

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** (“**AGREEMENT**”) is made this 17th day of January, 2025 by and among the Commonwealth of Massachusetts (including any department, agency, or administrative body therein and together with any affiliates and assignees, “**MA**”), and the United States Department of Labor (“**DOL**”), hereinafter referred to together as the “**Parties**,” or individually as “**Party**.”

RECITALS

WHEREAS, Congress enacted a series of new temporary unemployment compensation (UC) programs under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as amended, as well as allowed federal funding for Extended Benefits under the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) (collectively “Pandemic UC programs”), to be administered by the states along with regular unemployment insurance (UI).

WHEREAS, MA signed an agreement with DOL to administer the CARES Act UC programs (attached as Appendix I), referred to here as the “CARES Act Agreement,” and UI base program annual funding agreement(s), which covered the Extended Benefits (EB) program.

WHEREAS, MA, like other states, experienced challenges implementing the new federal programs during the COVID-19 pandemic while also trying to ensure the timely payment of benefits to an unprecedented number of claimants.

WHEREAS, MA was responsible for managing and drawing down funds from the appropriate Pandemic UC funding source or the state account in the Unemployment Trust Fund (UTF), based on the type and amount of each claim.

WHEREAS, MA created five subaccounts in the State’s Benefit Payment Account (BPA) in 2020 and 2021 to account for the federal funds but did not regularly reconcile them.

WHEREAS, MA used Pandemic UC funds to pay regular UI benefits.

WHEREAS, in 2021, MA hired an independent auditor, KPMG, to review its financial records. KPMG found that MA did not redeposit into the correct accounts returned payments or payments identified as fraudulent claims returned by the Payee bank to MA’s BPA. Despite a comprehensive financial review of MA’s UTF, KPMG did not identify any other amounts overdrawn from Pandemic UC funds.

WHEREAS, MA’s Annual Comprehensive Financial Report (ACFR) for FY 2021 was

consistent with KPMG's findings,

WHEREAS, MA's FY 2022 ACFR identified an estimated \$2.491 billion total overdraw from the Pandemic UC Funds and MA's FY 2023 ACFR identified an estimated \$2.499 billion total overdraw.

WHEREAS, DOL performed a desk monitoring review that took place July 10-14, 2023, and an on-site monitoring review September 25-28, 2023, followed by extensive discussions, document reviews, corrective actions and related approvals regarding MA's improved internal controls, processes, and system improvements. Based on the FY 2022 and 2023 ACFRs, the state FY 2022 Single Audit and DOL's independent review, DOL initially concluded that MA overdrew approximately \$2.499 billion in Pandemic UC funds.

WHEREAS, on August 2, 2024, DOL issued a "Monitoring Report" to MA, which contained a timeline and initial recitation of facts as provided by DOL, followed by a collaborative review process wherein MA demonstrated enhanced internal controls and operational improvements that DOL deemed satisfactory.

WHEREAS, MA provided a letter from their Comptroller General (Appendix II) stating CLA "did not consider as part of the federal overdraw liability the first compensable week program" and that "CLA's federal overdraw liability view did not consider whether EOLWD requested and/or received federal reimbursement of claims for reimbursable employers."

WHEREAS, MA provided evidence that the ACFRs did not account for approximately \$178,898,037.60 in federally reimbursable Unemployment benefits under section 2103 of the CARES Act (Pub. L. 116-136) and DOL reviewed the evidence and concurred.

WHEREAS, MA provided evidence that the ACFRs did not account for \$285,928,127 that was properly spent as payments under the federally-funded first week of unemployment program under section 2105 of the CARES Act (Pub. L 116-136) and DOL reviewed the evidence and concurred.

WHEREAS, the sum of the \$285,928,127 figure and the \$178,898,037.60 figure--\$464,826,164.60--is referred to in this Agreement as the "Properly Spent Funds."

WHEREAS, consistent with Appendix II, MA and DOL understand that the outcome of this Agreement will be reflected in the Commonwealth's financial statements going forward.

WHEREAS, DOL acknowledges that it has reviewed the information in MA's possession concerning the amounts spent, the amounts identified in the ACFRs, and MA's methodology for calculating the Properly Spent Funds.

