \$200 dollars per occurrence.

DEPARTMENT/SECTION ASSIGNED: Client Liaison (others as requested)

B. ENROLLMENT

Performance Standard 1. The Administrator shall provide timely and accurate enrollment results to the Client.

Performance Guarantee 1(A). On all enrollment information received by the agreed to deadline date, the Administrator shall provide enrollment information that meets a 98% accuracy rate.

Performance Penalty 1(A). For failure to meet this guarantee, the Administrator shall pay \$5 dollars per occurrence per individual.

DEPARTMENT/SECTION ASSIGNED: Performance Team

Performance Guarantee 1(B). The Administrator shall provide enrollment results in a format and timeframe mutually agreed by FBMC and the Client.

Performance Penalty 1(B). For failure to meet this guarantee, the Administrator shall pay \$300 dollars per business day until such information is received in the appropriate offices.

DEPARTMENT/SECTION ASSIGNED: Software Systems Implementation and Enrollment Processing

C. MISCELLANEOUS ITEMS

Performance Standard 1. Provide for cessation of services under the existing contract.

Performance Guarantee 1. The Administrator shall maintain a plan for complete turnover of ERA operations to the Department or a successor contractor, and shall implement the plan to the Department's satisfaction according to the terms and conditions of the plan.

Performance Penalty 1. Until successful turnover of the ERA program to the Department's satisfaction, the penalty is the total of any final administrative payments due FBMC from the Department.

DEPARTMENT/SECTION ASSIGNED: Performance Team

Performance Standard 2. Provide for continuation of services in the event of a disaster.

Performance Guarantee 2. The Administrator shall utilize its backup data processing system in accordance with its disaster processing agreement.

Performance Penalty 2. For each day after the 60th that FBMC is not back in operation after a disaster and able to pay claims and meet other contract obligations, the Administrator shall pay \$500 dollars per business day.

DEPARTMENT/SECTION ASSIGNED: Performance Team

Performance Standard 3. Maintain an approved affirmative action plan on file with the Department.

Performance Guarantee 3. The Administrator shall file and maintain an approved affirmative action plan with the Department within 60 (sixty) business days of the date of the contract.

Performance Penalty 3. For failure to meet this guarantee and at the Client's sole discretion, the penalty is contract termination or total of any administrative payments due the Administrative until the guarantee is met.

DEPARTMENT/SECTION ASSIGNED: Performance Team

D. CUSTOMER SERVICE

Performance Standard 1: The Administrator shall provide Customer Service to address customer inquiries in a timely and thorough manner.

Performance Guarantee 1(A): The Administrator shall respond to inquiries about claims authorization or payment within twenty-four (24) hours of the customer's originating inquiry call if information is not immediately available to respond to a customer.

Performance Guarantee 1(B): The Administrator shall maintain a logging system of all customer/employee inquiries and shall log no less than 96% of calls answered.

DEPARTMENT/SECTION ASSIGNED: Customer Service

GOOD FAITH EFFORT - NO PENALTY

PART II. FINANCIAL PENALTIES AND REPORTING

Penalties for failure to meet the Guarantees contained in this document are described following each Guarantee.

The Department, at its discretion, may waive any penalty. Performance standards may be modified as circumstances warrant, by mutual agreement between the Department and Fringe Benefits Management.

Penalties determined below may be deducted from otherwise due Plan management fees unless the Department and Fringe Benefits Management agree to a different method of payment. Penalty amounts deducted shall be accompanied by documentation identifying the specific area of non-compliance. Penalties shall be determined in the following manner:

1. Fringe Benefits Management shall provide the Department with a Quarterly Performance Report outlining compliance with the Performance Standards and Guarantees. Unless waived, penalties for identified non-compliance shall be deemed due and owing to the Department, and the Department shall deduct those fees from the next management fee payment.
2. The Department may document any provision which has not been identified in the Quarterly Performance Report by Fringe Benefits Management, but for which the Department believes Fringe Benefits Management is in non-compliance.
 - (a) Fringe Benefits Management shall have fifteen (15) business days from the receipt of the Department's penalty documentation to respond in writing to the Department.
 - (b) If Fringe Benefits Management agrees with the facts and penalty amount calculated, the penalty shall be paid immediately via the Department deducting those fees from the next management fee payment. Fringe Benefits Management shall include the penalty calculation on the next Quarterly Performance Report.
 - (c) If Fringe Benefits Management disagrees with the facts and/or penalty calculation, Fringe Benefits Management shall provide a defense or explanation of the issue.
 - (d) If the Department disagrees with Fringe Benefits Management explanation, the Department and Fringe Benefits Management shall meet within fifteen (15) business days to resolve the disagreement.
 - (e) If the issue is not resolved, it shall be handled in the manner prescribed in the Mediation Provisions between the Department and Fringe Benefits Management, as set

forth above.

