**STATE OF WISCONSIN, DEPARTMENT OF EMPLOYEE TRUST FUNDS**

**COMMUTER BENEFITS PLAN**

**PLAN DOCUMENT**

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ARTICLE I

INTRODUCTION

1.01 **Introduction**.  The State of Wisconsin (the “Employer”) has established the Commuter Benefits Plan (“Plan”), which is effective as of the date set forth in the Plan Information Appendix. It is intended that this Plan will constitute a “Transportation Fringe Benefit Plan” that has been described in Section 132(f) of the Internal Revenue Code of 1986 (“Code”) and the regulations issued thereunder, as amended from time to time.

1.02 **Purpose and Scope**.  The purpose of this Plan is to allow Eligible Employees to set aside otherwise taxable compensation on a pre-tax basis for Reimbursement (as defined herein) of Eligible Transportation Expenses (as defined herein).

1.03 **Documentation.**  This document, including the Plan Information Appendix attached hereto, constitutes the official plan document of the Plan. No terms of any other document relating to this Plan shall be binding on the Employer and/or Plan Administrator except as specifically set forth herein.

ARTICLE II

DEFINITIONS

The terms used in this Plan shall have the meanings set forth in this Article II unless the context in which they are used clearly indicates that some other meaning is intended.

2.01 **Adopting Employer**  means any entity which is a member of a group that includes the Employer that is defined in Code §414(b) or (c) and who has been authorized by the Employer to adopt the Plan for the benefit of its Eligible Employees and has so adopted this Plan.

2.02 **Benefit Administrator** means WageWorks (WW) which has agreed to perform certain services on behalf of the Plan Administrator as set forth in the WW plan services agreement.

2.03 **Commuter Highway Vehicle**  means any highway vehicle (including a Van Pool operated by an Employer, Employee, private or public entity):

(1) That has a seating capacity of at least 6 adults (not including the driver), and

(2) For which at least 80 percent of the mileage of such vehicle is reasonably expected to be used:

(a) for transporting Employees in connection with travel between their residences and their place of employment, and

(b) on trips during which the number of Employees transported for such purposes is, on average, at least one-half of the adult seating capacity of such vehicle (not including the driver).

2.04 **Compensation**  means the cash wages or salary paid to an Employee by the Employer.

**Coverage Period**  means the monthly, quarterly, semi-annual, annual (or other) period designated by the Employer in the Plan Information Appendix and/or in its enrollment material during which a Salary Reduction Agreement is effective and irrevocable.

2.06 **Effective Date**  means the date the Plan was established. The Effective Date of this Plan is identified in the Plan Information Appendix.

2.07 **Eligible Transportation Expenses**  mean those qualified expenses incurred by an Employee after the effective date of this Plan, after the date the Eligible Employee becomes a Participant, and prior to the date the Employee ceases to be a Participant to use a Commuter Highway Vehicle, Transit Pass, or Qualified Parking, as defined herein, for purposes of transportation between an Employee’s residence and place of Employment.

2.08 **Employee** means an individual that the Employer classifies as a common-law employee and who is on the Employer’s W-2 payroll, but does not include any leased employee (including, but not limited to those individuals defined in Code § 414(n)), or an individual classified by the Employer as a contract worker, independent contractor, temporary employee or casual employee, whether or not any such persons are on the employer’s W-2 payroll, or any individual who performs services for the Employer but who is paid by a temporary or other employment agency such as “Kelly,” “Manpower,” etc., or any employee covered under a collective bargaining agreement.

2.09 **Employer**  means State of Wisconsin.

2.10 **Participant**  means an Employee who has satisfied the eligibility requirements of Section 3.01 herein and has made an election in accordance with Section 3.02 herein.

2.11 **Plan Administrator**  as set forth in Article IV, means the person(s) or Committee appointed by the Employer with authority, discretion, and responsibility to manage and direct the operation and administration of the Plan. If no such person is named, the Plan Administrator shall be the Employer. The Plan Administrator may operate through the Benefit Administrator, as specified in any services agreement.

2.11 **Plan**  means this Commuter Benefits Plan, as amended from time to time.

2.12 **Qualified Parking**  means the following types of parking:

(1) On or near the business premises of the Employer;

(2) On or near a location from which the Participant commutes to work:

(a) On mass transit facilities, whether or not publicly owned,

1. In a “Commuter Highway Vehicle,” or
2. In a car or vanpool (i.e., two or more individuals who commute together in a motor vehicle on a regular basis).