WHEREAS, DOL and MA agree that MA owes \$2,034,173,835.40 in principal debt plus \$73,121,219.00 in back interest for a total amount owed of \$2,107,295,054.40.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual consideration set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

DEFINITIONS

1. "ACFR" means MA's Annual Comprehensive Financial Report.
2. "Annual Interest Payment" means the annual payment equal to the sum of: (i) accrued interest computed on the average daily balance of the Settlement Amount Part A during the accrual period multiplied by the Interest Rate, divided by the number of days over which interest accrued and (ii) one ninth of Settlement Amount Part B; provided that interest applicable to Settlement Amount Part A under clause (i) shall commence as of the Effective Date of this Agreement, but shall not be payable until the first Annual Interest Payment Date.
3. "Annual Interest Payment Date" shall mean each December 1, or if December 1 is not a Business Day, then the next succeeding Business Day, starting on December 1, 2026, until repayment in full of the Settlement Amount.
4. "Business Day" means a calendar day on which MA is legally open for business, not including any Saturday, Sunday, federal legal public holiday, and any legal holiday under the laws of the Commonwealth of Massachusetts.
5. "Covered Claims" means any and all known claims, demands, or causes of action, arising from or related to alleged excess withdrawals of Pandemic UC funds/funding by MA during FY2020 to FY2023, including the excess withdrawals identified in the 2022 ACFR and the 2023 ACFR.
6. "Interest Rate" means the agreed upon rate of interest to be paid by MA on Settlement Amount Part A which shall be 3.1227% per annum.
7. "Pandemic UC funds/funding" means federal funds transferred to MA for Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation

(PEUC), and Federal Pandemic Unemployment Compensation (FPUC). These funds were authorized under the “CARES Act UC Benefit programs” established in Pub. L. 116–136. CARES Act UC Benefits under Section 2102 and 2107 and are available to individuals who were ineligible to receive Regular UC benefits. See PL 116-136 Sections 2102(a)(3)(A), and 2107(a)(3). “Pandemic UC funds/funding” also includes funds provided to MA to pay benefits under the EB program, as authorized by Section 4105 of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) Pub. L. 116–127.

8. “Payment Date” means the Settlement Installment Payment Date, with respect to the Settlement Amount and the Annual Interest Payment Date with respect to Annual interest, provided that every Payment Date shall be a Business Day.
9. “Payment Default” has the meaning set forth in Paragraph 5(a) (“Payment Default”).
10. “Settlement Amount₂” means the sum of Settlement Amount Part A and Settlement Amount Part B.
11. “Settlement Amount Part A” means the amount, or outstanding amount, agreed upon by the Parties as the amount of Pandemic UC funds owed to the Department equaling \$2,034,173,835.40.
12. “Settlement Amount Part B”, means the amount agreed upon by the Parties to resolve additional administrative charges related to the Covered Claims equaling \$73,121,219.00.

AGREEMENT

1. Promise to Pay. MA shall pay DOL the Settlement Amount in full satisfaction of the Covered Claims, MA’s obligations to DOL for improper withdrawals of the Pandemic UC program funds described in this Agreement, all associated administrative charges as of the date of the Agreement, and interest accrued according to the terms of the Agreement.
2. Payment Schedule and Terms. Payment of the Settlement Amount and Interest shall be as follows:
 - a. Payment of Settlement Amount Part A.
 - i. The Settlement Amount Part A shall be payable in annual installments, each a “Settlement Installment Payment.”
 - ii. Each Settlement Amount Part A Installment Payment shall be due and payable on December 1, or the first Business Day following December 1,

