

AGENDA  
ARKANSAS LOTTERY COMMISSION  
Tuesday, November 17, 2009  
1:30 p.m.  
ALC Board Room  
124 West Capitol Avenue  
Little Rock, Arkansas

- I. Call to Order
  - II. Approval of minutes of meeting October 7, 2009
  - III. Report from Legal Committee, November 13 meeting
  - IV. Announcement of Retail Advisory Council appointments
  - V. Report from the Internal Auditor
  - VI. Report from the Executive Director
  - VII. Approval of Draw Games
    - Cash 4
    - Mega Millions
    - Instant Win, Add On
  - VIII. Presentation of Commission Zone
  - IX. Discussion of future meetings
  - X. Other business (Upcoming LOC meeting)
- Adjourn

**MINUTES**  
**ARKANSAS LOTTERY COMMISSION**  
**Tuesday, October 7, 2009**  
**1:30 p.m.**  
**Arkansas Lottery Commission Board Room**  
**124 West Capitol Avenue, Little Rock, AR**

The meeting was called to order by Chairman Thornton. All Commissioners were present: Commissioners Thornton, Lamberth, Pickard, Smith, Shipp and White in person and Commissioners Hammons, Malone, and Ward-Jones by teleconference. Director Ernie Passailaigue represented the staff, along with David Barden, Ernestine Middleton, Julie Baldrige, Bridgette Frazier, Bishop Woosley, and Patricia Vick. Internal Auditor Michael Hyde also was present.

Chairman Thornton expressed the Commission's appreciation to the staff in putting the ASL on track to gross \$100 million for scholarships in the first year, adding that the likely \$30 million in scholarships produced by the end of 2009 would exceed the total scholarships funded annually by state government prior to the establishment of the Lottery. The minutes from the September 11 meeting were reviewed and unanimously approved.

Mr. Passailaigue and Mr. Barden gave Commissioners an overview of the introduction of products. Four more instant tickets will be introduced on October 20, including a \$1 Money Bags game with a maximum prize of \$2,000; a \$2 Money Madness game with a maximum prize of \$18,000; a \$2 Crazy 8's game with a maximum prize of \$18,888; and a \$5 Super 7s game with a maximum prize of \$77,777. Further, on October 31, Arkansas retailers will begin selling Powerball® tickets, with a Midnight Madness launch event, details to be released as the planning progresses. Also, on November 10, four more new instant tickets will be introduced. And on December 14, there are plans to launch the first Arkansas draw game, Cash 3. Also mentioned were prospective games such as raffle, Hot Lotto by Multi-State Lottery Association and a southern regional lotto game.

Director Passailaigue reported on the ASL Budget and Expenditures. To date, the expenditures totaled \$16,468 to the end of FY 2009 on June 30; and \$2,144,314 for FY 2010, for a total owed to the Department of Finance and Administration of \$2,160,782. This expenditure is less than half of the amount the legislature made available for startup costs, and less than one-third of the total \$9 million that could have been requested. The Director said the loan would be repaid in full on October 15, 18 days after the first ticket went on sale.. Also, he presented a preliminary budget from September 28, 2009 through September 27, 2010. He estimated sales at \$400 million, prizes at \$241.7 million, commissions at \$26 million, gaming costs at \$14.930 million, administrative, advertising and other expenses at \$15.564, leaving net proceeds at \$102.37 million.

Ms. Middleton reported that the Springdale Claim Center would open in early November, most likely November 2; that the Jonesboro Center should follow in December, and that Camden negotiations were well underway after being renewed when the original site fell through.

Mr. Andy Babbitt of Legislative Audit addressed the Division's report on the ALC for FY 2009, noting good communication with Internal Auditor Michael Hyde and Controller Philip Miley, with the expectation that they will provide assistance when needed.

Mr. Hyde then presented a draft of the Internal Audit Charter and a report to the Commission. He said he would perform two audits during the last four months of 2009, including instant tickets internal control and retail settlements; would review and monitor projects; and would prepare a 2010 Internal Audit plan.

The ALC Legal Committee report was presented next following a meeting earlier in the day attended by members Commissioner Smith, Commissioner Hammons and Commissioner Shipp, as well as by Commissioner Lamberth and Commissioner Pickard. Commissioner Smith proposed ALC approval of an Invitation For Bid for Directors and Officers coverage. This proposal, by motion of Commissioner Smith, seconded by Commissioner Lamberth, was approved unanimously. Next, by motion of Commissioner Smith, seconded by Commissioner Hammons, the permanent adoption of the Rules of Practice and Procedure was unanimously approved. Last, the proposal to begin the permanent rulemaking process for the Operational Rules – currently in place on an emergency basis – with public and commission comment, was unanimously approved by motion of Commissioner Smith, second by Commissioner White.

In other business, the Commission discussed the 10-member Retailer Advisory Council. Commissioner White proposed that in addition to Commissioner suggestions, the Retail Committee would help with suggestions for appointees, and would ask for input from the Marketing and Sales Representatives, thereby presenting the Chairman with a pool of possible appointees. Chairman Thornton agreed, and by motion of Commissioner White, seconded by Commissioner Pickard, the proposal was approved unanimously.

Chairman Thornton then read laudatory letters regarding the Arkansas Lottery Commission and its startup of the Arkansas Scholarship Lottery from Representative Barry Hyde, Co-Chair of the Legislative Oversight Committee, and from Representative Linda Tyler, an LOC member.

There being no further business, the meeting was adjourned. No date was set for the next meeting.

**Retailer Advisory Board, Arkansas Lottery Commission  
Appointments by the Chair for Approval by the Commission  
November 17, 2009**

Terri Brewer of Plumerville, Kroger

Sarah Diebold of Fayetteville, Friendly Liquor

Carl James of El Dorado, Murphy Oil USA, Inc.

Richard King of Little Rock, E-Z Mart

Steve Lightle of Searcy, B&B Oil Company

Branch Satterfield of Conway, Satterfield Fuel

Ness Sechrest of West Memphis

Connie Townsley of Batesville

Harold Tunious of North Little Rock, D&J Mini-Mart

Joe Dan Yee of Lake Village, Yee Foodland



TO: Commissioners, Arkansas Lottery Commission

FROM: Ernie Passailaigue, Executive Director

DATE: October 29, 2009

SUBJECT: RECOMMENDATION FOR EXEMPT EMPLOYEES

It is common practice in the lottery industry to financially recognize employees for an early start-up. Bonuses in many instances range from the high 50k for executives and several thousand for the start-up staff. Up until recently, the norm for starting a lottery has been six months before the first ticket sale. The phenomenal record breaking start-up of the Arkansas Scholarship Lottery would *literally* not have been possible without the tireless effort and long hours including holidays and weekends of the staff. Federal law (Fair Labor Standards Act - FLSA) requires that we pay overtime at a rate of time and a half to non-exempt employees for any hours worked over 40 in a work week. ASL is in compliance with the law and pays all of our non-exempt employees accordingly.

