

MEMORANDUM OF UNDERSTANDING  
AMONG THE  
THE COMPTROLLER OF MARYLAND, THE ALCOHOL AND TOBACCO  
COMMISSION, AND THE EXECUTIVE DIRECTOR OF THE ALCOHOL AND  
TOBACCO COMMISSION

WHEREAS, the Maryland General Assembly established the Alcohol and Tobacco Commission (“ATC”) and the Executive Director of the ATC (“Executive Director”), pursuant to 2019 Md. Laws, Ch. 12 (“2019 Act”), which, among other things, provided for the transfer of certain duties and responsibilities relating to alcohol and tobacco laws from the Comptroller of Maryland (“COM”) to the ATC and Executive Director;

WHEREAS, the Maryland General Assembly further acted to increase the efficiency and accuracy in the performance of the respective duties and responsibilities of the COM, ATC, and Executive Director (together, the “Parties”) by enacting 2020 Md. Laws, Ch. 360 (“2020 Act,” collectively with the 2019 Act the “Acts”);

WHEREAS, the Acts are effective January 1, 2021;

WHEREAS, the Office of the Executive Director will be under the direction of the Executive Director and will have a Field Enforcement Division;

WHEREAS, the Executive Director, along with the employees in the Office of the Executive Director, will be responsible, for, among other things, adopting regulations and enforcing certain laws related to the use, sale, manufacture, distribution, importation, possession, storage, transportation, and general regulation and control of alcohol and tobacco;

WHEREAS, certain duties and responsibilities of the Comptroller (“COM,”), particularly those of the Comptroller’s Field Enforcement Bureau, and the Office of the Executive Director will require similar resources;

WHEREAS, a Declaration of State of Emergency and Existence of Catastrophic Health Emergency – Covid-19 (“Declaration”) has been issued by the Governor in response to the Covid-19 pandemic (“Pandemic”);

WHEREAS, the events set forth in the Declaration have caused unavoidable delays in organizing the ATC and the Office of the Executive Director and transitioning resources from the COM to the ATC,

the Executive Director, and the Office of the Executive Director;  
and

WHEREAS, the COM, the ATC, and the Executive Director must attempt to accomplish the directives of the General Assembly despite the logistical and budgetary limitations caused by the Pandemic;

**NOW, THEREFORE,** to allow the COM to share administrative services, personnel, equipment, and other organizational resources with the ATC and Executive Director in furtherance of the intent expressed by the Maryland General Assembly, to establish a framework for the COM, ATC, and Executive Director to effectuate the provisions of the Alcoholic Beverages Article and other provisions of the law, and to preserve the confidential nature of any information shared, the Parties agree to the following terms and conditions of this Memorandum of Understanding (“MOU”) as follows:

1. Recitals

The recitals are hereby incorporated into this MOU.

2. Cooperative Arrangements

The COM agrees to work and cooperate with, provide equipment and administrative service assistance to, and make procurements for the ATC and the Office of the Executive Director for use in fulfilling their responsibilities for alcohol and tobacco regulation and enforcement, in accordance with Maryland law and any appropriate delegation of authority.

In the performance of their respective duties under state law and pursuant to this MOU, the Parties agree to share employees, agents, and other personnel, as well as existing facilities, equipment, and other resources, as needed. Agents and inspectors of the Field Enforcement Division in the Office of the Executive Director shall work cooperatively with the COM to carry out their respective law enforcement and statutory duties.

When, as part of the employee sharing authorized by the Legislature, field enforcement agents or inspectors employed by the Office of the Executive Director perform any inspection or enforcement activity that relates to the COM’s functions, duties, and/or oversight, such as motor fuel inspections, those field enforcement agents or inspectors act under the authority of the COM’s Field Enforcement Bureau Director.

When, as part of the employee sharing authorized by the Legislature, field enforcement agents or inspectors employed by the COM perform any inspection or enforcement activity that relates to the Office of the Executive Director’s functions, duties, and/or oversight, those COM field enforcement agents or inspectors act under the authority of the Executive Director for the ATC.

### 3. Facilities

The COM agrees to permit the ATC, the Executive Director, and the Office of the Executive Director to share the facilities that are currently under the control of the COM, including COM field offices, the Motor Fuel Testing Laboratory, and various offices or storage rooms within the Treasury Building. The ATC and the Executive Director agree to abide by the COM's provisions for the safe and secure storage of any contraband or any items of an evidentiary nature seized or otherwise obtained in connection with inspections or investigations.

The COM has the sole authority to determine, in its discretion, with reasonable consideration of the requests and needs of ATC and the Executive Director, which facilities shall be shared and how such sharing shall occur.