- beginning December 1, 2025, each a “Settlement Installment Payment Date”, as set forth in the attached Schedule A, unless prepaid, forgiven, waived, amended or otherwise reduced in writing by the Parties.
- iii. The Settlement Amount Part A, including each Settlement Amount Part A Installment Payment, shall be paid from the state account in the UTF.
- b. Annual Interest Payment.
- i. An Annual Interest Payment shall be due and payable annually on each Annual Interest Payment Date, beginning December 1, 2026, and ending on the earlier of: (i) December 1, 2034, or (ii) the payment in full of the Settlement Amount (both Part A and Part B). The interest payable under this Agreement shall not compound.
 - ii. A specimen schedule of interest due on each Annual Interest Payment Date is attached hereto as Schedule A. However, if the Settlement Amount is prepaid, forgiven, waived, amended or otherwise reduced in writing, the Settlement Amount and any interest calculated thereon shall be reduced accordingly.
- c. All payments on the Settlement Amount and interest shall be made by MA to the U.S. DOL Office of the Chief Financial Officer following the manner of payment to be arranged between the Parties within 30 Business Days of the Effective Date of this Agreement.
- d. There shall be no penalty for prepayment of any Settlement Amount or interest. Any prepayments of the Settlement Amount, or any portion thereof, will be applied ratably to the outstanding Settlement Amount to reduce the remaining Settlement Installment Payments, unless otherwise agreed in writing by the Parties. Any amount of Settlement Amount Part A that is prepaid, forgiven, waived, amended or otherwise reduced in writing, shall no longer be outstanding and shall cease to bear interest from the date of such prepayment, forgiveness, waiver, amendment or reduction.
3. Release of MA. Upon DOL’s receipt of payment in full of all amounts due under the terms of this Agreement, including the receipt of any late fees, interest, or other applicable administrative expenses, DOL releases MA, and its current and former agencies, officers, agents, and employees, as of the date of the receipt of the final payment, of any and all Covered Claims. Notwithstanding anything to the contrary, the following claims, demands, and causes of action of the United States are specifically reserved and are not released: (i) any claim, demand, or cause of action of any agency of the United States other than DOL; (ii) any civil, criminal or administrative action under Title 26 of the United States Code (the Internal Revenue Code); (iii) any criminal proceeding; (iv) any civil or administrative action for false

or fraudulent claims arising under common law or the U.S. Code, including under subchapter III of chapter 37 of Title 31 of the United States Code; (v) any claims for fraud or antitrust violations; (vi) any claim for personal injury, property, or liability to third parties; or (vii) any action for suspension and debarment from procurement or other federal covered transactions, or for exclusion from federal programs, by any federal agency.

4. Release of the United States. Upon DOL's receipt of payment in full of all amounts due under the terms of this Agreement, MA hereby fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that MA has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Claims.
5. Default. The following shall constitute an event of default under this Agreement:
 - a. *Payment Default.* MA fails to make a Settlement Installment Payment on the applicable Settlement Installment Payment Date or fails to make an Interest payment on the Annual Interest Payment Date.
 - b. *Other Default.* MA fails to comply with any other material term, obligation, covenant or condition contained in this Agreement.
 - c. *False Statements.* Any knowingly false or misleading warranty, representation, or statement made to DOL by MA (including through its counsel) related to this Agreement.
6. Payment Default – Cure/Penalties.
 - a. *Cure of Payment Default.* In the event of a Payment Default, MA may cure the default by paying the Settlement Installment Payment and, if applicable, the Annual Interest Payment then due and payable within fifteen (15) calendar days of the missed payment. This Cure Provision shall not apply if MA was given notice of another event of a default (including a Payment Default) within the preceding twelve (12) months.
 - b. *Penalties for Payment Default.* In the event of a Payment Default that is continuing for more than (15) calendar days, DOL in its sole discretion may apply the following penalties, provided that DOL shall provide five (5) Business Days advance notice to MA prior to the application of any penalty under this section:
 - i. **Late Fee.** A late fee equal to \$52,000 shall be added to the amount of the next quarterly Settlement Installment Payment.

- ii. **Penalty Rate.** The Interest Rate shall no longer apply to the outstanding balance of the Settlement Amount, and Interest shall be payable at the rate established by the Secretary of the Treasury, for the period affected, under 31 U.S.C. § 3717, until the Payment Default is cured by MA or otherwise waived or agreed by the Parties.
- iii. **All Penalties.** DOL reserves the right to charge all applicable penalties and fees set forth under federal law.
- iv. **Administrative Costs.** DOL reserves the right to recover any reasonable administrative costs incurred as a result of the Payment Default.
- v. **Acceleration.** In the event of a Payment Default that occurs and is continuing for fifteen (15) calendar days, the total outstanding Settlement Amount, plus any applicable costs and interest, less any prior payments made under this Agreement, may at DOL's discretion, become due and payable immediately upon notice by DOL, unless otherwise waived or agreed by the Parties.
- c. *Reservation of Rights.* DOL reserves all rights, including but not limited to the right to use non-centralized administrative offset, to collect any overdue payments plus any additional administrative expenses, as appropriate, and the right to transfer the overdue payments to the U.S. Department of the Treasury and/or U.S. Department of Justice for collection.
- d. *Other Penalties or Fees.* Except as expressly specified in this Agreement, DOL will not assess penalties or administrative fees related to the Covered Claims.