The FLSA does not require an employer to recognize exempt employees with additional compensation. Because of the hard work and superior performance of our exempt employees, who are primarily in management positions, it is recommended that exempt employees be recognized in an alternative manner. It is proposed to the Commission that exempt employees be rewarded through an additional grant of leave for overtime worked. Clearly, it is in the sole discretion of the Commission to entertain such a proposal.

The proposal if ratified, is for a limited time period. Staff suggest a two year period by which all overtime must be taken. Considering that in many respects we are still in start-up mode and not 100% staffed, we propose some flexibility for those in critical positions that cannot afford to take off for two to three weeks in a twelve month period. Human Resources would be responsible for administering and tracking this program and ensuring that records are available for documenting the time worked and the time used. If the exempt employee leaves employment, the unused time is forfeited. The time may be used in lieu of annual or sick leave but cannot be used to extend family medical leave, which is 12 weeks for those with at least one year of state service.

This proposal is submitted to you for your review and approval. Please let me know how you would like for us to proceed.

CC: David Barden

Ernestine Middleton



## **Cash 4 Summary**

### **Overview**

- Cash 4 is a four-digit numbers game drawn twice daily.
- Four states bordering Arkansas offer a similar four-digit game.

### **Attributes**

- There are several play options and ticket costs available to players to either mark on an ASL-issued playslip or by asking the retailer.
- Players would select four digits, each from 0 through 9, any of which can be the same.
- Players would select a ticket cost of either \$0.50 or \$1.00.
- Players select a play type from:
  - Straight (match numbers drawn in exact order),
  - Box (match numbers drawn in any order),
  - Straight/Box (a \$0.50 Straight play plus a \$0.50 Box play), or
  - Combo (purchasing a Straight play for all possible combinations of the number).

### **Drawings**

- Drawings would be held twice daily, midday and evening, following the Cash 3 draw.
- Four numbers would be randomly selected in each draw.
- Like Cash 3, drawings would be conducted using random number generator technology.

### **Ways to Win and Prizes**

- Prizes and odds of winning depend on the ticket cost and play type selected by the player.
- The highest prize for a single play would be \$5,000 for a \$1.00 Straight play. This carries the longest odds in the game of 1 in 10,000.

### **Commission Action Needed**

- Approve the Cash 4 game for inclusion in Arkansas' online game mix, with sales anticipated to begin in early 2010.



## **Mega Millions® Summary**

### **Overview**

- Mega Millions® is a multi-state jackpot drawing game similar to Powerball®.
- Members of the Mega Millions® group include California, Georgia, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Texas, Virginia, and Washington.
- Beginning early 2010, Powerball® group lotteries (33 jurisdictions) will be able to sell Mega Millions®.

### **Attributes**

- Each Mega Millions® play costs \$1.
- Players select five (5) white ball numbers from 1 to 56 and one (1) gold Mega Ball number from 1 to 46, either on an ASL-issued playslip or by asking the retailer.
- The optional Megaplier® feature may be added for an additional \$1 per play.
- Megaplier®, like PowerPlay® on Powerball®, multiplies non-jackpot winnings. A multiplier number is randomly selected each draw from 2, 3, or 4.

### **Drawings**

- Drawings are held at 10:00 p.m. CST each Tuesday and Friday in Atlanta, Georgia. During each drawing, five (5) white ball numbers from 1 to 56 and one (1) gold Mega Ball number from 1 to 46 will be drawn using a ball machine.

### **Ways to Win and Prizes**

- Like Powerball®, there are nine (9) prize tiers based on the number of balls matched.
- Prizes range from \$2 for matching just the gold Mega Ball up to the jackpot for matching all six balls.
- The Mega Millions® annuitized jackpot starts at \$12 million and increases after each draw that it is not won.
- Overall odds of winning are 1 in 40. The odds of winning the jackpot are 1 in 175,711,536.
- The Prize Fund for any drawing is expected to be 50% of sales, but may be higher or lower based upon the number of winners at each prize level, as well as the funding required to meet the advertised jackpot.

### **Commission Action Needed**

- Approve Arkansas participation in the multi-state Mega Millions® game, with sales expected to begin January 2010.



# Instant-Win Add-On Concept

## Overview

- An optional add-on feature would be available for online games.
- When selected, the terminal would print a separate ticket with an instant-win game following the online game ticket.
- The play style and theme of the instant-win game would change periodically to refresh the game.

## Attributes

- Each add-on play would cost \$1.
- Play styles for the instant-win game could include matching, tic-tac-toe, or other styles similar to those of instant scratch-off tickets.
- Prizes and odds of winning would follow a set prize structure similar to an instant scratch-off game.

## Commission Action Needed

- Approve inclusion of an instant-win add-on feature on existing and future online games, anticipated to begin in 2010.

**Arkansas Lottery Commission  
Rules of Practice and Procedure**

**Section 1. Statement of Organization and Operations.**

**1.1 Creation.** The Arkansas Lottery Commission is an agency of state government created by Act 606 of 2009, Ark. Code Ann. §23-115-201 et seq. The legislature has delegated to the Commission regulatory authority over the establishment and operation of one or more lotteries for the benefit of funding and providing for scholarships and grants to citizens of the State of Arkansas enrolled in public and private nonprofit two-year and four-year colleges and universities located within the State.

**1.2 Name.** The lotteries operated by the Arkansas Lottery Commission shall be referred to as the Arkansas Scholarship Lottery ("ASL") and the staff may use the latter name in communications and advertising as appropriate.

Deleted: may

Deleted: shall

**1.3 Location.** The Commission's principal office is situated at 124 West Capitol Avenue, Little Rock, Arkansas 72201, and may be moved as necessary by a majority vote of the Commission. Its mailing address is Post Office Box 3238, Little Rock, Arkansas 72203.

**1.4 Seal.** The Commission may maintain a corporate seal, which shall be in a form adopted by the Commission.

**1.5 Operations.** The Commission staff, which may consist of a director, internal auditor, chief operating officer, information technology director, administrative and operations director, chief legal counsel, chief fiscal officer, marketing and product development director, sales/retail relations director, procurement director and others, acts as administrator and operating entity of the Commission. This staff, or members thereof, may make office administrative procedure, act as spokesperson for the Commission, receive correspondence and correspond on behalf of the Commission, provide legal and other research to the Commission, investigate allegations of violations of laws under the Commission's jurisdiction, and perform such other functions as the Commission deems appropriate.

**1.6 Commission Organization.**

A. The Commission shall consist of nine (9) Commissioners who shall be appointed as follows:

1. Three (3) members by the Governor of the State of Arkansas;
2. Three (3) members by the Speaker of the Arkansas House of Representatives; and

3. Three (3) members by the President Pro Tempore of the Arkansas Senate.

B. Of the initial appointees to the Commission, each appointing authority shall designate one appointee to serve a term of two (2) years; one appointee to serve a term of four (4) years; and one appointee to serve a term of six (6) years. All succeeding appointees to the Commission shall be appointed for terms of six (6) years. All Commissioners shall continue to serve until their successors have been appointed and have taken the official oath. No person shall serve more than two (2) terms on the Commission.

