

AGREEMENT BETWEEN

THE STATE OF _____

AND THE

SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,

TO CARRY OUT THE PROVISIONS OF

SUBCHAPTERS A, B, and C OF CHAPTER 2 OF TITLE II OF THE
TRADE ACT OF 1974, AS AMENDED BY THE
TRADE ADJUSTMENT ASSISTANCE REAUTHORIZATION ACT OF 2015

INTRODUCTION

The Trade Act of 1974 (Pub. L. No. 93-618), as amended (the Act) (codified at 19 U.S.C. §§ 2271 et seq.), Title II, Chapter 2, established the Trade Adjustment Assistance for Workers (TAA), Alternative Trade Adjustment Assistance (ATAA), and Reemployment Trade Adjustment Assistance (RTAA) programs. These programs, collectively referred to as the Trade Adjustment Assistance Program (TAA Program), provide assistance to workers who have been adversely affected by foreign trade. The Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015), (Pub. L. No. 114-27, Title IV), recently reauthorized and reinstated changes to the Act (<https://www.congress.gov/114/plaws/publ27/PLAW-114publ27.pdf>). TAARA 2015 also revised reporting requirements to align performance accountability for the TAA Program with that of other partner programs in the workforce system under the Workforce Innovation and Opportunity Act (Pub. L. No. 113-128) (WIOA or Opportunity Act).

For adversely affected workers and adversely affected incumbent workers, the State will follow the applicable eligibility criteria and procedures for the TAA Program under Subchapters A, B and C of Chapter 2 of Title II of the Trade Act of 1974, as amended by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No. 107-210), the Trade and Globalization Adjustment Assistance Act of 2009 (Pub. L. No. 111-5), the Trade Adjustment Assistance Extension Act of 2011 (Pub. L. No. 112-140), the TAARA 2015 (Pub. L. No. 114-27), the Workforce Innovation and Opportunity Act (Pub. L. No. 113-128), and all relevant regulations, operating instructions, and other guidance and program letters of the Department.

States must adhere to this signed Agreement, and the terms and conditions provided in the TAA Annual Funding Agreement (AFA) and the UI Annual Funding Agreement, executed each fiscal year between the Department and the State.

The AFA, which is incorporated by reference into the Governor-Secretary Agreement, explains program requirements, limitations on the use of funds, assurances, and other important grant provisions that States must follow in order to receive TAA Program funding for Training and Other Activities which includes: funding for training, employment and case management services, allowances for job search and relocation, and related State administration of these benefits and services. The Unemployment Insurance (UI) Annual Funding Agreement is the mechanism for funding the State administration of Trade Readjustment Allowances (TRA) and Alternative Trade Adjustment Assistance (ATAA) and Reemployment Trade Adjustment Assistance (RTAA) through the agency that administers the UI laws for the State.

TERMS OF AGREEMENT

The Secretary of Labor, United States Department of Labor (the Secretary) and the State/Commonwealth of _____ (the State), in order to carry out the worker adjustment assistance provisions of Chapter 2 of Title II of the Act (TAA Program), agree as follows:

I. This Agreement is entered into under Section 239 of the Act and will take effect upon the signatures of both parties. This Agreement supersedes all prior Agreements under the Act (and any modifications thereof) between the Secretary and the State.

II. A. The _____,
(Name of Cooperating State Agency (CSA) Designated by the Governor)

in coordination with the State agency that administers the UI law, if applicable, and such other agency or agencies of the State as the Governor of the State may designate to cooperate with such CSA for performance accountability reporting and other purposes, will act as the agent of the United States in receiving applications from, and providing benefits and services to, adversely affected workers. The TAA Program benefits and services include training, subsistence payments, and transportation payments; Trade Readjustment Allowances (TRA); job search and relocation allowances; and the Alternative Trade Adjustment Assistance Program (ATAA) or the Reemployment Trade Adjustment Assistance (RTAA) Program under Section 246 of the Act. The State will make available the employment and case management services as described in Section 235 of the Act to eligible adversely affected workers and adversely affected incumbent workers (as defined in Section 247(2) and (18) of the Act). The functions and duties undertaken under this Agreement will be performed in accordance with the Act and the relevant regulations, operating instructions, and other guidance and program letters issued by the United States Department of Labor (the Department). The State will perform such duties and functions

in accordance with the Department's program and administrative requirements applicable to grants as provided in the Annual Funding Agreements executed between each state's CSA and the Department, and 2 CFR Part 2900 (Department of Labor Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, adopting and supplementing government-wide regulations at 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)).