7. Non-Payment Defaults.

- a. *Cure of Non-Payment Defaults.* In the event of a default by MA, other than a Payment Default, MA may cure the default by: 1) returning to compliance with the Agreement within fifteen (15) calendar days of being notified by DOL of the default, or 2) immediately initiating steps which DOL deems, in DOL's sole discretion, to be sufficient to cure the default and thereafter MA continues and completes all reasonable and necessary steps sufficient to remedy the default as soon as reasonably practicable.
- b. This Cure Provision for non-Payment Defaults shall not apply if MA was given notice of another event of default (including Payment Default) within the preceding twelve (12) months.
- c. *Consultation Period for Uncured Non-Payment Defaults.* In the event of a default by MA, other than a Payment Default, which DOL determines has not been cured by MA in accordance with section 7.a above, DOL will so notify MA and thereupon the parties agree to enter into a 60-calendar day period of good faith consultations with the goal of reaching agreement on the actions MA will

take to return to compliance or otherwise remedy the default. The parties may mutually agree to extend this period of good faith consultation.

- d. *Remedy for Unresolved Default.* In the event that a non-Payment Default by MA is not cured according to section 7.a and has not been remedied or otherwise resolved by mutual agreement following the consultation period described in section 7.c, DOL reserves all rights to seek recovery for MA's default, including damages, fees, and costs arising from the default, and to pursue any and all causes of action and claims available under law, to include administrative remedies, collection actions, cancellation, or termination of the Agreement for cause, in its sole discretion and as DOL deems necessary and appropriate.
8. Waiver of Defenses for Payment Default. In the event of a Payment Default that occurs and is continuing for fifteen (15) calendar days, MA waives and agrees not to plead, argue, or otherwise raise any defenses including statute of limitations, laches, estoppel or similar theories; and agrees not to contest any collection action undertaken by the United States pursuant to this Agreement, and immediately pay the United States all reasonable costs incurred in such action, including attorney fees and expenses.
9. Interpretation; Construction. This Agreement shall be considered neutrally in accordance with its plain meaning, rather than in favor or against any Party, inasmuch as all Parties have been represented by counsel, a consultant, or other knowledgeable business representative, each of whom has had a full opportunity to be heard. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.
10. Incorporation of Recitals. The recitals set out herein are fully incorporated into this Agreement.
11. Integration, Severability. This Agreement is entered into by each of the Parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. If any portions of this Agreement are held invalid and unenforceable, all remaining portions shall nevertheless remain valid and enforceable, to the extent they can be given effect without the invalid portions.
12. No Third-Party Beneficiaries. This Agreement is intended for the benefit of the Parties and is not for the benefit of any other party.

13. Governing Law. This Agreement is governed by the federal laws of the United States.
14. Authority to Bind the Parties. The individuals signing this Agreement represent that they have the authority to bind the respective Parties concerning this Agreement.
15. Non-Assignment. A Party's rights under this Agreement may not be assigned without the express advance written consent of the other Party, which consent may be given only in accordance with applicable law and regulation.
16. Additional Representations. The undersigned, on behalf of MA and DOL respectively, declare and represent that they fully understand the terms of this Agreement and voluntarily enter into the same. Each Party further represents that it has been independently represented by a representative of its own choice and that it has made an adequate investigation into the facts and claims giving rise to this Agreement.
17. Survival. The rights and obligations of the Parties under the provisions of this Agreement, which by their context, intent and meaning would reasonably be expected to survive the termination or expiration of this Agreement, or any part thereof, shall so survive.
18. Waiver of Rights. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein by law or in equity.
19. Multiple Counterparts. This Agreement and any other documents to be delivered pursuant to this Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement. Each Party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this Agreement or any other document contemplated hereby, bearing an original manual or electronic signature by facsimile transmission (including a facsimile delivered via the Internet), by electronic mail in "portable document format" (".pdf") or similar format intended to preserve the original graphic and pictorial appearance of a document, or through the use of electronic signature software will have the same effect as physical delivery of the

paper document bearing an original signature.