### 4. Miscellaneous Equipment and Administrative Services

The COM agrees to make available to the ATC, the Executive Director, and the Office of the Executive Director existing equipment and administrative services they may need to perform their duties and responsibilities. The COM retains the sole authority to determine the method and manner of providing such equipment and administrative services.

Equipment shall include, but not necessarily be limited to, furniture, computer hardware, law enforcement equipment, communications equipment, and motor vehicles.

Administrative services shall include, but not necessarily be limited to, human resources services, information technology services and applications (including relevant software and programs, computer networks, databases, and electronic communications), budget and finance services, and procurement services, and mail services.

### 5. Equipment Inventory

All COM equipment made available for the use of the ATC, the Office of the Executive Director, and/or the Executive Director remains COM equipment and shall be reflected on the COM's inventory. Any property procured by the COM on behalf of the ATC or the Office of the Executive Director shall, upon payment to the COM, become the property of the ATC or the Office of the Executive Director and shall be reflected on the inventory records of the ATC or the Office of the Executive Director, as appropriate.

6. Security

The ATC and the Executive Director agree that they and their employees and staff shall comply with all relevant security requirements imposed by the COM on its own employees as if they and their employees were COM employees. These security requirements include all policies, procedures, statutory provisions, or regulations concerning the access to and handling of federal tax information, State tax information, personally identifiable information, and other such information protected by State or federal law and regulations. The ATC and the Executive Director agree that they and their employees and staff shall timely complete any training the COM may require relating to security and the confidentiality of its systems and tax information.

7. Costs

The COM shall not be responsible for any costs incurred by the ATC, the Executive Director, or the Office of the Executive Director in fulfilling their duties and responsibilities. The COM shall not be responsible for reimbursing the ATC, the Executive Director, or the Office of the Executive Director for any salaries or costs incurred by the ATC, the Executive Director, or the Office of the Executive Director or their employees. The parties shall not charge, bill, or invoice each other for the sharing of field enforcement agents or inspectors to carry out either the COM's or the Office of the Executive Director's inspection, enforcement, and oversight obligations. The Parties agree that the COM shall incur no costs associated with the implementation, completion, or fulfillment of any responsibility of the ATC, the Executive Director, or the Office of the Executive Director.

8. Billing for Equipment, Administrative Services, and Procurements

The COM may impose a reasonable charge on the ATC and/or the Office of the Executive Director for equipment and administrative services, as defined in paragraph 4 above, and for procurements made by the COM on behalf of the ATC or Executive Director's Office.

The COM may impose a reasonable charge on the ATC and/or the Office of the Executive Director during the period from January 1, 2021 through and including the date on which this MOU is fully executed by all parties for the following: (1) any costs for the use of COM equipment, administrative services, as defined in paragraph 4 above and (2) any procurements made by the COM on behalf of and for the benefit of the ATC or the Executive Director's Office.

Notwithstanding paragraph 7 above, the COM may charge the ATC and/or the Office of the Executive Director for payroll expenses incurred by the COM for employees who are transferring to the ATC or the Office of the Executive Director and who were to have transferred on January 1, 2021, but for the Workday structure not being in place to permit the transfer. These payroll expenses are for any position identification numbers (pins) to be transferred that are filled by personnel (and not vacant pins) and cover the period from January 1, 2021 through the date of transfer of the pins and personnel to the ATC. Payroll expenses means any amounts expended by the Comptroller in connection with employee pay, including, but not limited to, salaries or

hourly wages; fringe benefits, such as retirement and health insurance; and any ancillary expenses related to employee pay, such as payment of employment insurance and withholding taxes.

9. Term

This MOU shall become effective on the date on which the last signatory signs the MOU and shall continue in force through, and including, June 30, 2022, unless terminated earlier as specified below.

10. Project Manager

The COM shall designate a Project Manager. The address and telephone number of the Project Manager are c/o Comptroller of Maryland, Field Enforcement Bureau, PO Box 2397, Annapolis, MD 21404-2397, (410) 260-7388. The Project Manager will serve as a point of contact for all actions taken and have the authority to make management decisions relating to the COM's obligations, pursuant to this MOU. The COM may change its Project Manager on written notice to the Executive Director of the ATC. The ATC and the Executive Director also reserve the right to designate a point of contact or Project Manager for the same purposes and in the same manner as the COM.

11. Cooperation

The COM agrees to cooperate with the ATC and the Executive Director, as reasonably required to effectuate the intent of the Acts and this MOU and to facilitate the ATC's and Executive Director's successful use of COM resources. The COM will make its designated Project Manager, and any other necessary employees, available on a timely basis to the ATC and the Executive Director as requested.