“Qualified Parking” does not mean parking on or near property used by the Employee for residential purposes. If more than Participant participates in a car or vanpool, and a Qualified Parking space has been obtained by one of the participants as a result of a membership in such car or vanpool, the rules and limitations of this Plan apply to the Participant to whom the space has been assigned. If no Participant has been assigned to the Qualified Parking Space, the Employer will, in its sole discretion, assign the Qualified Parking Space to one of the Participants.

2.13 **Reimbursement** means direct cash reimbursement of Eligible Transportation Expenses incurred by a Participant, or alternatively, indirect reimbursement of Eligible Transportation Expenses incurred by a Participant through a Voucher or direct payment to the transportation service provider.

2.14 **Salary Reduction Agreement**  means the actual or deemed agreement pursuant to which an Eligible Employee enrolls in the Plan in accordance with Article III.

2.15 **Transit Fare**  means a pass, token, fare card, Voucher (as defined herein), or similar item entitling a person to transportation (or transportation at a reduced price) satisfying either of the following conditions:

1. On mass transit facilities, whether or not publicly owned, or
2. Provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle with a seating capacity of at least six adults (excluding the driver).

2.16 **Voucher**  means an instrument (including an electronic payment card) that may be purchased by Employers from a Voucher Provider (as defined herein) that is accepted by one or more mass transit operators (e.g. train, subway, and/or bus) in an area as Transit Fare or in exchange for Transit Fare.

2.17 **Voucher Provider** means any person in the trade or business of selling transit system Vouchers (as defined herein) to Employers. A Voucher Provider includes a transit system operator that sells Vouchers to Employers for direct distribution to Participants. A Voucher Provider does not include a third party administrator that administers a transportation fringe benefit program using Vouchers that the Employer could obtain directly.

ARTICLE III

ELIGIBILITY and PARTICIPATION

3.01 **Eligibility**.  Each Employee who satisfies the “Eligibility Requirements” described in the Plan Information Appendix shall become eligible to participate in the Plan no earlier than the “Eligibility Date” described in the Plan Information Appendix. An Eligible Employee shall become a Participant when he or she satisfies the requirements of Section 3.02 herein.

3.02. **Election of Benefits**.

1. An Eligible Employee may become a Participant by completing and submitting a Salary Reduction Agreement through an on-line process approved by the Plan Administrator whereby the Employee agrees to reduce his or her Compensation by the amount of Eligible Transportation Expenses he or she expects to incur during a future Coverage Period, not to exceed the applicable Monthly Limits set forth in the Plan Information Appendix. The pre-tax compensation reduction may exceed the Monthly Limits set forth in the Plan Information Appendix if the election is for more than one future Coverage Period and the monthly pro-rated election amount does not exceed the applicable Monthly Limits. An amount equal to the elected amount for the Coverage Period divided by the number of pay periods during the Coverage Period will be deducted from each paycheck during the Coverage Period.
2. An eligible Employee may make an election to Participate in accordance with this Section 3.02 at any time after the requirements in Section 3.01 have been satisfied. Such election will be effective no earlier than the first Coverage Period following the date the election to participate is made or the date the Employee first becomes eligible, whichever is later. To the extent set forth in the enrollment material, the Plan Administrator may deem each Eligible Employee who has satisfied the Eligibility Requirements set forth in the Plan Information Appendix to become a Participant in this Plan as of the Eligibility Date set forth in the Plan Information Appendix unless the Employee affirmatively elects not to participate.
3. Such pre-tax salary reductions will continue each Coverage Period unless changed or revoked (prospectively) by the Employee pursuant to Section 3.04 and 3.05 herein.

3.03 **Accounts.**  The Employer will create and maintain a bookkeeping account (“Account”) on behalf of each Participant for one or both of the following types of expenses, to the extent elected by the Eligible Employee in accordance with Section 3.02 herein:

1. Commuter Highway and Transit Fare Expenses; and/or
2. Qualified Parking Expenses

The Account(s) will reflect the accumulated amount of Compensation that has been deducted on a pre-tax basis from the Employee’s Compensation for each such type of expense, as set forth on the Salary Reduction Agreement. The balance of the Account(s) will be reduced by the amount of each Reimbursement made in accordance with the terms of this Plan. Amounts allocated to one Account per the Salary Reduction Agreement [can or cannot] be transferred to the other Account.

