

AMENDED AND RESTATED
CONTESTED CASE HEARING AGREEMENT BETWEEN
THE OFFICE OF ADMINISTRATIVE HEARINGS AND
THE MARYLAND STATE LOTTERY AND GAMING CONTROL COMMISSION

This Agreement is made between the Office of Administrative Hearings (“OAH”) and the Maryland State Lottery and Gaming Control Commission (“Commission”) (collectively, “Parties”);

WHEREAS, State Government Article (“SG”), § 10-205, Annotated Code of Maryland provides that agencies may delegate authority to conduct a contested case hearing under the Administrative Procedure Act to the OAH;

WHEREAS, SG § 9-104 establishes the Commission in the Maryland Lottery and Gaming Control Agency (“Agency”);

WHEREAS, the Commission and the Director of the Agency are authorized to issue licenses as follows:

Under SG § 9-112, the Director of the Agency is authorized to issue: (1) a lottery retailer license to a person or governmental unit; and (2) an instant ticket lottery machine license to a qualified veterans’ organization;

Under the Gaming Law (SG § 9-1A-01, *et seq.*), the Commission may issue a license to a video lottery employee, manufacturer, contractor, and operator;

Under SG § 9-1B-01, *et seq.*, and regulations promulgated thereunder, the Commission may issue an amusement gaming license to a qualifying family entertainment center in Worcester County;

Under Criminal Law Article (“Crim. Law”) §§ 12-301.1 and 12-308, and COMAR 36.07, the Commission may issue an electronic instant bingo license in Anne Arundel or Calvert County; and

Under Crim. Law § 12-301.1, the Commission may issue a license to an operator, owner, or manufacturer of an electronic gaming device; and

Under SG § 9-1E-01, *et seq.* and regulations promulgated thereunder, the Commission may issue a license to a sports wagering employee, contractor, sports wagering facility operator, and online sports wagering operator;

WHEREAS, with respect to a license listed above, the Commission is authorized to conduct a hearing to decide the appeal of a denial of a license, the suspension or revocation of a license, or any enforcement action taken against a licensee;

WHEREAS, SG § 9-1A-24(d) and COMAR 36.03.07 requires that the Commission maintain a list of individuals who are to be mandatorily excluded or ejected by a video lottery operation licensee from a video lottery facility;

WHEREAS, SG § 9-1E-11(a)(7) and COMAR 36.10.11 provides for a mandatory sports wagering exclusion list maintained by the Commission;

WHEREAS, the Commission is authorized to conduct a hearing to decide the appeal from an individual who the Commission intends to place on a mandatory exclusion list;

WHEREAS, the Commission conducts such licensing and mandatory exclusion hearings in accordance with the Administrative Procedure Act (SG § 10-201, *et seq.*) and COMAR 36.01.02.06;

WHEREAS, SG § 9-1604(b)(1)(ii) authorizes the Chief Administrative Law Judge of the OAH to provide an Administrative Law Judge (“ALJ”) on a contractual basis to another governmental entity;

WHEREAS, SG § 9-1604(b)(1)(iv) further authorizes the Chief Administrative Law Judge of the OAH to enter into an agreement or contract with any public or private agency or educational institution and the Chief Administrative Law Judge has delegated that authority to the Director of Administration for the OAH; and

WHEREAS, the Commission desires that the OAH conduct certain contested case evidentiary hearings under the Administrative Procedure Act.

WHEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is expressly acknowledged, the parties agree as follows:

I. Duties and Responsibilities of the Parties

a. The Commission may delegate to the OAH on a case-by-case basis the authority to conduct a pre-hearing conference, any required motions hearings, and a contested case evidentiary hearing ~~in certain cases~~, pursuant to SG § 10-205 and COMAR 36.01.02.06O.

a.b. When delegating to OAH the authority to conduct a contested case hearing, the Commission may delegate to the OAH the authority to issue: proposed or final findings of fact; proposed or final conclusions of law; proposed or final findings of fact and conclusions of law; or a proposed or final order.

b.c. The OAH, through the Chief ALJ, shall assign an ALJ to conduct the hearings for the Commission.

e.d. The ALJ shall issue to the Commission a decision that contains one of the following, as delegated by the Commission to the OAH: a written final decision, consisting of final findings of fact and/or conclusions of law proposed or final findings of fact; proposed or final conclusions of law; proposed or final findings of fact and conclusions of law; or a proposed or final decision, no later than 90 days from the conclusion of the evidentiary hearing, along with any written orders or rulings issued in relation to the pre-hearing conference and any motions hearings.

d.e. The OAH shall schedule a court reporter “upon request” to be present to record the evidentiary hearing and any dispositive motions hearing.

e.f. The OAH shall provide the record of the proceedings before the ALJ, including any evidence, to the Commission at the time the OAH issues a decision, as delegated by the Commission and provided in Paragraph I.d.~~the final decision~~. No transcript of any hearing will be provided at this time unless ordered and paid for by a person named or admitted to participate in the hearing as described in COMAR 36.01.02.06H(2) or the Commission.

II. Costs

- a. The OAH shall be compensated for the work performed at a rate of \$200 per hour.
- b. The OAH shall provide the Commission a written itemized bill that includes a detailed breakdown, in attorney billable-hour format, of the time expended by the ALJ in the case, including a description of the type of work performed by the ALJ.
- c. The OAH shall provide the Commission with an itemized bill within 14 days after the written ~~final~~ decision is issued.
- d. Upon receipt of the ~~final-OAH written~~ decision and the itemized bill as described in Paragraph II.b., the Commission shall transfer the amount set forth in the itemized bill to the OAH through R*STARS within 30 days of receipt of the itemized bill.
- e. The person named or admitted to participate in the hearing shall pay transcription costs for any transcript ordered by that person in accordance with COMAR 36.01.02.06H(2).

III. Term of Agreement

This Agreement is effective when executed by each of the Parties and shall continue until such time that the Commission revokes a delegation or otherwise terminates this Agreement.

IV. Exclusivity of Agreement

- a. This Agreement is the exclusive agreement of the Parties with respect to this subject matter and supersedes all prior agreements, representations, proposals, written and oral, relating to the subject matter.
- b. The Parties expressly acknowledge that this Agreement is the product of mutual negotiation and state that neither party shall be construed to be the primary drafter of the Agreement.

V. Amendment

This Agreement may be amended only by mutual agreement in writing executed by both Parties. Except for a specific provision which may be amended, this Agreement shall remain in full force and effect after such amendment subject to the same laws, obligations, conditions, rules, provisions and regulations as it was prior to any amendment.

VI. Revocation of Delegation

The Commission may revoke a delegation to the OAH in accordance with COMAR 36.01.02.06O.

VII. Governing Law

This Agreement shall be governed and construed in accordance with Maryland Law.

VIII. Representation of Authority

Each party to this Agreement represents and warrants to the other that it has the full right, power, and authority to execute this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

_____, 2021

By: _____
Danara Harvell
Director of Finance and Administration
Office of Administrative Hearings

_____, 2021

By: _____
John A. Martin
Secretary
Maryland State Lottery and Gaming
Control Commission

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

_____, 2021

By: _____
Kevin M. Cox
Assistant Attorney General
Office of Administrative Hearings

_____, 2021

By: _____
Holly K. Citko
Assistant Attorney General
Maryland State Lottery and Gaming
Control Commission