3. **MEDIATION PROVISION**

If after the exhaustion of all other procedures provided for herein, the parties cannot amicably resolve a dispute or claim, then any such claim or dispute between or among the parties, relation to the Performance Standards and Guarantees, shall be resolved by a mediation proceeding conducted in accordance with the commercial arbitration rules of the American Arbitration Association or any successor body thereto. Such proceeding may be commenced upon thirty (30) days' written notice from either party that a claim or dispute cannot be resolved and mediation thereof is desired. Each party shall thereafter, by written notice give to the other party, name of mediator, and within fifteen (15) days thereafter the two appointed mediators shall select a third mediator. If either party shall fail to make such appointment within said thirty (30) day period, the other party shall appoint the second mediator for that party. If the two appointed mediators shall fail to select a third mediator within said fifteen (15) days period, the parties shall mutually select the third mediator.

4. In the event of termination of Fringe Benefits Management's services, the Department's penalties shall be determined as provided above except that any penalty payment to the Department shall be due from Fringe Benefits Management immediately upon resolution.

**THIRD AMENDMENT TO THE ADMINISTRATIVE AGREEMENT
BETWEEN FRINGE BENEFITS MANAGEMENT COMPANY
AND THE STATE OF WISCONSIN, DATED FEBRUARY 13, 1995**

[110200]

THIS THIRD AMENDMENT to the Agreement is made and effective the 1st day of July, 2000, by and between **FRINGE BENEFITS MANAGEMENT COMPANY**, a Florida corporation, ("FBMC") and **THE EMPLOYEE TRUST FUNDS BOARD**, acting on behalf of the **STATE OF WISCONSIN** ("EMPLOYER").

RECITALS

WHEREAS, Employer and FBMC previously entered into an Administrative Agreement (the "Agreement") pertaining to the administration of Employer's Employee Reimbursement Accounts Program (ERA); and

WHEREAS, Employer and FBMC now desire to amend such Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the adequacy and receipt of which are hereby acknowledged, Employer and FBMC do hereby amend the Agreement as follows:

1. IVR / INTERNET BASED ENROLLMENT.

A. In accordance with the procedures set forth in Employer's Request for Proposal #ETJ0012 for the Employee Reimbursement Accounts (ERA) Program and Qualified Transportation Benefit Program (issued February, 2000), and FBMC's Proposal submitted in response thereto, FBMC shall provide an IVR/Internet based enrollment in the ERA program for a fee of \$150,000, starting with the Fall, 2000, enrollment period. The Employer agrees to pay this fee in two equal installments of \$75,000 each. The first installment shall be payable within thirty (30) calendar days after the final enrollment tapes are received at the State's payroll processing centers in the Fall of 2000, and the second installment shall be due six weeks prior to the beginning of the open enrollment period in the Fall of 2001.

In the event that FBMC cannot provide an IVR/Internet based enrollment in the ERA program in the Fall of 2000, the price shall be lowered to \$125,000, payable in two installments of \$75,000 in the year 2001 and \$50,000 in the year 2002.

The IVR/Internet system shall be available to state employees for up to five years with no interruptions, contingent upon the life of the contract. If FBMC is awarded the contract to enroll and administer the ERA program for the next contract period beginning in the year 2006, FBMC will continue to provide IVR/Internet based enrollment services in the year 2005.

B. Article VIII of the Agreement is amended with the addition of new paragraph 8.3.B.7, which reads: In addition, FBMC shall provide IVR/Internet based enrollment services in accordance with Employer's Request for Proposal #ETJ0012 for the Employee Reimbursement Accounts (ERA) Program and Qualified Transportation Benefit Program (issued February, 2000), and FBMC's Proposal submitted in response thereto.

2. RATIFICATION. All terms, covenants, conditions and restrictions under the Agreement, except as specifically altered by this Amendment, are hereby ratified and confirmed by the parties.

3. AUTHORITY TO EXECUTE. The individuals signing this Amendment on behalf of their respective parties certify that they have full authority to sign on behalf of the parties, and to bind the parties to the terms of this Amendment.

IN WITNESS WHEREOF, the parties do hereby sign and execute this Amendment as of the date first above written.

Witnesses:

Witnesses:

FRINGE BENEFITS MANAGEMENT COMPANY

By: _____
Patricia K. Neely, Vice President

THE STATE OF WISCONSIN

By: Marilyn J. Wigdahl
MARILYN J WIGDAHL
Chair, Employee Trust Fund Board
(Print Name and Title)