**1.7 Staff Organization.**

A. Director.

1. The Commission shall employ a Director who shall serve at the will and pleasure of the Commission.

2. The Director shall employ a staff to assist in the administration of the Commission's office.

3. The Director shall be responsible to the full Commission and shall not be answerable to any member thereof. The Director shall ensure, however, that the Chairperson of the Commission is advised of the progress and conduct of the employees and operation of the Commission office.

B. Internal Auditor.

1. The Commission shall employ an Internal Auditor who shall serve at the will and pleasure of the Commission.

2. The Internal Auditor shall establish internal controls and procedures to prevent and detect fraud, including without limitation a system of internal audits.

3. The Internal Auditor shall be responsible to the full Commission and shall not be answerable to any member thereof.

**1.8 Conflicts of Interest.** Members of the Commission and the Commission's staff shall maintain constant vigilance against conflicts of interest and against the appearance of conflicts of interest. Applicable provisions of the Arkansas Scholarship Lottery Act and the Disclosure Act for Lobbyists and State and Local Officials, Ark. Code Ann. § 21-8-401 through -407, -601 through -607, and -801 through -804 shall be in full force.

**Section 2. Information for Public Guidance.**

- A. The Commission shall make available a list of persons holding certain responsibilities for handling Freedom of Information Act requests, responding to licensing questions, and addressing complaints against licensees so that the public may obtain information about the Commission or make submissions or requests. The names, mailing addresses, telephone numbers, and electronic addresses can be obtained from the Commission's office or Web site.
- B. The Commission shall maintain a list of official forms used by the Commission and a list of all formal, written statements of policy and written interpretative memoranda, and orders, decisions and opinions resulting from adjudications may be obtained from the Commission's office or Web site.
- C. Copies of all forms used by the Commission, written statements of policy and written interpretive memoranda, and all orders issued by the Commission may be obtained from the Commission's office or Web site.

**Section 3. General Organization.**

**3.1 Officers.**

- A. The officers of the Commission shall be the Chair, Vice-Chair, Secretary/Treasurer, and such other officers as a majority of the Commissioners choose. The Commission shall elect at its first meeting following May 1 of each year a chair, vice chair, and secretary/treasurer.
- B. The Chair shall be a member of the Commission and (1) shall preside at the meetings of the Commission with the authority to vote, (2) shall call special meetings as required, (3) shall appoint or provide for the election of all committees; and (4) shall perform such other duties as may be prescribed by law or by action of the Commission.
- C. The Vice-Chair shall be a member of the Commission and shall perform the duties and have the powers of the Chair during the absence or disability of the Chair.
- D. The Secretary/Treasurer shall be a member of the Commission and shall attest the official actions of the Commission.

**3.2 Meetings.**

- A. Regular Meetings: The business of the Commission shall be conducted in public meetings pursuant to the Arkansas Freedom of Information Act and guided by Robert's Rules of Order. Regular meetings will be held at least quarterly. Special meetings will be held on the call of the Chair or five (5) Commission members.

- B. **Notice:** The Commission shall post a notice of its regular meetings on its website and at [www.arkansas.gov](http://www.arkansas.gov) at least three (3) days before the meeting. Notices for emergency or special meetings shall be posted on the Commission website at least two (2) hours before the meeting takes place.
- C. **Quorum:** A majority of the total membership of the Commission, whether present in the meeting room, via telephone, teleconference or similar technology, constitutes a quorum for the transaction of business.
- D. **Agenda:** The Chair shall prepare a proposed agenda for each regular meeting with assistance from the Director or his or her designee, and the proposed agenda shall be distributed to the Commission members and made available to the public in advance of the meeting. Any Commissioner may add items to the agenda by notification to the Chair at least twenty-four (24) hours before the scheduled meeting date time. Any item may be added to the agenda during the meeting upon the majority vote of the Commissioners present at the meeting.

**3.3 Committees.** The Commission may create standing and ad hoc committees. The Chair will select members of committees. Standing Committees may address any item referred to it by the Commission or address any matter upon its own initiative that may reasonably related to its title and its subject matter that is generally reviewed by that committee in custom and practice. A quorum for the transaction of committee business is a majority of the number of voting members of the committee.

#### **Section 4. Rule-Making.**

- 4.1 Authority.** Pursuant to Ark. Code Ann. §23-115-207, the Commission has been authorized by the Legislature to promulgate rules. The Commission follows the procedural requirements of the Arkansas Administrative Procedure Act, Ark. Code Ann. §25-15-201 et seq. except that the Commission shall not be required to file rules under Ark. Code Ann. §10-3-309 but the Commission shall file its rules with the Arkansas Lottery Commission Legislative Oversight Committee at least thirty (30) days prior to the expiration of the public comment period.
- 4.2 Initiation of Rule-Making.** The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to "rule-making") may be initiated by request of the Commission that the staff submit proposed drafts. Additionally, staff of the Commission may request permission of the Commission to initiate rule-making. Third persons outside the Commission may petition for the issuance, amendment, or repeal of any rule.
- 4.3 Petition to Initiate Rule-Making.**
  - A. In accordance with Ark. Code Ann. §25-15-204(c), third parties may initiate a rule-making proceeding to adopt, amend, or repeal a rule by filing a petition with the

Commission to initiate rule-making. The petition must contain the name, address, and telephone number of the petitioner, the specific rule or action requested, the reasons for the rule or action requested, and facts showing that the petitioner is regulated by the Commission or has a substantial interest in the rule or action requested.

- B. The petition to initiate rule-making shall be filed with the Director.
- C. Within thirty (30) days after submission of the petition, the Commission shall either deny the petition, stating its reasons in writing, or initiate rule-making. A special meeting will be called if necessary to meet this time frame.

#### **4.4 Public Input.**

- A. Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, the Commission shall receive public input through written comments and/or oral submissions. The Commission shall designate in its public notice the format and timing of public comment.
- B. Any public hearing will provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the Commission to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings.
- C. The Chair, any member of the Commission, or any person designated by the Commission may preside at the public hearing. The Commission must ensure that the Commission personnel responsible for preparing the proposed rule or amendment are available, and will notify third parties initiating rule changes to be available to explain the proposal and to respond to questions or comments regarding the proposed rule.
- D. The Commission shall preserve the comments made at the public hearing by a certified court reporter or by recording instruments.
- E. Any person may submit written statements within the specified period of time. All timely, written statements will be considered by the Commission and be made a part of the rule-making record.

**4.5 Notice of Rule-Making.** The Commission shall give notice of proposed rule-making pursuant to Ark. Code Ann. §25-15-204. The notice will set any written comment period and will specify the time, date, and place of any public hearing.

#### **4.6 The Decision to Adopt a Rule.**

- A. The Commission shall not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.