**Election Changes.**  A Participant may revoke or change an election at any time pursuant to procedures established by the Plan Administrator. Such revocation or change of election shall not be effective until the first day of the Coverage Period following the Coverage Period during which the election change was made.

3.05 **Termination of Participation**

Participation in this Plan shall terminate on the earliest of the following to occur:

1. the date the Employer terminates the Plan,
2. the date the Participant terminates employment, or
3. the end of the Coverage Period during which the Participant revokes his or her Salary Reduction Agreement in accordance with Section 3.04 herein. Notwithstanding the preceding sentence, a former Participant who has revoked his or her Salary Reduction Agreement but is still an Employee as defined herein may be permitted, to the extent set forth in the Plan Information Appendix, to continue participating until coverage ends as set forth in (a) or (b) above and to receive Reimbursement for Eligible Transportation Expenses incurred after the effective date of the revocation up to the Participant’s Account(s) balance. If permissible, all Reimbursements received for Eligible Transportation Expenses incurred after the effective date of the Salary Reduction Agreement revocation are subject to the terms of this Plan.

For purposes of Transit Fare Expenses provided in the form of a transit pass or Voucher by an Employer, the value of such coverage provided to an Employee for entire month(s) in which the Participant is not an Employee shall be included in the Participant’s gross income for income tax purposes. The same amount shall be excluded from the Participant’s gross income for purposes of reporting unemployment tax unless, prior to the beginning of the Coverage Period during which the Participant’s employment terminated, the effective date of the termination was established to begin prior to the first day of the last month of the Coverage Period.

3.06 **Forfeiture of Unused Amount in Account.**

Any unused amounts in a Participant’s Account(s) that have not been used for Eligible Transportation Expenses incurred prior to the end of any Coverage Period will be carried over to the subsequent Coverage Period. Any amounts in a Participant’s Account(s) that have not been used for Eligible Transportation Expenses incurred before the date the individual ceases to be a Participant in accordance with Section 3.05 shall be forfeited and returned to the Employer to be used in the sole discretion of the Employer.

3.07 **Substantiation of Expenses**.

(a) Where feasible, the Participant must provide written evidence indicating:

(i) the date that the Participant incurred the Expense,

(ii) the amount of such Expense,

1. the date the expense was incurred or paid, and
2. a description of the expense.
3. The information submitted by the Participant may vary depending on the specific facts and circumstances surrounding the expenses, including the method of

payment and the particular transportation method used by the Participant. If written evidence is not available (for example, the expense is for a parking meter), the Plan Administrator may rely on the Participant’s certification regarding the amount, date the expense was incurred, and type of expense unless the Plan Administrator has reason to doubt such Participant’s certification.

(c) All substantiation must be provided to the Plan Administrator within the Substantiation Period set forth in the Plan Information Appendix. No Reimbursement shall be provided for other Eligible Transportation Expenses where the required substantiation is not provided with the Substantiation Period.

(d) For purposes of a transit pass or Voucher purchased in advance by the Employee, the requirements of this Section 3.07 will be satisfied if the Participant presents the transit pass or Voucher to the Plan Administrator at the beginning of the Coverage Period and then certifies that such transit pass or fare card will be used during the Coverage Period. An expense is “incurred” when the services giving rise to such expense have been provided.

(e) If the Participant fails to provide adequate substantiation (where required) and/or fails to provide substantiation within the Substantiation Period set forth in the Plan Information Appendix, the Participant will be required to repay the unsubstantiated Reimbursement (to the extent reimbursement has already been provided). If the Participant fails to repay the unsubstantiated Reimbursement, such amount will be held from the Participant’s Compensation after all applicable taxes have been withheld or, alternatively, no further claims will be paid until the aggregate of all subsequent claims submitted for Reimbursement equals the unsubstantiated Reimbursement.

3.08 **Reimbursement of Expenses**.

