

## MSCA Counterproposal for 3-Year Agreement – September 10, 2021

This is a package proposal. The MSCA reserves its right to withdraw this package proposal and return to its position immediately prior to the proffering of this package should the parties be unable to reach agreement on a framework for settlement, or should negotiations on this framework stall.

This package includes a Memorandum of Agreement detailing the COVID-19 health and safety provisions and a Memorandum of Agreement detailing a COVID-19 vaccine mandate.

### A. Stipends

Year 1. Effective upon the commencement of the spring instructional period of 2021, each University shall apply an increase of **two and one-half percent (2.5%)** to the contractual stipends.

Year 2. Effective upon the commencement of the spring instructional period of 2022, each University shall apply an increase of **two percent (2%)** ~~2.5%~~ to the contractual stipends.

Year 3. Effective upon the commencement of the spring instructional period of 2023, each University shall apply an increase of **two percent (2%)** ~~2.5%~~ to the contractual stipends.

### B. Classroom Observations

Article IX, D(2) classroom observations shall be expunged for the respective Fall 2020, Winter 2021 and Spring 2021 instructional periods. The absence of a classroom observation for the Fall 2020, Winter 2021 and/or Spring 2021 instructional periods shall have no adverse effect on the unit member.

### C. Student Evaluations

Article IX, D(1) student evaluations shall be expunged for the Fall 2020 instructional period. The absence of student evaluations for the Fall 2020 instructional period shall have no adverse effect on the unit member.

### D. One-time COVID-19 Adjustment Bonus

**The parties agree that for the purpose of providing unit members with a one-time**

**COVID-19 Adjustment bonus**, faculty members who have taught in DGCE between Spring 2020 and Summer 2021 instructional periods will receive a one-time payment of \$500 to defray the technology costs associated with teaching during the pandemic.

**E. Paid Family and Medical Leave**

The Association acknowledges that one-half percent (0.5%) of the Year 1 increase above fully satisfies any and all obligations that the BHE has or may have to it or its DGCE bargaining unit members pertaining to Paid Family and Medical Leave (“PFML”) contributions. Specifically, the Association hereby waives its right to assert, and hereby relinquishes any and all claims, whether pending or to be brought, regarding the BHE’s obligation to bargain with the DGCE unit over the amount of PFML contributions to be paid by its members, and regarding any entitlement to compensation or reimbursement for PFML contributions paid since October 2019 or to be paid by its members at the maximum allowable contribution rate determined by the Department of Family and Medical Leave (DFML), including but not limited to, the financial remedy ordered by the Commonwealth Employment Relations Board in the matter SUP-19-7687.

Insert the following paragraph:

“Massachusetts’s Paid Family and Medical Leave Act (“PFMLA”), codified as Mass. G.L. c. 175M, provides eligible bargaining unit members with paid family and medical leave. This leave is funded through mandatory payroll contributions at a rate that is assessed annually by the Department of Family and Medical Leave, which shall set the rate as a percentage of an employee’s annual wages. The Department attributes a portion of the mandatory payroll contribution separately to medical leave and to family leave. Unit members shall pay 40% of the medical leave contribution rate and 100% of the family medical leave contribution rate from their eligible wages.”

**F. Duration**

This Agreement shall expire at midnight on December 31, 2023. Either party may at any time give notice to the other requiring commencement of negotiations for a successor agreement. Negotiations for a successor agreement shall commence no later than June 30, 2023.

## **G. ARTICLE X – Grievance Procedure**

### **A. INTRODUCTION**

The Board and the Association recognize that Chapter 150E, Section 8, of the General Laws provides a mechanism for arbitration of disputes between the parties to a collective bargaining agreement and further provides that the parties to an agreement may establish an independent grievance procedure culminating in final and binding arbitration. It is the intent of the parties to this Agreement to use their best efforts to encourage the informal and prompt settlement of grievances which may arise between the Association or a member or members of the bargaining unit and the Board. Therefore, the parties agree, for themselves and for all those whom they represent, that they shall use the procedures set forth in this Article, and no other procedures, for the resolution, strictly pursuant to the terms of this Agreement, of all disputes involving the interpretation of this Agreement and of any other matter that is or may become the subject of a grievance as hereinafter defined.