- B. Before acting on a proposed rule, the Commission shall consider all of the written submissions and/or oral submissions received in the rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in the rule-making proceedings.
- C. The Commission may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

**4.7 Variance Between Adopted Rule and Published Notice of a Proposed Rule.**

- A. The Commission shall not adopt a rule that differs from the rule proposed in the published notice of the intended rule-making on which the rule is based unless:
  - 1. The final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule; or
  - 2. The notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.
- B. In determining whether the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments, and that the notice of intended rule-making provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the Commission must consider the following factors:
  - 1. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
  - 2. The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intended rule-making; and
  - 3. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intended rule-making.

**4.8 Concise Statement of Reasons.**

- A. When requested by an interested person, either prior to the adoption of a rule or within thirty (30) days after its adoption, the Commission shall issue a concise statement of the principal reasons for and against its adoption of the rule. Requests for such a statement must be in writing and be delivered to the Director. The request should indicate whether the statement is sought for all or only a specified part of a rule. A request will be considered to have been submitted on the date on which it is received by the Commission.

B. The concise statement of reasons must contain:

1. The Commission's reasons for or against adopting the rule;
2. An indication of any change between the text of the proposed rule and the text of the rule as finally adopted, with explanations for any such change;

and

3. The principal reasons urged in the rule-making procedure for and against the rule, and the Commission's reasons for overruling the arguments made against the rule.

**4.9 Contents.** The Commission shall cause its rules to be published and made available to interested persons. The publication must include:

- (a) The text of the rule; and
- (b) A note containing the following:
  - (1) The date(s) the Commission adopted or amended the rule;
  - (2) The effective date(s) of the rule;
  - (3) Any findings required by any provisions of law as a prerequisite to adoption for effectiveness of the rule; and
  - (4) Citation to the entire specific statutory or other authority authorizing the adoption of the rule;
- (c) The publication of the rule(s) must state the date of publication.

**4.10 Incorporation by Reference.** By reference in a rule, the Commission may incorporate all or any part of a code, standard, rule, or other matter if the Commission finds that copying the matter in the Commission's rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the Commission rule shall fully and precisely identify the incorporated matter by title, citation, date, and edition, if any; briefly indicate the precise subject and general contents of the incorporated matter; and state that the rule does not include any later amendments or editions of the incorporated matter. The Commission may incorporate such a matter by reference in a proposed or adopted rule only if the incorporated matter is readily available to the public. The Commission must retain permanently a copy of any materials incorporated by reference in a rule of the Commission.

#### **4.11 Filing.**

- A. After the Commission formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule has been filed with the Arkansas Legislative Oversight Committee for review, the staff shall file final copies of the rule with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, or as otherwise provided by Ark. Code Ann. §25-15-204(d).
- B. Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research will be kept in a file maintained by the staff attorney of the Commission.
- C. Notice of the rule change will be posted on the Commission's Web page.

#### **Section 5. Emergency Rule-Making.**

- 5.1 Request for Emergency Rule-Making.** The proponent of a rule may request the Commission to adopt an emergency rule. In addition to the text of the proposed rule or amendment to an existing rule and any other information required by Section 4.3, the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public health, safety, or welfare.
- 5.2 Finding of an Emergency.** Upon receipt of the written statement requesting an emergency rule-making and documents or other evidence submitted in support of the assertion that an emergency exists, the Commission shall make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than 30 days notice. If the Commission determines that the circumstances warrant emergency rule-making, it will make a written determination that sets out the reasons for the Commission's finding that an emergency exists. Upon making this finding, the Commission may proceed to adopt the rule without any prior notice or hearing, or it may determine to provide an abbreviated notice and hearing.
- 5.3 Effective Date of Emergency Rule.** The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the Commission finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The Commission will file with the rule its written findings justifying the determination that emergency rule-making is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten days after the filing of the rule pursuant to Ark. Code Ann. §25-15-204(e). The Commission shall take appropriate measures to make emergency rules known to persons who may be affected by them.

## **Section 6. Declaratory Orders.**

**6.1 Purpose and Use of Declaratory Orders.** A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the Commission has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from the Commission. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

**6.2 The Petition.** The process to obtain a declaratory order is begun by filing with the Director a petition that provides the following information:

- (a) The caption shall read: Petition for Declaratory Order Before The Arkansas Lottery Commission.
- (b) The name, address, telephone number, and facsimile number of the petitioner.
- (c) The name, address, telephone number, and facsimile number of the attorney of the petitioner.
- (d) The statutory provision(s), Commission rule(s), or Commission order(s) on which the declaratory order is sought.
- (e) A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order.
- (f) The signature of the petitioner or petitioner's attorney.
- (g) The date.
- (h) Request for a hearing, if desired.

### **6.3 Commission Disposition.**

- A. The Commission may hold a hearing to consider a petition for declaratory order. If a hearing is held, it shall be conducted in accordance with Ark. Code Ann. §25-15-208 and §25-15-213.
- B. The Commission may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days

of the filing of the petition, the Commission will render a final order denying the petition or issuing a declaratory order.

**Section 7. Adjudicative Hearings.**

**7.1 Scope.** This section shall be applicable to any of the adjudicative hearings conducted by the Commission or its Director whether by statute or other rule.

**7.2 Subpoena Power.**

A. At the request of any party, the Commission shall issue subpoenas for the attendance of witnesses, and the production of books, papers, documents and other relative evidence. ~~The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents.~~

Deleted: at the hearing

B. A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is eighteen (18) years of age or older. Delivering a copy to the person named in the subpoena shall make service. Proof of service may be made by affidavit of the person making service. The party seeking the subpoena shall have the burden of obtaining service of the process and shall be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The witness must be served at least two days prior to the hearing. For good cause, the Commission may authorize the subpoena to be served less than two days before the hearing.

C. Any motion to quash or limit the subpoena shall be filed with the staff attorney of the Commission and shall state the grounds relied upon.

## **Operational Rules Arkansas Scholarship Lottery**

**Preface:** The purpose of these rules is to establish the policies and procedures regulating the conduct and operation of the Arkansas Scholarship Lottery; to make certain that the lottery is operated with dignity and integrity; and to ensure that the citizens of Arkansas maintain trust and confidence in the Arkansas Lottery Commission (ALC). These rules are promulgated under the authority of Arkansas Code Ann. § 23-115-205.