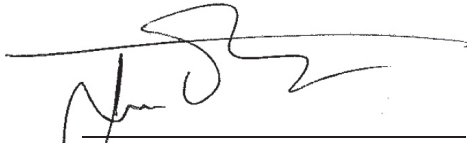
20. Headings. The headings in this Agreement are for the convenience of the Parties only and shall not limit, expand, modify, amplify, or aid in the interpretation or construction of this document.
21. Time is of the Essence. Time is of the essence with all dates set forth in this Agreement.
22. Unallowable Costs. MA agrees that all costs (as defined by 2 C.F.R. Part 200) incurred by or on behalf of MA and its officers, directors, agents and employees in connection with the matters covered by this Agreement and implementation thereof shall be unallowable costs for government accounting purposes. These unallowable costs will be separately estimated and accounted for by MA. MA will not charge such unallowable costs directly or indirectly to any grant or contract with the United States.
23. No Admission of Liability. This Agreement does not constitute an admission of liability by either Party and may not be used in any other proceeding other than to enforce its own terms.
24. Ambiguity. The Parties agree that they jointly have agreed to the terms and language used herein and that no ambiguity will be construed against any Party for having drafted this Agreement. The Parties have participated in the drafting and negotiation of this Agreement, and, for all purposes, this Agreement shall be deemed to have been drafted by each of the Parties.
25. Entire Agreement. This Agreement, the appendices hereto, Schedule A, and any documents expressly incorporated herein, constitute the entire agreement between the Parties with respect to the subject matter addressed herein and supersedes any and all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.
26. Modification. This Agreement may only be changed, modified, or amended by written document agreed to and executed by the Parties. The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give prompt and full force and effect to the terms and intent of this Agreement.

27. Effective Date. The Effective Date of this Agreement shall be the date that the last Party to execute the Agreement does so.

IN WITNESS WHEREOF, the Parties execute this Agreement on the dates stated below.
**[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURES ON
FOLLOWING PAGE]**

AGREED TO:

FOR: The Commonwealth of Massachusetts



Jesse M. Boodoo
Deputy Chief Legal Counsel

Massachusetts Governor's Office

Dated: January 17, 2025

FOR: THE UNITED STATES DEPARTMENT OF LABOR:

LENITA JACOBS-
SIMMONS



Digitally signed by LENITA
JACOBS-SIMMONS
Date: 2025.01.17 17:58:02
-05'00'

Lenita Jacobs-Simmons
Deputy Assistant Secretary,
Employment and Training Administration
U.S. Department of Labor

Dated: 1/17/25

Listing of Schedules & Appendices

Schedules

Schedule A: Schedule of Payments

Appendices

Appendix I Coronavirus Aid, Relief, and Economic Security (CARES) Act Agreement
between DOL and Massachusetts

Appendix II Commonwealth of Massachusetts Office of the Comptroller letter to U.S.
Department of Labor, December 23, 2024

Schedule A – Payment Schedule

<u>Payment Date*</u>	<u>Settlement Installment Payments</u>	<u>Annual Interest Payment</u>	<u>Total Payment</u>
December 1, 2025	\$203,417,383.54	-	\$203,417,383.54
December 1, 2026	203,417,383.54	\$70,862,588.82	282,404,552.25
December 1, 2027	203,417,383.54	64,510,474.19	276,052,437.62
December 1, 2028	203,417,383.54	58,158,359.55	269,700,322.98
December 1, 2029	203,417,383.54	51,806,244.91	263,348,208.34
December 1, 2030	203,417,383.54	45,454,130.28	256,996,093.71
December 1, 2031	203,417,383.54	39,102,015.64	250,643,979.07
December 1, 2032	203,417,383.54	32,749,901.01	244,291,864.44
December 1, 2033	203,417,383.54	26,397,786.37	237,939,749.80
December 1, 2034	<u>203,417,383.54</u>	<u>20,045,671.78</u>	<u>231,587,635.21</u>
Total	\$2,034,173,835.40	\$409,087,172.54	\$2,443,261,007.94