### **B. DEFINITIONS**

1. **Grievance.** A grievance is an allegation by the Association or by a member or members of the bargaining unit that an express provision of this Agreement has been breached in its application to it, a member or members. The Association may seek resolution of a grievance only if initiation of the procedure for such resolution has been duly authorized by the Association and so certified by its President or expressed designee. A grievance shall aver all the known facts material to the alleged breach on which the grievance is based, including the date when such breach is alleged to have occurred and the specific contractual provisions alleged to have been breached, and shall set forth the remedy requested.
2. **Grievant.** Grievant shall mean the Association or any member or members of the bargaining unit, as the case may be, who, pursuant to the terms of this Agreement, seeks resolution of a grievance.
3. **Day.** For the purposes of this Article, day shall mean a calendar day, exclusive of December 24th through January 2nd. Deadlines falling on a Saturday, Sunday or a legal holiday are moved to the next business day.

### **C. PROCEDURES FOR FILING A GRIEVANCE**

The Association or any member or members of the bargaining unit having a grievance shall seek its resolution only in accordance with the grievance procedures set forth in this Article.

1. **Extension of Certain Time Periods**

The parties may agree, providing such agreement is recorded in writing, to extend any time period of the grievance procedure contained in this Article X.

2. Inspection of Record

At any reasonable time during any step of these procedures the grievant shall be permitted to inspect all or any part of the grievance record, and, where appropriate, shall be permitted to make copies of all or any parts of such record.

3. Introduction of Evidence

- a. Within the time limits hereinafter prescribed for the initiation of Step 2 of these procedures, the grievant shall introduce all evidence in the grievant's possession and on which the grievant relies or intends to rely as supporting the grievant's claim for relief.
- b. Notwithstanding the foregoing, the grievant may introduce additional evidence for the sole purpose of rebutting any finding of fact or any determination as set forth in any decision rendered pursuant to the provisions of this Article; provided, however, that such additional evidence, if any, shall be introduced within the time period allowed for the initiation of the Step next following such decision.
- c. The President shall introduce at Step 2 all evidence in the President's possession and on which the President relied in making any finding of fact and any determination as set forth in the decision rendered pursuant to the provisions of this Article; provided, however, that nothing herein contained shall be deemed to require the President to introduce any evidence otherwise introduced by the grievant pursuant to the foregoing provisions.
- d. Notwithstanding the foregoing, the grievant, the President, or the Chair of the Council of Presidents may introduce any evidence material and relevant to the grievance the existence or relevance of which he/she did not and should not have known at the times otherwise provided herein for the introduction of evidence.

All evidence introduced pursuant to the foregoing provisions shall form a part of the grievance record.

4. Request for Evidence

Whenever the grievant wishes to introduce evidence pursuant to the provisions of this Article, and such evidence is or may be in the possession of the administration, the grievant may, within the time period allowed for the initiation of the Step at which such evidence is permitted to be introduced, file with the

President a written request for such evidence. Whenever such request shall have been so filed, the President shall, within eleven (11) days after the filing of such request, convey to the grievant any and all such evidence in the President's possession so requested; provided, however, that notwithstanding the foregoing, the President may refuse to convey any such evidence not deemed material and relevant to the grievance set forth in the grievance; and provided, further that whenever the President shall have refused to convey any such evidence, such refusal and the reasons therefor shall be communicated in writing to the grievant and shall thereafter form a part of the grievance record. Such request when so filed and such evidence when so conveyed shall form a part of the grievance record.

5. Notice to Association

Whenever any grievant shall have initiated the grievance procedures of this Article, or shall have proceeded to Step 2, notice thereof shall be given to the President of the Association by the person charged at such Step with resolution of the grievance.

6. Determination to Be Made Pursuant to Resolution of Grievance

At Step 2 of these procedures, the President shall, within the time limits prescribed, determine:

- i. whether the grievant has complied with the procedures for seeking resolution of a grievance as set forth in this Article;
- ii. whether the grievance alleges a breach of an express provision of this Agreement; and
- iii. whether an express provision of this Agreement has been breached in its application to the grievant as claimed.

7. Optional Electronic Filing of Grievances

- a. Step 1 and Step 2 grievances may be filed by email by the Chapter Grievance Representative, other Association officer, or an individual unit member provided that it is identified explicitly as a Step 1 or Step 2 grievance and has the appropriate case number as assigned by the chapter (consolidated grievances may be filed by email by the Grievance Committee Chair on behalf of the Association President using the wording now used to identify them as consolidated grievances).
- b. The appropriate management representative shall acknowledge receipt by email.

- c. On or before the day of the Step 1 or Step 2 hearing, the grievant shall follow up with a signed paper copy of the grievance form, which shall include the correct grievance number and any relevant documents as required by the collective bargaining agreement. The management representative shall continue to notify the Chapter President of hearings scheduled with *pro se* grievants.
- d. The management grievance hearing officer at Step 1 or Step 2 may respond via email to an emailed grievance, sending it to the grievant and the Chapter Grievance Representative; and
- e. As soon as possible thereafter, the management hearing officer shall follow up with a paper copy of the decision.
- f. All other communications between the parties may be exchanged electronically, and such electronic communications shall be considered to be “in writing” or “written” provided that paper copies can be made available.