### **Section 1. Definitions.**

- 1.1 "Act" means the Arkansas Scholarship Lottery Act (Act 606 of 2009).
- 1.2 "Administrative order" means the final disposition of the Arkansas Lottery Commission in any matter other than a claim in contract or tort, including without limitation bid protests and retailer licensing in which the Arkansas Lottery Commission is required by law to make its determination after notice and a hearing.
- 1.3 "ALC" means the Arkansas Lottery Commission as created by the Act.
- 1.4 "Applicant" means a natural person, corporation, partnership, unincorporated association, or other legal entity.
- 1.5 "Banks" means and includes all commercial banks, mutual savings banks, savings and loan associations, credit unions, trust companies, and any other type or form of banking institution who are authorized to do business in the state of Arkansas and that are designated to perform banking institution functions, activities, or service in connection with the operations of ALC for the deposit and handling of lottery funds, the accounting of the funds and the safekeeping of records.
- 1.6 "Bar code validation" means a system which allows any winning lottery ticket, printed with computer readable bar codes for a prize amount as determined by the Commission, to be read electronically at any claim center or lottery retailer location and paid by the retailer regardless of where the player purchased the ticket.
- 1.7 "Certified Drawing" means a number selection event about which the ALC and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred.

- 1.8** "Claims Center" means the ALC claims center located at the ALC Main Office in Little Rock, Arkansas, or any other location authorized by the ALC to validate and pay a winning ticket.
- 1.9** "Commission" or "Commissioner" means the individual(s) appointed as members to the ALC under Arkansas Code Ann. § 23-115-201 et seq.
- 1.10** "Compensation" means any money or anything of value received or to be received as a claim for services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof.
- 1.11** "Debt" means a liquidated sum due and owing any claimant agency when the sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum; or sum that is due and owing any person and is enforceable by the State of Arkansas.
- 1.12** "Depository" means any entity, including a bank or state agency, performing activities or services in connection with the operation of the ALC for the deposit and handling of lottery funds, the accounting for lottery funds, and the safekeeping of tickets.
- 1.13** "Drawing" means the procedure used to select the winning numbers or combination of numbers in accordance with the game rules of the particular lottery game.
- 1.14** "Employee" means a person who is an employee of the ALC unless the context clearly indicates otherwise.
- 1.15** "Director" means the individual appointed by the ALC to initiate, operate, supervise, and administer the ALC lottery games.
- 1.16** "Game" means any individual or particular type of lottery game authorized by the ALC pursuant to the Act including but not limited to instant games and online games.
- 1.17** "Immediate family" means the father, mother, sister, brother, husband, wife, child, grandmother, grandfather, grandchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepchild, grandmother-in-law, grandfather-in-law, step grandchild, or any individual acting as parent or guardian.
- 1.18** "Instant Game" means a game in which a ticket is purchased and upon removal of a latex covering or other covering on the front or back of the ticket or the opening of the sealed ticket, the ticket bearer determines his or her winnings, if

any, which are payable upon presentation to a lottery retailer, claims center or another entity approved by the ALC.

- 1.19** "Instant Ticket" means a printed card or slip purchased for participation in an instant game.
- 1.20** "Legal Owner" means the individual(s) whose name(s) appear on the ticket or share in the space designated for "Name" or in the absence of such entry the bearer of the ticket or share.
- 1.21** "Lottery" or "Lottery Game" means the public gaming system or games established and operated by ALC.
- 1.22** "Lottery Retailer" or "Retailer" means any person licensed by the ALC to sell and dispense instant tickets and materials or lottery games.
- 1.23** "Lottery Ticket" or "Ticket" means tickets or other tangible evidence of participation used in lottery games pursuant to the Act.
- 1.24** "Online Game" means a state or multi-state lottery game in which a player pays a fee to a lottery retailer and selects or uses a computer terminal to select a combination of digits, numbers, or symbols, the type and amount of play, and the drawing date, and receives a computer-generated ticket with those selections printed on it.
- 1.25** "Online Terminal" means the electronic computer terminal through which a lottery retailer enters the combination of digits, numbers, or symbols selected by a player and by which online tickets are generated and claims are validated.
- 1.26** "Online Ticket" means a computer-generated ticket issued by a lottery retailer to a player as a receipt for the combination of digits, numbers, or symbols selected.
- 1.27** "Person" means an individual, association, corporation, club, trust, estate, society, governmental entity, company, joint stock company, receiver, trustee, assignee, referee, and anyone acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of human beings.
- 1.28** "Player" means any individual who purchases or is given a lottery game from a retailer or the ALC.
- 1.29** "Prize" means any award, financial or otherwise, awarded by the ALC.
- 1.30** "Random number generator" means a computer driven electronic device capable of producing numbers at random.

- 1.31** "Share" means any intangible evidence in participation in a lottery.
- 1.32** "Ticket Bearer" means the person who has signed the ticket or has possession of the unsigned ticket.
- 1.33** "Ticket Number" means the preprinted number found on the back of each ticket which identifies that particular ticket as one (1) of a series of tickets.
- 1.34** "Ticket Pack Number" means the printed number or numbers appearing on the back of each ticket.
- 1.35** "Unclaimed Prize" means the prize on a winning ticket for which no claim is made within the required time period after the drawing or winner selection event which made the ticket a winning ticket.
- 1.36** "Unclaimed Prize Account" means the ALC account to which unclaimed prizes are transferred.
- 1.37** "Validation" means the process of determining whether an instant or online ticket presented for payment is a winning ticket.
- 1.38** "Validation Number" means the multi-digit number found on the face of the ticket. There must be a validation number on each ticket.
- 1.39** "Vendor" means a person who provides or proposes to provide goods or services to the ALC under a procurement contract. "Vendor" does not include:
- (a) An employee of the ALC;
  - (b) A retailer; or
  - (c) A state agency or instrumentality.
- 1.40** "Working papers" means the programming parameters and specific details for each game, including the identification of the game, ticket price and prize structure.
- 1.41** "Website" means the ALC's lottery address at [lotterycommission.arkansas.gov](http://lotterycommission.arkansas.gov), [www.myarkansaslottery.com](http://www.myarkansaslottery.com), or any other website that may be specified by the ALC.
- 1.42** "Winner" means the holder of a lottery ticket determined to have the required match or the specific alignment of the play numbers, digits or symbols, the required sum of the play numbers or digits in accordance with the game rules for the specific game, or a redeemable prize amount indicated on its face.

1.43 "Winner selection" means the drawing process used by the ALC to select the winning numbers in online games.

1.44 "Winning Combination" means numbers or symbols chosen during the drawing process used by the ALC to select the winning numbers in online games.