1. The Employer will provide Reimbursement of Eligible Transportation Expenses on an administratively convenient periodic basis. The amount of any Reimbursement shall not exceed the lesser of the specific Account balance or the applicable Monthly Limit set forth in the Plan Information Appendix. A Participant may request a Reimbursement in accordance with procedures established by the Employer and described in the Participant’s enrollment material or other communication material. (b) Special Rules for Transit Passes**.** A direct cash reimbursement may not be provided for an Employee’s Transit Fare expenses in the form of a Transit Pass if a Voucher is readily available to the Employer for direct distribution to Participants. A Voucher is readily available if (1) the Employer can obtain the voucher on terms that are no less favorable than the terms available to a Participant directly and (2) the Employer does not incur a significant administrative cost in obtaining the Voucher. An administrative cost will be deemed to be “significant” if the Employer (in its sole discretion) determines that any of the following conditions have been satisfied:
   1. the average annual administrative cost imposed by the Voucher Provider and incurred by the Employer (excluding delivery charges of $15 or less) is more than one percent (1.0%) of the average annual value of the Vouchers for a particular transit system (i.e., train, bus, subway), or
   2. The Voucher Provider imposes one of the following other restrictions that effectively prevent the Employer from obtaining the Vouchers appropriate for distribution to Participants:
   3. Advance Purchase Requirements wherein the Voucher Provider does not offer the Vouchers in regular intervals or fails to provide the Voucher within a reasonable period (as determined by the Employer) after receiving payment for the Voucher. A requirement to purchase Vouchers on a monthly basis is not considered an unreasonable advance purchase requirement;
   4. Purchase Quantity Requirements wherein the Voucher Provider does not offer Vouchers in quantities that are reasonably appropriate (as determined by the Employer) to the number of the Employer’s Employees who use mass transit; or
   5. Limitations on denominations of Vouchers available for distribution wherein the Voucher Provider does not offer Vouchers in denominations that are appropriate (as determined by the Employer) for distribution to the Participants.

(b) Special Valuation Rule for Van Pools. If a Participant incurs or pays an expense in a Commuter Highway Vehicle that is a car or vanpool, the value of such expense shall be determined in accordance with Treas. Reg. 1.132-9, Q-21.

ARTICLE IV

ADMINISTRATION

4.01 **Plan Administrator**. The Plan Administrator of the Plan shall be identified in the Plan Information Appendix.

4.02 **Powers and Duties of the Plan Administrator**. The Plan Administrator shall have exclusive responsibility for, and all powers necessary or desirable to carry out, the administration of the Plan and, without limitation on the foregoing, shall have complete discretionary power and authority to:

(a) Adopt any rules and regulations it deems desirable for the conduct of its affairs and the administration of the Plan;

(b) Take any action it deems necessary or appropriate to comply with any requirements of applicable law with respect to notice and disclosure and the preparation and filing of reports and forms, if necessary;

(c) Construe and interpret the Plan and make determinations (including factual determinations) under the provisions of the Plan with respect to all rights, benefits, duties and entitlements, including but not limited to eligibility for benefits, amounts of benefits payable, and all other matters pertaining to the operation and administration of the Plan, all of which determinations are to be made in the Plan Administrator’s sole discretion;

(d) Appoint or employ persons to assist in the administration of the Plan (such as the Benefit Administrator); and

(e) Make any equitable adjustments to correct any error or omission discovered in the administration of the Plan.

4.03 **Indemnification**. The Employer and each Affiliated Employer shall indemnify and hold harmless the Benefit Administrator and the Plan Administrator from and against any liability, loss, cost or expense arising from any action or inaction by such parties in connection with their responsibilities under the Plan.

ARTICLE V

AMENDMENT AND TERMINATION

The Employer may at any time (1) amend the Plan contained in this document in any manner it deems advisable, (2) terminate or limit the Plan contained in this document, or (3) terminate or limit the participation in the Plan by any Affiliated Employer, effective as of the date specified in the instrument of amendment or termination. Such amendments may be retroactive to the extent deemed appropriate by the Employer and may be made in contemplation of, or with specific reference to, a particular transaction, job elimination, reduction in force, or similar event.

ARTICLE VI

MISCELLANEOUS

6.01 **Right to Assets**. Neither the establishment of the Plan nor the payment of benefits under the Plan shall be construed as giving any legal or equitable right to any Eligible Employee, former Eligible Employee or Participant against the Employer or its officers or employees except as expressly provided herein, and all rights under any Plan shall be satisfied, if at all, only out of the general assets of the Employer.

6.02 **No Inducement, Contract or Guarantee of Employment**. The Plan does not constitute inducement or consideration for the employment of any Eligible Employee, nor is it a contract between any Employer and Eligible Employee. Participation in the Plan shall not give any Eligible Employee any right to continued employment with his Employer, and the Employer retains the right to hire and discharge any Eligible Employee at any time, with or without cause, as if the Plan had never been adopted.

6.03 **Spendthrift**. Except as permitted by law and this section, no assignment of any rights or benefits arising under the Plan shall be permitted or recognized. The Employer shall not be liable for or subject to the debts, contracts, liabilities, or torts of any person entitled to benefits under this Plan.