#### Step 1: The Vice President (Informal)

Save as is provided in Section G, a grievant shall initiate the grievance procedures of this Article by filing with the Vice President during the term of this Agreement or an extension thereof, a written notice that a grievance exists.

The notice need only briefly describe the subject of the grievance. No such notice may be filed more than fifteen (15) days from the date of occurrence of the event upon which the grievance is based or from the date when the grievant had or should have had knowledge of the event upon which the grievance is based. The filing date required hereunder shall be deemed to have been complied with by a postmark dated within the specified time limit. Within seven (7) days after the receipt of such notice, the Vice President shall meet with the grievant and attempt to resolve the grievance. If within seven (7) days after such meeting, the grievant and the Vice President shall have failed to agree upon a resolution of the grievance, the grievant may elect to proceed to Step 2; provided, however, that nothing herein contained shall be deemed to permit the making of any such election in respect of any claim to which this Article X, by the provisions of its Section H or otherwise, is of no application.

#### Step 2: The President (Formal)

If the grievant elects to proceed to this Step, then within eleven (11) days after the expiration of the period provided under Step 1 for informal resolution of the grievance, the grievant shall file with the President:

- i. a copy of the grievance; and

- ii. all documents and evidence in the grievant's possession and upon which the grievant replies or intends to rely as supporting the grievant's claim for relief.

All such documents and evidence so filed shall form a part of the grievance record.

The President shall transmit a copy of the grievance to the Employee Relations Committee, to the Chair of the Council of Presidents and, unless the Association or the Chapter President, personally, is the grievant, to the Chapter President.

The President shall meet with the grievant to discuss the grievance within ~~twenty-one (21)~~ **fifteen (15)** days after the filing of the grievance at Step 2. The President shall consider any grievance the resolution of which shall have been sought, pursuant to the terms set forth herein, through the prior Step of the grievance procedure; provided, however, that nothing herein contained shall be deemed to confer on the President jurisdiction to consider or remedy any claim that may not be processed as a grievance pursuant to this Article X.

Within ~~thirty (30)~~ **fifteen (15)** days after the ~~filing of the grievance~~ **President and the grievant meet**, the President shall make such determination as is prescribed in Section C(6) of this Article. The President shall render a written decision and shall set forth therein the President's determinations and the reasons therefor and the President's findings of fact, and shall provide a copy of such decision to the grievant, the Employee Relations Committee, the Chapter President and the Chair of the Council of Presidents. Such decision shall thereafter form a part of the grievance record.

If the President shall have determined that an express provision of this Agreement has been breached in its application to the grievant as claimed, the President may, consistent with the terms of this Agreement, provide any appropriate remedy for such breach. Whenever the President shall have provided any remedy deemed appropriate, such remedy shall be set forth in writing in the President's decision. Such determination when so set forth in writing shall thereafter form a part of the grievance record.

If the Association elects to proceed beyond Step 2, then within twenty-one (21) days after the expiration of the period provided under this Step 2 for resolution of the grievance, it shall file notice of such election with the President, the Chair of the Association Grievance Committee, and the designated representative of the Council of Presidents. This notice shall satisfy the requirements of Step 3 and the requirements of clauses (i) and (ii) in the first paragraph of Step 4; such notice may be filed electronically. As soon as practicable thereafter, the Association President shall follow up with a signed paper copy.

### Step 3: Mediation

If the Association elects to proceed to this Step, then following the receipt of such notice by the representative of the Council of Presidents, but not sooner than forty-five (45) days thereafter, the grievance will be addressed as soon as practicable.

The Council and the Association shall reserve, at a minimum, the first Wednesday of each month, exclusive of January and February, for mediation of grievances at Step 3. Dates shall be determined at the beginning of each fiscal year falling within the terms of this Agreement. Mediation shall be conducted on a rotating basis by Loretta Attardo, Richard Boulanger, Diane Zaar Cochran, and Roberta Golick and such other mediators as the parties may agree to add. The expenses of the mediator shall be shared equally by the parties.

Both parties shall insure that their representatives in mediation have the authority to enter into a settlement.