**Section 2. Authority of Director.**

Notwithstanding the authority and duties listed in Arkansas Code Ann. § 23-115-302 or other such responsibilities and duties designated by the Commissioners, the Director of the ALC may:

- (a) Cancel or postpone any promotion at any time;
- (b) Contract with and license retailers for the sale of lottery games and shares;
- (c) Direct the distribution of on-line terminals, ticket stock, and supplies shipped directly from the manufacturer or supplier to an authorized retailer;
- (d) Determine the price paid for all lottery games and shares;
- (e) Determine the types of online and instant games to be offered for sale at retailers, including any necessary game rules for the proper administration of the games;
- (f) Establish a procedure for the disposition of unsold lottery games;
- (g) Develop and determine the working papers of each lottery game;
- (h) Announce the time for the end of sales prior to the drawings for each type of online game;
- (i) Designate the type of equipment to be used for each online game;
- (j) Establish procedures to randomly select the winning combinations for each type of online game, and require the presence of an independent accountant or other third party to witness all pre- and post-drawing tests, and the drawing or winner selection;
- (k) Determine the location, times, and days of prize drawings and promotions;
- (l) Determine the manner and frequency of online game drawings;
- (m) Establish game rules and procedures governing the conduct of drawings for each instant and online game;

- (n) Investigate and conduct hearings pursuant to a consumer complaint;
- (o) Make the final decision on whether any prize is paid or any annual prize payment is made;
- (p) Enter into any contracts for annuities;
- (q) Hold copyrights, trademarks, and service marks and enforce ALC's rights with respect to them;
- (r) Enter into written agreements with one or more states or sovereigns for the operation, participation in marketing, and promotion of a joint lottery or joint lottery games;
- (s) Perform other duties and powers necessary or convenient to carry out and effectuate the purposes and provisions of the ALC and those generally associated with a director of an entrepreneurial business enterprise; and
- (t) Take any other action necessary for the efficient and effective operation of the lottery.

**Section 3. Use of ALC/Arkansas Scholarship Lottery Trademarks.**

- A. Lottery retailers may use, and display the lottery logo, trademark, and other advertising materials without charge to the user or compensation to ALC for its use.
- B. Any use of the lottery logo or other trademarked or copyright materials, other intellectual property, or copy in advertising or production of consumer articles requires a prior written request and execution of the retailer contract.
- C. The Director may exercise supervision over the quality of the materials produced under trademark licensing agreement and may require as a condition to continuation of the license, changes in quality of the goods or material produced.
- D. The Director or his or her designee may at any time terminate an agreement to license in the event that the licensee fails to meet the requirement of the agreement, or in the event that the continuation of the license is not considered to be in the best interest of ALC or of the State of Arkansas.
- E. The logo shall not be modified in any way, including a change in color without the express written approval from the Director or his or her designee prior to its use.

**Section 4. Draw Integrity.**

- A. Subject to the approval of the Director, the ALC's Director of Security shall designate a Drawing Manager. Lottery drawings shall be conducted pursuant to the procedures developed by the Drawing Manager in consultation with the Director of Security and as approved by the Director. Drawing procedures shall include provisions for the substitution of back up drawing equipment or methods in the event primary drawing equipment malfunctions or fails for any reason and procedures for completing a drawing that is interrupted due to equipment malfunction or operator error.
- B. The ALC may use any type of equipment or method, including electronic or manual equipment and any variety of existing or future methods or equipment, for determining the winner or winning combination in any lottery game that involves a drawing.
- C. The ALC shall ensure the security and integrity of any electronic drawing equipment used to determine a winner or winning combinations. Any electronic connections to this equipment must be made by a secure method. The ALC shall test the equipment as needed to ensure proper operation and lack of tampering or fraud. The ALC shall have its random number generators, or any other computer-driven or computer-assisted device used for a drawing, statistically analyzed, tested, and certified by an independent, qualified statistician for integrity.
- D. The ALC shall ensure the security and integrity of any manual equipment used to determine a winner or winning combinations. Any manual equipment used by the lottery to determine a winner or winning combinations must be inspected by an independent certified public accountant or the professional representative of an independent certified public accountancy organization and an employee or agent of the ALC before and after the drawing. The drawing and such inspections must be recorded on video and audio tape. Any drawing using manual equipment must be witnessed by an independent certified public accountant, a professional representative of an independent certified public accountancy organization or the applicable state entity.
- E. The ALC may use random number generators to determine winning numbers for lottery games.
- F. Subject to the approval of the Director, the ALC's Director of Security shall establish procedures to ensure the physical security of the ALC's drawing equipment and shall specify the individuals who shall have physical access to that equipment. Any random number generator, or any other computer-driven or computer-assisted device used by the ALC to determine winners or winning combinations, shall be kept in a sealed enclosure within a secure area. Any person who enters the sealed enclosure must have permission from ALC Security and be escorted by an ALC Security Section officer or employee.

- G. If, during a game drawing, an equipment failure or operator error causes an interruption in the selection of numbers or symbols, the Drawing Manager will declare a technical difficulty. Any number drawn prior to the declaration of a technical difficulty will stand and be deemed official when verified by the Drawing Manager. The drawing will be completed as set forth in the Drawing Manager procedures.
- H. The Director will delay payment of all prizes if any evidence exists or there are grounds for suspicion of equipment malfunction, tampering, or fraud. In such event, the ALC will not pay any prize until the ALC completes an investigation and the Director approves the drawing and authorizes payment. If the Director does not approve the drawing, it will be void and the ALC will conduct another drawing to determine the winner or the winning combinations.

**Section 5. Sale of Lottery Games and Shares.**

**5.1 Generally.** Any person who buys or accepts a lottery game or otherwise participates in the lottery agrees to be bound by all laws, rules, regulations and policies of that particular lottery game and ALC including the Act. All players or persons purchasing or possessing any lottery ticket or share must comply with and are bound by all applicable laws, rules, and procedures and any additional terms and conditions found on the ticket or share itself. In the event of a conflict between the ALC's rules and additional terms and conditions found on the back of a ticket or share, the rules control.

**5.2 Eligibility.**

- A. Lottery games or tickets may only be sold to an individual who is eighteen (18) years old or older.
- B. A lottery game or share may not be purchased by any:
  - 1. Commissioner employee of the ALC;
  - 2. Commissioner of the immediate family of a member or employee of the ALC; or
  - 3. An officer, employee, agent, or subcontractor of an ALC vendor; or the immediate family of an officer, employee, agent, or subcontractor of an ALC vendor that has access to confidential information that may compromise the integrity of a lottery.
- C. Nothing in this section shall be construed to prevent a person who lawfully purchases or possesses a lottery ticket or share from making a gift of such

ticket or share to another person who could lawfully purchase or possess a lottery game.

**5.3 Sales Locations.** Unless authorized, lottery games or shares may only be sold by a lottery retailer at the location listed in the retailer contract. The Director may also designate its agents or employees to sell lottery tickets or shares directly to the public, either in person or through electronic means at any location authorized by the lottery.

**5.4 Price.** Unless authorized to do so in writing by the Director, a person shall not sell a ticket or share at a price other than established by the Director. The Director may designate its agents or employees to sell or give lottery games or shares directly to the public.