**If December 1 is not a Business Day, payment is due on the next succeeding Business Day.*

Agreement Implementing the
Relief for Workers Affected by Coronavirus Act

AGREEMENT BETWEEN
THE STATE OF MASSACHUSETTS
AND
THE SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR

The Secretary of Labor, U.S. Department of Labor, and the State of Massachusetts, in order to carry out the provisions of the Relief for Workers Affected by Coronavirus Act (Public Law 116-136), hereinafter referred to as the "Act," hereby agree as follows:

I. The Massachusetts State Workforce Agency, hereinafter referred to as the "Agency," will make payments of benefits in accordance with the provisions of the Act identified in paragraph XIV, and any future amendments thereto (which are incorporated herein by reference), and will cooperate with the U.S. Department of Labor (Department of Labor), and with other state agencies in making such payments.

II. The Agency and other state officials concerned will perform all of the functions and duties undertaken pursuant to the provisions of the Act identified in paragraph XIV in accordance with the terms of this Agreement, and all guidance or operating instructions issued by the Department of Labor.

III. This Agreement will immediately terminate with respect to any of the provisions of the Act identified in paragraph XIV and no further benefits will be payable under such provision or provisions of the Act identified in paragraph XIV, upon the Department of Labor's determination that the state did not comply with all of the requirements of such provision or provisions of the Act identified in paragraph XIV, or any applicable guidance or operating instructions issued by the Department of Labor.

IV. The Agency will maintain such records pertaining to the administration of each provision of the Act identified in paragraph XIV as the Department of Labor requires, and will make all such records available for inspection, examination, and audit by such federal officials or employees as the Department of Labor may designate or as may be required by law.

V. The Agency will furnish to the Department of Labor such information and reports as the Department of Labor determines are necessary or appropriate for carrying out the purposes of the provisions of the Act identified in paragraph XIV

VI. Payments to States.

- A. The Agency will be paid from time to time, in advance, the amount of the estimated cost of the benefits to be paid or reimbursed the amount of benefits already paid by the Agency under this Agreement regarding the provisions of the Act identified in paragraph XIV. This amount may be reduced or increased by any amount which the Secretary of Labor finds that the prior estimate for any calendar month was greater or less than the amount which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Department of Labor and the Agency.
- B. The Agency also will be paid, from funds appropriated for such purpose, the amounts the Department of Labor determines to be necessary in the state for the proper and efficient administration of the provisions of the Act identified in paragraph XIV under this Agreement.

VII. The Agency will use all money paid to the state pursuant to this agreement for the payment of benefits, and related administrative costs, for the purpose for which the money was paid to the state, and will return to the United States Treasury, upon request of the Department of Labor, any such money (a) if the Department of Labor finds that the money is not needed for such purpose or that the money has been used for a purpose other than that for which it was paid, or (b) on termination of this Agreement. The "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 apply to funds distributed under this Agreement. Additionally, the Notice of Award issued will include other terms and conditions that may be applicable to these grants.

VIII. Consistent with the requirements of the provisions identified in paragraph XIV, and the related addenda, the Agency will take such action as reasonably may be necessary to recover for the account of the United States all benefit amounts erroneously paid and restore any lost or misapplied funds paid to the state for benefits or the administration of this Agreement.

IX. To the extent that agencies of the state obtain bonds to protect funds of the state, the Agency will obtain bonds to protect funds made available to it for the payment of benefits and the costs of administration of this Agreement. The pro rata cost of such bonds shall be considered a necessary cost of the administration. If under state law the

Addendum No. 1
Pandemic Unemployment Assistance

The state of Massachusetts agrees to follow the requirements of section 2102 of the Relief for Workers Affected by Coronavirus Act, including the following:

- I. For purposes of administering Pandemic Unemployment Assistance, except where contrary to the statute or operating instructions or guidance, the state will administer the program in accordance with the Disaster Unemployment Assistance regulations at 20 CFR Part 625, including follow the provisions for fraud and overpayments.
- II. Pandemic Unemployment Assistance is payable for weeks of unemployment beginning on January 27, 2020.