6.04 **Conclusiveness of Records**. The Employer’s records with respect to an Employee’s age, service, employment history, employment termination, compensation, absences, illnesses and all other relevant matters shall be conclusive for purposes of the administration of the Plan.

6.05 **Payment of Administration Expenses**. The Employer and, to the extent deemed appropriate by the Plan Administrator, the Adopting Employers, shall pay all the expenses of administration of the Plan and the expenses of the Plan Administrator, and any other expenses incurred at the direction of the Plan Administrator.

6.06 **Governing Law**. The Plan shall be governed, construed, administered and regulated in all respects under the rules and regulations of the Internal Revenue Code and the laws of Wisconsin.

6.07 **Right to Require Information and Reliance Thereon**.  The Plan Administrator shall have the right to require Eligible Employees and/or Participants to provide the Plan Administrator or its agents with such information, in writing, and in such form as it may deem necessary to the administration of the Plan, and such parties may rely on that information in carrying out their duties hereunder.

6.08 **Construction**. One gender includes the other, and the singular and plural include each other when the meaning would be appropriate. The Plan’s headings and subheadings have been inserted for convenience of reference only and must be ignored in any construction of the provisions. If a provision of this Plan is illegal or invalid, that illegality

or invalidity does not affect other provisions. Any term with an initial capital not expected by capitalization rules is a defined term according to Article II.

6.09 **Notification of Employees**. The Employer shall communicate in writing the terms and conditions of the Plan to all Eligible Employees.

6.10 **Taxability of Benefits**. The Employer makes no guarantee as to the excludability of benefits under this Plan from federal, state, or local taxes, and it shall be the Employee’s sole responsibility to pay any taxes due as a result of the payment of benefits hereunder.

**PLAN INFORMATION APPENDIX**

This Plan Information Appendix provides information specific to the State of Wisconsin Commuter Benefits Plan. It is hereby incorporated into by reference and made a part of the Plan Document.

This Plan Information Appendix is effective beginning January 1st, 2014. This version supersedes all prior Plan Information Appendices with an earlier effective date.

**I. EMPLOYER/PLAN SPONSOR INFORMATION**

|  |  |
| --- | --- |
| 1. Name, address, and telephone number of the Employer/Plan Sponsor: | STATE OF WISCONSIN  Department of Employee Trust Funds  801 West Badger Road  Madison, WI 53713-2526  608-266-2640  608-267-0633 (F) |
|  |  |
| 2. Name, address, and telephone number of the Plan Administrator: | Same as Employer |
|  |  |
| 3. Employer’s federal tax identification number: | N/A |
|  |  |
| 4. Effective Date of the Plan: | January 1, 2001 |
|  |  |
| 5. Adopting Employers participating in the Plan: | 1.N/A  2.N/A |
| 6. Benefit Administrator | WageWorks (WW) |

**II. ELIGIBILITY**

All State employees, including limited term employees, are eligible to participate. Spouses and dependent children are not eligible, nor is any employee eligible who is enrolled in a State of Wisconsin pre-tax transit, vanpool or parking program. The Employee’s commencement of participation in the Plan is conditioned on the Employee properly completing and submitting a Salary Reduction Agreement through an on-line process as set forth in Section 3.02 herein.

**EXPENSES INCURRED AFTER REVOCATION OF ELECTION**

Expenses incurred after the effective date of a Participant’s revocation of participation in this Plan may or may not be reimbursed in accordance with the terms of the Plan.

**IV. COVERAGE PERIOD**

The Coverage Period for which an Election is effective is monthly.

**V. MONTHLY LIMITS**

Reimbursement of Eligible Transportation Expenses each month is limited to the lesser of the applicable Account Balance or the following (to the extent elected by the Participant):

1. For Commuter Highway Vehicles and Transit Passes, the monthly limitation set forth in Treasury Reg. 1.132-9(b), Q/A 7(a), as indexed for inflation, or, if lesser, $130/month transit or vanpool and $250/month parking.

2. For Qualified Parking the monthly limitation set forth in Treasury Reg. 1.132-9(b), Q/A 7(b), as indexed for inflation, or, if lesser, $250/month parking.

**VII. SUBSTANTIATION PERIOD**

All required substantiation must be provided within 180 days after the date the claim is incurred or paid by the Participant.

ADOPTION OF PLAN

As witness whereof, the Plan shall be adopted effective as set forth below.

**STATE OF WISCONSIN**

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

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

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