B. The State agrees that staff employed to carry out State administration of the TAA program and funded by the TAA Program, including staff of the State agency and the State employment service (ES) agency that perform functions under both the TAA Program and the State unemployment compensation (UC) program and/or ES programs, will be merit-staffed in accordance with 20 C.F.R. § 618.890(a).¹

C. The State agrees the TAA Program is a required partner in the comprehensive one-stop delivery system established under the Workforce Innovation and Opportunity Act (WIOA) (Public Law 113-128) (29 U.S.C. 3101 note) (see Section 121(b)(1)(B)(vii) of the WIOA, 29 U.S.C. § 3151(b)(1)(B)(vii)). The State will ensure integration of the TAA Program into its one-stop centers, currently branded as American Job Centers, and will comply with all applicable laws, regulations, and policy guidance issued under the WIOA. The State will use one-stop centers the main point of participant intake and delivery of benefits and services.

¹ 20 CFR 618.890(c) states, “*Exemptions for States with employment service operation exemptions.* A State whose employment service received an exemption from merit staffing requirements from the Secretary of Labor (Secretary) under the Wagner-Peyser Act will retain an exemption from the requirement of paragraph (a) of this section. The exemption does not apply to the State’s administration of trade readjustment allowances which remain subject to the requirements of paragraph (a) of this section. To the extent that a State with an authorized ES exemption provides TAA-funded services using staff not funded under the Wagner-Peyser Act, the exemption in this paragraph does not apply, and they remain subject to the requirements of paragraph (a) of this section.” As of the date of this Agreement, there are three states with such exemptions: Colorado, Massachusetts, and Michigan.

D. The State will ensure that rapid response activities and appropriate career services (as described in Section 134 of the WIOA, 19 U.S.C. § 3174) are made available to workers for whom a Petition for Trade Adjustment Assistance has been filed.

E. The State agrees that the TAA Program will be the primary source of assistance to adversely affected workers and adversely affected incumbent workers. The State also agrees that, to the extent adversely affected workers and adversely affected incumbent workers covered by a certification enrolled in the TAA Program require assistance or services not authorized under the TAA Program or assistance or services for which TAA Program funds are unavailable or insufficient (including the employment and case management services required under Section 235 of the Act), such assistance will be made available through the one-stop delivery system under Title I of the WIOA, to the extent that Local Workforce Development Boards and/or one-stop center operators can provide or arrange for such assistance in accordance with the terms of the local memoranda of understanding (MOU) established under Section 121(c) of the WIOA (19 U.S.C. § 3151(c)). Additionally, where WIOA Title I funds are used for training, the training for workers must be delivered through a training provider eligible under both the TAA and WIOA program requirements, and the training must be approvable under Section 236(a) of the Act and the regulations and operating instructions of the TAA Program. The State will otherwise cooperate with the Department, other State and Federal agencies, and service providers funded under the WIOA in providing payments and services in accordance with this Agreement.

F. When a single State agency administers both the TAA program benefits and services under Sections 231 through 238 and Section 246 of the Act, and the programs under Title I of the WIOA, or if multiple State agencies separately administer TAA Program benefits

and services and programs under WIOA, that State agency or those agencies will take such action as may be necessary to ensure the coordinated delivery of services and payments under these programs to adversely affected workers. When the TAA Program under the Act and the programs under Title I of the WIOA are administered by different State agencies, in whole or in part, the CSA administering the TAA Program under this Agreement and the agency administering programs must ensure coordination of, and avoid duplication of, activities as required by Sections 101(d)(3)(A) and 101(d)(8) of the WIOA.

G. In carrying out the terms of this Agreement, the State must: (1) advise each worker who applies for UI of the benefits under Chapter 2 of Title II of the Act, and the procedures and deadlines for applying for such benefits; (2) facilitate the early filing of petitions under Section 221 of the Act for any workers who reasonably may be or become eligible for benefits under the Act, including helping petitioners file petitions and filing petitions on behalf of eligible workers under Section 221 of the Act; (3) assist the Department in the review of petitions after they have been filed by verifying information and providing such other assistance as the Department may request; (4) as soon as practical, identify the adversely affected workers and adversely affected incumbent workers covered by a certification; (5) perform outreach, intake, and orientation to inform them of suitable training opportunities, and provide additional information including time limits for applying for benefits and services, and advise and assist workers as required by the Act and the relevant regulations, operating instructions, and other guidance and program letters issued by the Department; (6) advise each adversely affected incumbent worker covered by a certification of the availability of the pre-layoff training benefit; (7) make available employment and case management services described in Section 235 of the Act to adversely affected workers and adversely affected incumbent workers covered by a

certification under subchapter A, as provided by the TAARA 2015, and (8) encourage each adversely affected worker covered by a certification to apply for training under the Act before (if possible) the worker becomes entitled to receive TRA, but not later than the enrollment deadline.

