**Section 1800.320 Minimum Standards for Use Agreements**

a) All Use Agreements must comply with the following:

1) Only be between:

A) A licensed terminal operator that, beginning July 15, 2014, is licensed by the Board at the time the Use Agreement is signed; and

B) For all applicants filing application for a licensed video gaming location on or after October 1, 2022, any of the following:

i) a licensed video gaming location;

ii) an applicant to become a licensed video gaming location; or

iii) any person that applies to become a licensed video gaming location within one year of executing the Use Agreement;

2) Subject to the requirements of subsection (a)(1)(B), if an applicant becomes licensed, a first-in-time Use Agreement, and any amendments thereto, shall control from the date the Use Agreement is executed, and be superior to any Use Agreements executed by the applicant after the first-in-time Use Agreement's execution.

3) An executed Use Agreement becomes void if either:

A) the person executing the Use Agreement under subsection (a)(1)(B) fails to apply for a video gaming location license within one year of execution; or

B) the person executing the Use Agreement under subsection (a)(1)(B) is denied a video gaming location license by a Final Board Order.

4) Contain an affirmative statement that no inducement was offered or accepted regarding the placement or operation of video gaming terminals in a licensed video gaming location.

5) Contain an indemnity and hold harmless provision on behalf of the State, the Board and its agents relative to any cause of action arising from a use agreement.

6) Prohibit any assignment other than from a licensed terminal operator to another licensed terminal operator.

7) Contain a provision that releases the video gaming location from any continuing contractual obligation to the terminal operator in the event that the terminal operator has its license revoked or denied, has its renewal denied, or surrenders its license.

8) State which sales agent, broker or other person, if any, procured the Use Agreement on behalf of the terminal operator.

9) Not provide for automatic renewal in the absence of cancellation.

10) Not be for a length of time exceeding eight years.

11) Contain a provision that terminates the Use Agreement if an applicant to be a licensed video gaming location is denied pursuant to a final Board order or a licensed video gaming location is not renewed pursuant to a final Board order.

12) Contain a provision that the parties agree to modify the Use Agreement to the extent necessary to comply with a change in Illinois statutes, Board rules, or a Board directive or order.

13) Terminal Operators shall provide a final copy of the Use Agreement to the video gaming location after execution by the parties.

b) Petitions

1) The Board shall decide a petition brought by a terminal operator, licensed video gaming location or other interested party to determine the validity or enforceability of an agreement, or portion of an agreement, that purports to control the location and operation of video gaming terminals. For purposes of this Section an "interested party" is a party asserting legal rights whose enforcement requires, or may be materially and substantially affected by, Board action. Issues the Board has authority to decide under this subsection (b) include, but are not limited to, the following:

A) Whether the agreement is one that controls the placement or operation of video gaming terminals.

B) When two or more agreements between a licensed video gaming location and one or more terminal operators have overlapping effective dates, which of the agreements is valid during the period of overlap.

C) Whether an agreement, or portion of an agreement, complies with the requirements of the Act and this Part.

D) Whether a renewal provision in an agreement poses such obstacles against non-renewal, or confusion about the procedures for non-renewal, as to constitute an undue burden on the licensed video gaming location that has entered into the provision.

E) Whether a terminal operator or anyone on its behalf has used coercion, deception, or an inducement or incentive in violation of Section 25(c) of the Act or this Part to persuade a licensed video gaming location to enter into or renew an agreement.

F) Whether one or more terms of an agreement constitute practices detrimental to the public interest or against the best interests of video gaming.

2) Petitions under this subsection (b) shall be in writing and shall include an original and one copy unless submitted by e-mail to an e-mail address designated for that purpose on the Board's website. Any petitioner under this Section shall bear the burden of proof by clear and convincing evidence. A petition shall contain the following:

A) The name, current address, current telephone number, and e-mail address of the petitioner.

B) Detailed facts and reasons upon which the petitioner relies in arguing that an agreement, or portion of an agreement, is invalid or unenforceable. Petitions may include documentary evidence and affidavits. When the petitioner is petitioning as an interested party, the petition must include detailed facts and reasons upon which the petitioner relies in arguing that it has legal rights whose enforcement requires, or may be materially and substantially affected by, Board action.

C) A signature of the petitioner.

D) A verification of the petition in the following form:

"The undersigned certifies that the statements set forth in this petition are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies that he or she verily believes the same to be true."

E) A notarization.

3) Following receipt of a petition meeting the requirements of subsection (b)(2), the Administrator shall promptly send by certified mail or e-mail to each non-petitioning terminal operator or licensed video gaming location or other interested party named in the petition a complete copy of the petition, including all submitted documents. Non-petitioning parties named in the petition must file a response within 21 days after their receipt of the petition. All responses shall be in writing and shall include an original and one copy unless submitted by e-mail to an e-mail address designated for that purpose on the Board's website. A response shall be deemed filed on the date on which it is postmarked. The response shall contain the following:

A) The name, current address, current telephone number, and e-mail address of the responding party.