**5.5 Sales Are Final.** The sale of all lottery tickets and shares is final and no ticket returns are to be accepted by the retailer. A player may not return a lottery ticket or share for a refund of the purchase price or exchange unless the specific game rule provides otherwise. Where a specific rule provides that the purchaser of a lottery ticket or share may cancel the purchase, the following is the procedure for cancellation:

- (a) To cancel a purchase of a lottery ticket or share, the player must return it to the selling retailer on the day of purchase before wagers are disabled prior to the first drawing or other winner determination time as applicable.
- (b) The player shall receive a refund from the retailer equal to the purchase amount of the lottery ticket or share.
- (c) If a lottery ticket or share cannot be cancelled because the ALC's central computer system does not record the cancellation in a timely manner due to a mechanical or electronic transmission malfunction, credit may still be given to the retailer provided the following steps are taken:
  - (1) The retailer attempts to cancel the lottery ticket or share before wagers are suspended and a computer record of the attempt is created.
  - (2) The retailer calls the Retailer Services Hotline and gives the lottery ticket or share's identifying number to the operator, and
  - (3) The retailer mails the lottery ticket or share to the ALC within two weeks from the date of purchase.

**5.6 Exchange Tickets or Shares.** Notwithstanding any other rule, exchange tickets or shares cannot be cancelled under any circumstances.

**5.7 Future Drawings.** A player may purchase a ticket or tickets for future consecutive drawings to the extent permitted by the ALC for each lottery game. The player must specify at the time of purchase that the ticket or tickets include future consecutive drawings. However, no lottery games or shares may be sold after the commencement of a drawing. The date of the drawing shall be printed on all tickets except instant tickets.

**5.8 Player Error.** The ALC is not liable for lottery tickets or shares that are purchased in error. It is the responsibility of the player to verify at the time of purchase that he/she in fact received what was requested and to rectify any discrepancy immediately. If a defective ticket is purchased, the only responsibility or liability of the ALC is the replacement of the defective ticket with another unplayed ticket or tickets of equivalent sale price from any other current game.

## **Section 6. Lottery Tickets or Shares.**

**6.1 Bearer Instrument.** Except for a lottery ticket or share claimed jointly in accordance with the provisions of this rule, until such time as a name of an individual or individuals is imprinted or placed upon a lottery ticket or share in the area designated for "Name," the ticket or share is a bearer instrument and is owned by the bearer of the ticket or share. When a name or names is placed on the ticket or share in the designated place, the ticket or share ceases to be a bearer instrument and only the individual whose name appears in that area is the legal owner of the ticket or share. Only an individual or individuals may own a ticket or share and claim a prize.

**6.2 Ticket Validation Requirements.** Any lottery games or shares not passing all the validation requirements in this section and the specific validation requirements contained in the rules for its specific game are invalid and ineligible for any prize. Once validated, a lottery retailer must deface the lottery game in the manner prescribed by the Director or his designee.

**6.3 Instant Tickets.** An instant ticket must meet all of the following requirements in order to be considered valid and payable:

- (a) The instant ticket was issued in an authorized manner;
- (b) The instant ticket is not altered, mutilated, unreadable, reconstructed, or tampered with in any manner;
- (c) The instant ticket is not counterfeit in whole or in part;
- (d) The instant ticket is not stolen nor appears in any list of omitted instant tickets on file with the ALC;

- (e) The instant ticket is complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error;
- (f) The instant ticket has the correct number of play symbols in the correct position. The symbols must be present in their entirety, legible, right-side up, and not reversed in any manner;
- (g) The validation number of an apparent winning ticket appears on the ALC's official list of validation numbers of winning instant tickets; and an instant ticket with that validation number has not been previously paid; and,
- (h) The instant ticket passes all additional confidential validation requirements.

#### **6.4 Online Games.**

- A. An instant online ticket must meet all of the following requirements in order to be considered valid:
  - 1. All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and date printed on the ticket. The ticket is not valid unless the ticket number and other information are recorded in the ALC computer and transaction master file;
  - 2. The ticket shall be intact;
  - 3. The ticket shall not be altered, mutilated, unreadable, reconstructed, or tampered with in any manner;
  - 4. The ticket shall not be counterfeit or an exact duplicate of another winning ticket;
  - 5. The ticket shall have been issued by an authorized retailer in an authorized manner;
  - 6. The ticket shall not have been stolen or canceled;
  - 7. The ticket shall not have been previously paid; and
  - 8. The ticket shall pass all other confidential security checks of ALC.
- B. The Director may replace an invalid online ticket with an online ticket for a future drawing of the same game. The Director at his or her discretion may pay the prize for a ticket that is partially mutilated or is not intact if the online ticket can still be validated by the other validation requirements.

## **Section 7. Payment of Prizes.**

### **7.1 Procedures.**

- A. A legal owner may present the winning ticket for a prize not exceeding five hundred dollars (\$500) to any retailer, an ALC approved claim office, the ALC Main Office or may mail the signed ticket to the ALC for payment. Prizes shall be paid during the normal business hours of the retailer. If the claim cannot be validated, the claimant must fill out an ALC claim form and mail or present to the ALC the completed form with the disputed ticket. A check shall be forwarded to the claimant for payment of the amount due if the claim is validated. In the event that the claim is not validated, the claimant shall be promptly notified that the claim is denied.
- B. A legal owner of a prize of more than five hundred dollars (\$500) shall complete a claim form and submit the form with the winning ticket either in person at an ALC claims center or by mail to the ALC Main Office. Upon validation, a check shall be forwarded to the claimant in payment of the amount due. ALC will deduct from the amount due any required federal and state income tax withholdings and any withholding required by Arkansas Code Ann. §23-115-1001 et seq. In the event that the claim is not validated, the claim shall be denied and the claimant shall be promptly notified that the claim is denied.
- C. The Director may require claims of one million (\$1,000,000) dollars or more to be redeemed at the ALC Main Office.
- D. For any winning prize redeemed at the ALC Main Office, payment will be made by check, with the exception of a prize that is merchandise.
- E. The ALC is not liable for any lost or misdirected winning tickets sent by mail.
- F. The ALC shall make available a list of all winning numbers for the fifty-two (52) previous weeks.

### **7.2 Restrictions on Eligibility of Prizes.** The following are not eligible to redeem any lottery prize:

- (a) Any individual under eighteen (18) years of age;
- (b) Any individual incarcerated in:
  - (1) The Department of Correction;
  - (2) The Department of Community Correction; or

(3) A county or municipal jail or detention facility.

(c) Any Commissioner or employee of the ALC or their immediate family members;

(d) Any officer, employee, agent, or subcontractor of an ALC vendor; or immediate family of the officer, employee, agent, or subcontractor of an ALC vendor if that officer, employee, agent, or subcontractor has access to confidential information that may compromise the integrity of a lottery.

**7.3 Time Period for Redemption.** The Director may at any time alter the time periods for redemption of a lottery prize. If a valid claim is not made for a cash lottery prize within the applicable period, the cash lottery prize constitutes an unclaimed lottery prize. A holder of a winning ticket must claim the prize within the following time periods:

(a) To claim an online game prize, the claimant must submit the winning online ticket for validation at a lottery office or retailer on or before the 180<sup>th</sup> day after the winning drawing. If the ticket has remaining drawings, a continuation ticket will be issued. If mailed, the envelope containing both the ticket and claim form, if required, must be postmarked on or before the 180<sup>th</sup> day after the winning drawing.