III. The State agrees to issue waivers of the training requirements in accordance with Section 231(c) of the Act. The State will provide to the Secretary reports on waivers as required by Section 231(c)(3)(C) of the Act and consistent with the manner prescribed in guidance documents and reporting instructions issued by the Department. Upon the request of the Secretary, or his or her designee, the State will provide a copy of any or all waivers issued, together with a statement of reasons for each such waiver, and a copy of any or all revocations issued, together with a statement of reasons for each such revocation. The State will review each waiver issued under paragraph (1) of Section 231(c) of the Act three months after initial issuance and once every month thereafter.

IV. For adversely affected workers and adversely affected incumbent workers, the State will follow the applicable eligibility criteria and procedures for the TAA Program under Subchapters A, B, and C of Chapter 2 of Title II of the Trade Act of 1974, as amended by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No. 107-210), the Trade and Globalization Adjustment Assistance Act of 2009 (Pub. L. No. 111-5), the Trade Adjustment Assistance Extension Act of 2011 (Pub. L. No. 112-140), the Trade Adjustment Assistance Reauthorization Act of 2015 (Pub. L. No. 114-27), the Workforce Innovation and Opportunity Act (Pub. L. No. 113-128), and the relevant regulations, operating instructions, and other guidance and program letters of the Department.

V. The State will verify the satisfactory immigration status of workers applying for TAA Program benefits who are not United States citizens or nationals through the immigration status verification system described in Section 1137(d) of the Social Security Act (42 U.S.C. § 1320b-7(d)) and program letters of the Department. If this verification was done in connection with a claim for UC, the State need not do so again for TAA. However, if, after initial verification, either in connection with an UC or TAA claim, the documentation of a worker will expire during the period of potential TAA eligibility, the State will, in connection with any further benefits, re-verify the worker's immigration status according to Section 1137(d) of the Social Security Act.

VI. The State will assist in the administration of the health coverage tax credit program under Sections 35, 7527, and 6050T of the Internal Revenue Code of 1986 (26 U.S.C. §§ 35, 7527, 6050T), as amended by Section 407 of the TAARA 2015, in accordance with Department guidance and program letters.

VII. A determination by a CSA with respect to an individual's entitlement to any TAA Program benefits or services will be subject to review in the same manner and to the same extent as determinations with respect to UI under the State law, and only in that manner and to that extent.

VIII. The State or the State agency will not deny or reduce UC otherwise payable to an adversely affected worker under any State law or Federal UI law for any week by reason of any right to a payment of any TAA Program benefit. If, with respect to any week of unemployment, any reduction or denial of UC was made under the State law on account of any TAA Program benefit paid to an individual, the State (including the State agency) agrees to pay the individual the full amount of the reduction or denial, except for additional compensation not reimbursed by

any Federal funds as allowed under Section 231(a)(3)(B) of the Act. The payment of TRA in accordance with an adversely affected worker's election under Section 232(d) of the Act is not a denial or reduction of an adversely affected worker's UC, provided that the State or State agency does not treat the election as precluding the payment of UC for weeks of unemployment for which the adversely affected worker is otherwise eligible.

IX. Allowable costs, including the costs of performing services for another State under the Act, shall be determined in accordance with 2 CFR Part 2900, adopting and supplementing government-wide regulations at 2 CFR Part 200.

X. The State will comply with the provisions of the State's Trade Adjustment Assistance Program Annual Funding Agreement and Unemployment Insurance Program Annual Funding Agreement. All funds allocated to the State under the these Agreements will be used solely for the purposes for which they are allocated to the State. Any such funds that are not needed for the purpose(s) for which they were allocated, will be returned to the United States Treasury as soon as reasonably possible.

XI. The State will take such action as is reasonably necessary to recover for the account of the United States all amounts paid out as program benefits or services which were erroneously paid to ineligible claimants or others, and to restore any losses or misapplication of funds allocated to the State for TAA Program benefits or services.

XII. The State will, by and through the CSA and other agencies referred to in Article II. A. of this Agreement, maintain such records, in accordance with 29 C.F.R. § 97.42 and any successor provisions, pertaining to the administration of the Act as the Department requires, including, but not limited to, the identification of workers determined eligible for TRA and other TAA Program benefits and services, and the services and benefits provided to or on behalf of

such individuals. The State will make such records available for inspection, examination, and audit by such Federal officials or employees as the Department may designate or as may be required by law.