Addendum No. 2
Emergency Increase in Unemployment Compensation Benefits –
Federal Pandemic Unemployment Compensation

The state of Massachusetts agrees to follow the requirements of section 2104 of the Relief for Workers Affected by Coronavirus Act, including the following:

- I. Federal Pandemic Unemployment Compensation – The state agrees to make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the state law were applied, with respect to any week for which the individual is otherwise entitled under the state law to receive regular compensation, as if such state law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week is equal to the amount determined under state law plus an additional amount of \$600.
- II. Allowable Methods of Payment – Any Federal Pandemic Unemployment Compensation shall be payable either—as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or made separately from, but on the same weekly basis as, any regular compensation otherwise payable.
- III. Non-reduction Rule – The state will not modify its state law, regulations, or policies in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount, of regular compensation which will be payable during the period of the agreement (determined disregarding any Federal Pandemic Unemployment Compensation) will be less than the number of weeks, or the average weekly benefit amount, of the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the state law, as in effect on January 1, 2020.
 - a. For purposes of this provision, maximum benefit entitlement means the amount of regular unemployment compensation payable to an individual with respect to the individual's benefit year.
- IV. Fraud and Overpayments – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal Pandemic Unemployment Compensation to which such individual was not entitled, such individual—
 - a. Shall be ineligible for further Federal Pandemic Unemployment Compensation in accordance with the provisions of the applicable state unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

b. Shall be subject to prosecution under section 1001 of title 18, United States Code.

V. Repayment – In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the state shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the state agency, except that the state agency may waive such repayment if it determines that –

a. The payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

b. Such repayment would be contrary to equity and good conscience.

VI. Recovery by State Agency – The state agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any state or Federal unemployment compensation law administered by the state agency or under any other state or Federal law administered by the state agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the state.

VII. Opportunity for Hearing – No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

VIII. Review – Any determination by a state agency under this addendum shall be subject to review in the same manner and to the same extent as determinations under the state unemployment compensation law, and only in that manner and to that extent.

Addendum No. 3
Temporary Full Federal Funding of the First Week of Compensable Regular
Unemployment for States with No Waiting Week

The state of Massachusetts agrees to follow the requirements of section 2105 of the Relief for Workers Affected by Coronavirus Act, including the following:

- I. **Fraud and Overpayments** – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment for the waiting week to which such individual was not entitled, such individual shall be subject to prosecution under section 1001 of title 18, United States Code.
- II. **Repayment** – In the case of individuals who have received payment for the waiting week to which they were not entitled, the state shall require such individuals to repay the waiting week payment to the state agency, except that the state agency may waive such repayment if it determines that –
 - a. The payment of such waiting week amounts was without fault on the part of any such individual; and
 - b. Such repayment would be contrary to equity and good conscience.
- III. **Recovery by State Agency** – The state agency shall recover the amount to be repaid, or any part thereof, by deductions from any unemployment compensation payable to such individual under any state or Federal unemployment compensation law administered by the state agency or under any other state or Federal law administered by the state agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the waiting week to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the state.
- IV. **Opportunity for Hearing** – No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.
- V. **Review** – Any determination by a state agency under this addendum shall be subject to review in the same manner and to the same extent as determinations under the state unemployment compensation law, and only in that manner and to that extent.

Addendum No. 4
Pandemic Emergency Unemployment Compensation

The state of Massachusetts agrees to follow the requirements of section 2107 of the Relief for Workers Affected by Coronavirus Act, including the following:

- I. The state will make payments of Pandemic Emergency Unemployment Compensation to individuals who –
 - a. Have exhausted all rights to regular compensation under the state law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);
 - b. Have no rights to regular compensation with respect to a week under such law or any other state unemployment compensation law or to compensation under any other Federal law;
 - c. Are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and
 - d. Are able to work, available to work, and actively seeking work.
- II. For purposes of I.a., an individual has exhausted all rights to regular compensation under a state law when –
 - a. No payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or
 - b. Such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.
- III. For purposes of section I.d., the term actively seeking work means that an individual –
 - a. Is registered for employment services in such a manner and to such extent as prescribed by the state agency;
 - b. Has engaged in an active search for employment that is appropriate in light of the employment available in the labor market, the individual's skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the state;
 - c. Has maintained a record of such work search, including employers contacted, method of contact, and date contacted; and
 - d. When requested, has provided such work search record to the state agency.