Documents introduced before and during mediation shall be included in the grievance record. Statements made during mediation shall be off the record in order to encourage free discussion without injuring either party's case if mediation is unsuccessful. The mediator shall not testify about the mediation in any arbitration conducted under this Article X or in any other adversarial proceeding or judicial forum. Each party shall maintain the confidentiality of mediation and shall not rely on or introduce as evidence in any other proceeding:

- i. views expressed or suggestions made by the other party with respect to the possible settlement of the grievance;
- ii. admissions made by the other party in the course of the mediation;
- iii. proposals made or views expressed by the mediator; and
- iv. the fact that the other party had or had not indicated willingness to accept a proposal for settlement or to continue these or any other mediation proceedings.

The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution.

Mediation shall conclude in one of the following ways:

- i. by the execution of a settlement agreement by the parties; or
- ii. by a written declaration of the mediator, a party, or the parties to the effect that the mediation is concluded.

After May 31, 2020, upon forty-five (45) days' notice, either party may terminate

this mediation procedure, after which Step 4 shall become Step 3.

#### Step 4: Arbitration

##### a. Initiation of Arbitration

Subject to and in accordance with the following provisions, the Association may initiate arbitration within one hundred thirty-five (135) days of:

- Notice by the Association that mediation is waived; or
- The conclusion of mediation (other than by the parties' execution of a settlement agreement).

The Association shall have the exclusive right to initiate arbitration of a grievance. Whenever the Association shall initiate arbitration of a grievance, the resolution of which has theretofore been sought by a member or members of the bargaining unit, then such member or members shall be bound in all respects by the decision of the arbitrator to the same extent as the Board and the Association.

The Association shall, upon its determination so to do, initiate arbitration by filing a demand for arbitration with the American Arbitration Association and with the President of the University and the Chair of the Council of Presidents, with a copy to the Employee Relations Committee, within the limits of time set out above.

Such arbitration shall be conducted in accordance with the rules and regulations of the American Arbitration Association in effect on the date of such filing, unless otherwise provided herein; provided, however, that the jurisdiction of the arbitrator to inquire into any issue or to render any award shall be governed solely by the provisions of this Agreement.

In order to proceed to arbitration, within the time specified in the first paragraph in Step 4, the Association shall file a demand for arbitration with the American Arbitration Association, a copy of which shall be sent to the President, the Chair of the Council of Presidents, the Employee Relations Committee and the labor representative of the Council of Presidents in labor arbitration.

The deadline for filing a demand for arbitration for related grievances shall be one hundred thirty-five (135) days after the last of the related grievances has been addressed in accordance with the first paragraph in Step 4. The term "related grievances" shall refer to grievances such as those by different unit members pertaining to the same transaction or occurrence, or other

grievances determined by the parties to be related. Such related grievances shall be included in a single demand for arbitration.

b. Jurisdiction of the Arbitrator

Subject to the provisions of this Agreement, the arbitrator shall have no authority or jurisdiction to:

- i. arbitrate the portion of any grievance that is removed from the jurisdiction of the President by the express terms of this Agreement;
- ii. add to, alter or amend any term or condition of this Agreement; or
- iii. inquire into or arbitrate any issue not presented by the original grievance.

c. Authority of the Arbitrator

Unless otherwise provided in this Agreement, the arbitrator shall have the authority to make a final and binding award on any dispute concerning the interpretation or application of this Agreement. The arbitrator's authority in matters that are arbitrable is limited to determining whether the provisions set forth in this Agreement were violated. The arbitrator shall be without power, right or authority to make a decision or to substitute his/her judgment for that of the Board or its representatives.

The arbitrator shall have no authority to arbitrate any event which occurred or failed to occur prior to the ratification date of this Agreement.

Notwithstanding any rule of the American Arbitration Association to the contrary, in making said decision, the arbitrator shall apply the express provisions of this Agreement and shall not alter, amend, extend or revise any term or condition hereof.

d. Award of the Arbitrator

If the arbitrator determines no express provision of this Agreement has been breached in its application to the grievant as claimed the grievance shall be dismissed. If the arbitrator determines that this Agreement has been so breached, the arbitrator may, subject to the provisions of this Article and except as hereinafter provided, provide an appropriate remedy for the breach; provided, however, that in making any monetary award, the arbitrator shall only provide compensation for actual damages directly attributable to such breach, and shall in no event make any award by way of penal damages.

e. Expense of Arbitration

All fees and expenses of the arbitrator shall be divided equally between the parties. Each party shall bear the cost of preparing and presenting its own case.

D. ASSOCIATION REPRESENTATION

Any member or members of the bargaining unit may initiate and pursue a grievance **through the first two Steps of the grievance procedure** without intervention of the exclusive representative of the Association, provided that the Association shall be afforded the opportunity to be present at any conferences held and that any adjustment made shall not be inconsistent with the terms of this Agreement.