B) A clear and concise statement admitting or denying each of the allegations set forth in the petition.

C) For all allegations that the licensee denies, detailed facts and reasons upon which the non-petitioning party relies in arguing that the agreement, or portion of the agreement, is valid or enforceable. Responses may include documentary evidence and affidavits.

D) A signature of the licensee.

E) A verification of the licensee in the following form:

"The undersigned certifies that the statements set forth in this response are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies that he or she verily believes the same to be true."

F) A notarization.

4) The Administrator shall promptly provide a petitioning party with complete copies of all submitted responses meeting the requirements of subsection (c)(2).

5) Before rendering a recommended decision, the Administrator may require the parties to attend a conference to attempt to settle any dispute under this subsection (b)(5).

6) Administrator's Recommended Decision

A) Following the expiration of the 21-day response period, the Administrator shall issue a written recommended decision on the validity or enforceability of the contested agreement, or contested portions of the agreement, based on the contents of the petition and any responses.

B) The Administrator's recommended decision shall set forth the reasons the Administrator is recommending the granting or denial of the petition. When the petition asserts more than one claim as to the validity or enforceability of the agreement, or a portion of the agreement, the Administrator shall separately decide each claim.

C) Copies of the Administrator's recommended decision shall be served on each party by personal delivery, certified mail or overnight express mail to the party's last known address, or e-mail provided pursuant to Section 1800.140 or subsection (b)(2)(A) of this Section.

7) A petitioning party or party named in a petition brought under this subsection (b) may file exceptions to the recommended decision of the Administrator. The exception shall be filed with the Board no later than 14 days after receipt of the recommended decision. Exceptions shall specify each finding of fact and conclusion of law to which exception is taken. There shall be no oral argument on exceptions.

8) Intervention

A) Upon timely written application prior to the Administrator issuing a recommendation, the Administrator may, in his or her discretion, permit any interested party to intervene in the petition process, if that party may be materially and adversely affected by a final order arising from the petition.

B) In exercising his or her discretion, the Administrator shall consider whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

C) A petition for intervention must meet the same standards as an initial petition or response under subsection (b)(2) or (b)(3). It must also include sufficient facts for the Administrator to find that the intervening party may be materially and adversely affected by a final order arising from the petition.

D) Upon making a determination that a party may be permitted to intervene, the Administrator shall provide to the intervenor a copy of the original petition, as well as any responses. The Administrator shall also notify all other parties that the petition to intervene has been granted, and provide those parties with a copy of the petition to intervene.

9) Prior to the Board rendering a decision, the Administrator may require the parties to attend a conference to attempt to settle any dispute under this subsection (b).

10) Any relief given by the Board under this subsection (b) shall be limited to deciding which agreement, or portion of the agreement, is valid for the placement and operation of video gaming terminals in a licensed video gaming location. The Board has the express authority to order a licensed terminal operator to remove its Video Gaming Terminals from a licensed establishment if an agreement, or portion of the agreement, is invalidated. The Board shall not award monetary damages of any kind. Any failure by a party to abide by the Board's decision shall subject the licensee to discipline.

11) Ex Parte Communication Prohibited. No party or its representative shall make any communication directly or indirectly with the Administrator, employees, or members of the Illinois Gaming Board regarding a pending petition that imparts material information or makes a material argument, except upon notice to and opportunity for all parties to participate.

12) Final Board Order

A) The Board shall review the entire record, including the petitions filed, the Administrator's recommended decision, and any exceptions filed, and shall render a written order including the bases for its decision.

B) Copies of the final Board order shall be served on each licensee by personal delivery, certified mail or overnight express mail to the licensee's last known address, or e-mail provided pursuant to Section 1800.140 or subsection (b)(2)(A) of this Section.

C) A final Board order shall become effective upon personal delivery

to a party, upon posting by certified or overnight express mail to the party's last known address, or sending of e-mail provided pursuant to Section 1800.140 or subsection (b)(2)(A) of this Section.

c) The Board shall promulgate a standard form for Use Agreements and establish an effective date for its implementation. All new and renewed Use Agreements entered into on or after that effective date shall incorporate the language of the standard form and shall be consistent with the standard form in all respects.

d) Unless otherwise indicated, whenever the term "agreement" is used in this Section, it refers to an agreement that purports to control the operation and placement of video gaming terminals.

(Source: Amended at 46 Ill. Reg. 17107, effective September 28, 2022)