- IV. Flexibility – The state will provide flexibility in meeting the requirement in III. if an individual is unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.
- V. Non-reduction Rule – The state will not modify its state law, regulations, or policies in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount, of regular compensation which will be payable during the period of the agreement will be less than the number of weeks, or the average weekly benefit amount, of the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the state law, as in effect on January 1, 2020.
- a. For purposes of this provision, maximum benefit entitlement means the amount of regular unemployment compensation payable to an individual with respect to the individual's benefit year.
- VI. Fraud and Overpayments – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Pandemic Emergency Unemployment Compensation to which such individual was not entitled, such individual—
- a. Shall be ineligible for further Pandemic Emergency Unemployment Compensation in accordance with the provisions of the applicable state unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and
- b. Shall be subject to prosecution under section 1001 of title 18, United States Code.
- VII. Repayment –In the case of individuals who have received amounts of Pandemic Emergency Unemployment Compensation to which they were not entitled, the state shall require such individuals to repay the amounts of Pandemic Emergency Unemployment Compensation to the state agency, except that the state agency may waive such repayment if it determines that –
- a. The payment of such Pandemic Emergency Unemployment Compensation was without fault on the part of any such individual; and
- b. Such repayment would be contrary to equity and good conscience.
- VIII. Recovery by State Agency – The state agency shall recover the amount to be repaid, or any part thereof, by deductions from any Pandemic Emergency Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any state or Federal unemployment compensation law administered by the state agency or under any other state or Federal law administered by the state agency which provides for the payment of any assistance or allowance with

respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the state.

- IX. Opportunity for Hearing – No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.
- X. Review – Any determination by a state agency under this addendum shall be subject to review in the same manner and to the same extent as determinations under the state unemployment compensation law, and only in that manner and to that extent.

John P. Pallasch 3/27/20
John P. Pallasch Date

Assistant Secretary for
Employment and Training

U.S. Department of Labor

By [Signature] 3/28/20
(State Signatory) Date

Director
(Title)

DATE: 3/28/20

For the State of: Massachusetts

CERTIFICATION OF AUTHORITY

NAME: _____

TITLE: _____

I hereby certify that the above-named person has the authority under the Constitution and laws of this state to sign this Agreement on behalf of the state.

Signature

Title

Date

Commonwealth of Massachusetts

OFFICE OF THE COMPTROLLER

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WILLIAM MCNAMARA
COMPTROLLER



December 23, 2024

Jonathan Hammer
Counsel for Unemployment Programs
Department of Labor, Office of the Solicitor
200 Constitution Avenue, NW Room N-2101
Washington DC 20210

Dear Mr Hammer:

As Comptroller, I am responsible for the Commonwealth's financial statements, including the Annual Comprehensive Financial Report (ACFR). Included in the ACFR are reporting on the Unemployment Insurance Trust Fund of the Commonwealth and on related activities. The ACFR has included information on balances of the amounts drawn from and reimbursable by the United States Department of Labor (USDOL).

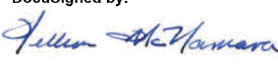
I understand the Commonwealth's Executive Office of Labor and Workforce Development (EOLWD) has been in discussion with USDOL to determine the net balance of the federal account.

I can confirm that we are prepared to reflect the outcome of these discussions in our financial reporting, including as early as the next annual report. I foresee no difficulty in reflecting the USDOL/EOLWD agreement in our reports or through the audit process with the Commonwealth's independent CPA firm.

Secondly, I understand that discussions have arisen regarding certain aspects of the FY22 ACFR as they relate to potential federal overdraws and the Unemployment Insurance Trust Fund. From discussions with our independent auditor, CLA, I understand that: (1) that CLA did not consider as part of the federal overdraw liability the first compensable week program; and (2) CLA's federal overdraw liability view did not consider whether EOLWD requested and/or received federal reimbursement of claims for reimbursable employers.

Please let me know if I can provide further information. Thank you.

Sincerely,

DocuSigned by:

408AB804EF29450...

Cc: Michael Doheny, General Counsel and Undersecretary of Labor,
Commonwealth of Massachusetts Executive Office of Labor & Workforce Development