Any member or members of the bargaining unit may request that the Association represent them at any Step of the grievance procedure. The Association shall notify in writing the Vice President, the President of the University, and the Chair of the Council of Presidents, as the case may be, of the name and address of such Association representative upon being authorized to represent the grievant.

E. WAIVER, ADMISSION, TERMINATION AND GROUNDS FOR APPEAL

1. Waiver

Failure of a grievant to comply with any of the provisions of this Article shall be deemed to be a waiver of the right to seek resolution of the grievance under the terms of this Agreement. In determining whether there has been any such failure to comply with any of the provisions of this Article, time shall be deemed to be of the essence, and any failure of the grievant to comply with any of the time limits prescribed herein shall be deemed to be such failure to comply with the provisions of this Article; provided, however, that the time limits prescribed herein may be extended in any specific instance by mutual written agreement of the parties.

2. Admission

The resolution of a grievance by the Vice President, the President of the University, the Council of Presidents, or any of their designees shall not be deemed to be an admission by any Board of Trustees or the Board that the grievance has, for any other purpose or proceeding, standing as a grievance, or be an admission by any Board of Trustees or by the Board that such grievance is cognizable or justiciable according to any applicable provisions of this Agreement or of the laws of the Commonwealth.

3. Termination

**Unless prohibited by law, if** any member or members of the bargaining unit shall initiate any administrative, judicial or like proceeding (other than a proceeding in the Division of Labor Relations) that relates to any matter that is the subject of a grievance in respect of which such member or members is or are the grievant while any proceeding in respect of such grievance is pending under any provision of Section C of this Article, such proceeding under Section C shall terminate as of the date of the initiation of such other administrative or judicial proceeding, and the grievance procedures aforesaid shall be inapplicable to such grievance.

4. Grounds for Appeal

The Board and the Association shall have the right to appeal any final decision of the arbitrator pursuant to the provisions of Chapter 150E, Section 8, and Chapter 150C, Sections 10, 11 and 12 of the General Laws.

F. COLLATERAL CONSEQUENCES OF A GRIEVANCE

The fact that a grievance is alleged by a member of the bargaining unit, regardless of the ultimate disposition thereof, shall not be recorded in the Official Personnel File of such member or in any file or record utilized in the taking of any personnel action in respect of such member; nor shall such fact be used in the making of any recommendation for the job placement of such member; nor shall such member or any other member or members who participate in any way in the grievance procedure be subjected to any action, whether disciplinary or other, for having processed such grievance; provided, however, that nothing herein contained shall derogate or be deemed to derogate from the right to take any action that might be authorized or required to be taken to give effect to the resolution of any grievance.

G. CONSOLIDATED GRIEVANCES

Anything in the foregoing provisions to the contrary notwithstanding, the Association may, within the ten (10)-day period during which a grievance may otherwise be filed, file such grievance with the Chair of the Council of Presidents in the form of a grievance, specifying therein the reasons why the grievance should be treated as a consolidated grievance. The Chair shall, within ten (10) days, determine whether to treat the grievance as a consolidated grievance. If the Chair accepts the grievance as a consolidated grievance, the procedures and time limits of Step 2 shall thereupon apply, provided only that the response rendered at such Step shall be rendered by the Chair in such capacity, rather than by the President of a University. If the Chair declines to accept the grievance as a consolidated grievance, the Association or any unit member or members may, within ten (10) days following the date of the Chair's decision, file the grievance at Step 1 at the University at which such grievance is alleged to have occurred.

H. **GRIEVANCES FILED PRIOR TO THE DATE OF EXECUTION OF THIS AGREEMENT**

**Notwithstanding any other term of this Agreement, any grievance filed prior to the date of execution of this Agreement shall be subject to the provisions of the predecessor Agreement; provided, however, that at the request of either party, the Employee Relations Committee may review any such grievance as it may determine, subject to the terms of Article II of this Agreement; and provided further that the selection of an arbitrator in connection with the arbitration of any grievance shall, unless already made pursuant to its predecessor, be made pursuant to this Agreement.**

**HI. APPLICATION**

The parties hereby agree that the provisions of Section 53 of Chapter 30 of the General Laws are, in their entirety, hereby rendered of no force and effect in their application to members of the bargaining unit.

Save as is otherwise expressly provided in this Agreement, no claim, however set forth, whether in the form of a grievance or otherwise, alleging a breach, or arising out of an alleged breach, of any of the following provisions shall be the subject of any proceeding, adjudication, determination or remedy pursuant to any provision of this Article X:

- i. Article II, Section A, Fair Practices, as is therein provided; or
- ii. Article III, Section E, Reduced Workload, provided that grievances involving the interpretation of this section may be processed through Step 2 of the Grievance Procedure.