XIII. A. The State will, in a timely and accurate manner, report to the Department all data necessary to meet the requirements of the Act, including the Trade Act Participant Report (OMB Control No. 1205-0392), and any subsequent TAA Program related reporting requirements that are approved in accordance with the Paperwork Reduction Act of 1995 and any successor law.

B. The State will, in a timely and accurate manner, report to the Department, in such formats as the Secretary requires and as approved in accordance with the Paperwork Reduction Act of 1995 and any successor law, the description and information described in Sections 102(b)(2)(B)(ii) and 103(b)(3)(A) of the WIOA (29 USC 3112(b)(2)(B)(ii) and 3113(b)(3)(A)), a description of how the State board will carry out the activities described in Section 101(d)(3)(F) of the WIOA (29 USC 3111(d)(3)(F)), and a description of the State's rapid response activities made available to the workers covered by petitions filed under Section 221(a)(1) of the Act as required by Section 221(a)(2)(A) of the Act.

C. The State will provide in a timely and accurate manner valid and reliable data, in such formats and according to such procedures as the Department requires, and as approved under the Paperwork Reduction Act, including comprehensive performance accountability measures on an annual basis, and the primary indicators of performance (as defined in Section 239(j)(2)(A) of the Act), additional indicators of performance as agreed upon by the Secretary and the State or a CSA (as provided by Section 239(j)(2)(B) of the Act), and a description of efforts made to improve outcomes for workers under the TAA Program.

XIV. The State will, as directed by the Department, implement effective control measures and effectively oversee the operation and administration of the TAA Program, including by means of monitoring the operation of control measures to improve the accuracy, verifiability and timeliness of data being collected and reported. In particular, the State will administer a formal monitoring program that reviews a sample of worker files to ensure effective and efficient operation and administration of the program. Reports generated by this monitoring activity will be available for audit by the Department.

XV. The State will keep confidential any information it receives about each claimant in the course of fulfilling its obligations under this Agreement to the extent required under all applicable State and Federal laws. The State will keep confidential any confidential business information, as defined at 29 C.F.R. § 90.33 and any successor provisions, it obtains or receives in the course of fulfilling its obligations under this Agreement and shall not disclose such information to any person, organization, or other entity except as authorized by applicable State and Federal laws.

XVI. The CSA will make available to any individual or organization a copy of this Agreement for inspection and copying. Copies of this Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to furnishing copies of other records of the CSA(s) as provided at 20 C.F.R 617.59 (c).

XVII. If the State, or any CSA, has not fulfilled the commitments under this Agreement, and the Secretary has made a determination to that effect, Section 3302(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3302(c)(3)), shall be implemented, and the total credits otherwise allowable to taxpayers subject to the UC law of the State shall be reduced as provided in Section 3302(c)(3). A State, or a State agency, will be notified and afforded an

opportunity for a hearing before such a determination is made. Before making a determination as provided herein, the Secretary may, when the Secretary determines that the seriousness of the situation warrants the action, suspend the Agreement by written notice to the State, and make such arrangements as the Secretary deems necessary or appropriate to assure the continuing administration of the Act in the State in accordance with the Act and the regulations and operating instructions issued thereunder.

XVIII. This Agreement will remain in effect until it is modified or terminated. A written request by the Secretary for a modification or, except as provided in paragraph XVII, a termination, will be submitted to the State at least thirty (30) days before such action will take effect. A written request by the State for a modification or termination will be submitted to the Secretary at least thirty (30) days before such action may take effect. The Secretary and the State must agree on all modifications before any such modifications will take effect. If this Agreement is terminated by the State, all matters concerning the administration of the Act and this Agreement in the State shall be concluded as soon thereafter as possible. On or before the date of termination, the State shall turn over to the Department all pending applications for TAA Program benefits and/or services and all State-maintained TAA records and will otherwise cooperate with the Secretary to ensure the continued administration of the TAA Program.

[Remainder of page intentionally left blank; signature page to follow]

STATE OF _____: U.S. DEPARTMENT OF LABOR:

By: _____ By: _____
Governor (or designee) Secretary of Labor

DATED: _____, 20__ DATED: _____, 20__

CERTIFICATION
(If signed by other than Governor)

_____, has the
(Name and Title)
authority under the Constitution and laws of this State to sign this foregoing Agreement on
behalf of the State of _____.

Signature: _____

Title: _____

Date: _____, 20__