12. Termination

a. *Inadequate Funding.* If adequate funds are not appropriated by the General Assembly to sustain this MOU, then the COM or the ATC may terminate the MOU by giving notice to the other party in writing at least 30 days in advance, or otherwise as promptly as possible before termination.

b. *Termination for Cause.* If a party to the MOU fails to satisfy the MOU requirements, and that failure impairs the performance of either the COM or the Office of the Executive Director or interferes with either's ability to carry out their respective lawful obligations, such failure constitutes a material breach. For purposes of this agreement, "material breach" means, with respect to a given breach, that a reasonable person in the position of the nonbreaching party would wish to terminate this agreement because of that breach.

c. *Material Breach.* In the event of a material breach, the non-breaching party shall give written notice of the breach to the breaching party. If within 15 days of receipt of the written notice, the breaching party does not begin to correct the breach

or, if within 30 days of receipt of notice, the material breach has not been substantially corrected, the non-breaching party may terminate this MOU without further notice. For purposes of this agreement, “substantially corrected” means that amount of correction that would makes the breach no longer “material.”

13. Information sharing

Unless prohibited by law, the Parties agree to inform each other about their alcohol and tobacco enforcement efforts by transmitting notices and providing information to designated persons. Upon the COM’s request, the ATC and the Executive Director agree to share information derived from their alcohol and tobacco inspections, licensing, and other enforcement actions with the COM for the COM’s tax enforcement obligations or to enable the COM to fulfill any of its legal or contractual obligations to share information with other federal, state, or local entities or agencies, including the Comptroller’s information sharing obligations with the Office of the Attorney General for purposes of enforcing the Master Settlement Agreement.

14. Notices

Whenever a Party is required to give notice (including to transmit invoices) to other Parties, the notice shall be deemed given when delivered by hand or by overnight courier, or on the third business day after being mailed by first-class mail addressed as follows:

**For the ATC:**

Attention: Chairperson  
Alcohol and Tobacco Commission  
Treasury Building  
80 Calvert Street  
3<sup>rd</sup> Floor—Field Enforcement  
Annapolis, Maryland 21404

**With a copy to:**

Murray Singerman  
Assistant Attorney General  
P.O. Box 591  
Annapolis, MD 21404-0591

**For the COM:**

Comptroller of Maryland  
Attention: PROJECT MANAGER  
P O Box 1751  
Annapolis, MD 21404-1751

**With a copy to:**

Brian Oliner  
Assistant Attorney General  
for the Comptroller of Maryland

P.O. Box 591  
Annapolis, MD 21404-0591

**For the Executive Director:**

Anthony Hatcher  
Acting Executive Director,  
ATCTreasury Building  
80 Calvert Street  
3<sup>rd</sup> Floor—Field  
EnforcementAnnapolis,  
MD 21404

**With a copy to:**

Murray Singerman  
Assistant Attorney  
General  
P.O. Box 591  
Annapolis, MD 21404-0591

A party may change its address or designated recipient by giving the other Parties written notice of the new address or recipient and the date that the change will be effective.

15. Severability; Construction

If, and only to the extent that, any provision of this MOU is declared or found to be illegal, unenforceable, or void, then the ATC, the Executive Director, or the COM shall be relieved of all obligations arising under such provision, it being the intent and agreement of the Parties that this MOU shall be deemed amended by modifying such provision to the least extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this MOU is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

16. Entire Agreement and Modification

This MOU, in conjunction with any schedules and any terms and conditions from other documents, legislation, laws, or regulations referred to herein or attached hereto, including without limitation those relating to the ATC, each of which is hereby incorporated, constitute the entire and exclusive statement of this agreement between the ATC, the Executive Director, and the COM. There are no oral or written representations, understandings, or agreements relating to this MOU that are not fully expressed herein. The Parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading, applications, internal or external memorandum, reports, letters, notices, bulletins, or other forms utilized or exchanged by the Parties shall not be incorporated herein or be binding unless

expressly agreed upon in writing by authorized representatives. No modification, change, or amendment shall be valid unless it is in writing and signed by the authorized representative of the Party against which such modification, change, or amendment is sought to be enforced.

**AGREED TO BY:**

**Comptroller of Maryland**

**Executive Director, Alcohol and Tobacco  
Commission**

By: JO Kelly  
Name: Jeffrey A. Kelly  
Title: Director of Field Enforcement Bureau  
Date: 06/28/2021

By: Anthony Hatcher  
Name: Anthony Hatcher  
Title: Acting Executive Director  
Date: 6/28/21

**Alcohol and Tobacco Commission**  
By: Alan Silverstein  
Name: Alan Silverstein  
Title: Chairperson  
Date: 6/29/2021