(b) To claim a scratch-off/instant game prize, the claimant must submit the winning scratch-off/instant ticket for validation at a claims center or retailer on or before the 90<sup>th</sup> day after the official end of game. If mailed, the envelope containing both the ticket and claim form, if required, must be postmarked on or before the 90<sup>th</sup> day after the official end of the game.

**7.4 Tax Liability.** Proceeds of a lottery prize are subject to federal and Arkansas state income tax. Each United States resident who is to receive a payment of winnings greater than \$600 shall furnish to the ALC the information required on the Internal Revenue Service Form W-2G (or any other form required by the IRS) including but not limited to the winner's name, address, and social security number. This disclosure is mandatory and the authority for such disclosure is 42 USC 405(c) (2) (C), 26 CFR 31.3402(q)-1(e), and Arkansas Code Ann. § 23-115-403. A winner's social security number will only be used for the purpose of transmitting the prize amount to the appropriate taxing authorities, and identifying individuals subject to Debt Set Off procedures set forth in Section 7.13.

Deleted: subsection M

**7.5 Prizes Non-Assignable.** A lottery prize, any portion of a lottery prize, or any right of any individual to a lottery prize is not assignable, except that the payment of any prize drawn may be paid to the estate of a deceased prize winner pursuant to an appropriate judicial order.

**7.6 Prizes Payable after Death.** A lottery prize or any portion of a lottery prize remaining unpaid at the death of a lottery prize winner shall be paid to the estate of the deceased lottery prize winner or to the trustee of a trust established by the deceased lottery prize winner as settlor if:

- (a) A copy of the trust document or instrument has been filed with the ALC along with a notarized letter of direction from the settlor; and
- (b) No written notice of revocation has been received by the ALC before the settlor's death.
- (c) Following a settlor's death and before any payment to a successor trustee, the ALC shall obtain from the trustee a written agreement to indemnify and hold the ALC harmless with respect to any claims that may be asserted against the ALC arising from payment to or through the trust.
- (d) Under an appropriate judicial order, an individual shall be paid the Lottery prize to which a winner is entitled.
- (e) The Director reserves the right to petition any court of competent jurisdiction to determine the proper payment of any prize winnings due to a deceased prize winner.
- (f) If any lottery prize is properly owned by an individual under eighteen (18) years of age, such as through inheritance, it must be paid to the parent, guardian or custodian of such person under the Arkansas Uniform Transfers to Minors Act.

**7.7 Issuance of Prizes to Multiple Owners.**

- A. All individuals claiming ownership of the winning lottery ticket or share must complete and sign the ALC's request and release form. Each of the persons signing the form must indicate each person's proportionate share of the prize. Each person must receive at least \$1.00. At least one of the persons claiming ownership of the ticket or share must sign the ticket or share. That person's signature must also appear on the request and release form. If a winning ticket or share is mailed to the ALC with multiple signatures on it, the Director will mail the request and release form to the claimants. A deceased signatory who dies before signing the request and release form will be presumed to have an ownership interest equal to that of the other signatories. In the event there is a deceased signatory, the Director may withhold payment for 60 days from the date of validation to allow co-owners the opportunity to seek a declaratory ruling from a court.
- B. Upon the signatures of the request and release form, the Director will issue to each individual claiming a share of the prize amount a check for the portion of the prize amount claimed by each multiple owner, the total

not to exceed the total prize amount. However, the Director reserves the right to issue a single prize check to an individual whose name appears on the ticket or share instead of multiple prize checks to the owners of the ticket or share if the number of persons claiming a share of the prize exceeds 100 people. The ALC shall pay multiple winners of a lottery prize only at the ALC claims center in Little Rock. Retailers are not authorized to pay multiple winners who share a single prize.

**7.8 Relinquishment of Interest.** When a person who has signed a lottery ticket or share wishes to relinquish the person's ownership interest in the lottery ticket or share, that person must sign the ALC's release of ownership form relinquishing the person's ownership interest. In no event will a person be permitted to relinquish ownership interest once it is determined that the person owes any indebtedness pursuant to Section 7.13 of this Section or other legal attachment has taken place. Once the ALC receives the release of ownership form, it is irrevocable.

Deleted: M

**7.9 Conflicting Information or Discrepancies.** If there is conflicting information or discrepancies between the names on a winning lottery ticket or share and the names on a claim form, the ALC may withhold prize payment until the conflicting information is resolved to the ALC's satisfaction. Discrepancies include, but are not limited to: names or addresses scratched out or erased, or unreadable or altered names or addresses. If there is a determination that more than one (1) claimant is entitled to a particular lottery prize, the sole remedy of the claimants is the award to each of them of an equal share in the lottery prize.

**7.10 Non-Payable.** The following will not be honored or paid by the ALC or any retailers:

- (a) Tickets or shares which are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, or not recorded by the ALC within applicable deadlines;
- (b) Tickets or shares lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery involved;
- (c) Tickets or shares not in compliance with rules and public or confidential validation and security tests of the ALC appropriate to the particular lottery involved; or
- (d) Any lottery prize which has already been paid.

**7.11 Investigations.** At the discretion of the Director, the ALC may conduct an investigation to aid in the determination of the rightful owner(s) prior to payment of any prize.

**7.12 Determinations.** The Director's decisions regarding the determination of a winning lottery ticket or share, or the determination of the rightful owner or owners of a prize, or of any other dispute or matter arising from payment or awarding of prizes are final and binding on all parties. The Director shall make the final decision on whether any prize is paid or any annual prize payment is made. All prizes shall be paid within a reasonable time after they are validated, unless the Director delays a prize payment. The Director may, at any time, delay any prize payment in order to review the validity of a prize claim, or review a change of circumstances relative to the prize awarded, the payee, or the claim, or review any other relevant matter that may come to the Director's attention. For any prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. Any delayed annual payment will be brought up to date immediately when payment is authorized by the Director.

**7.13 Set off for Debts Owed to the State.** The following provisions shall apply to the payment of any prizes in excess of Five Hundred Dollars (\$500.00):

- (a) The ALC shall set off against any prize the sum of any debt in excess of one hundred dollars (\$100.00) owed to the State of Arkansas or to persons on whose behalf the State and its claiming agencies act.
- (b) Notice of any prize subject to a valid lien from the State of Arkansas will be sent to the winner by certified mail, return receipt requested, of the action and the reason the prizes were withheld.
- (c) However, if the winner appears and claims prizes in person, the ALC shall notify the winner at that time by hand delivery of the action.
- (d) If the winner does not protest the withholding of the prizes in writing within thirty (30) days of receipt of the notice, the ALC shall pay the prizes to the claimant agency.
- (e) If the winner protests the withholding of the prizes within thirty (30) days of receipt of the notice, the ALC shall:
  - (1) File an action in interpleader in the circuit court of the county where the winner resides;
  - (2) Pay the disputed sum into the registry of that court; and
  - (3) Give notice to the claimant agency and winner of the initiation of the action.
- (f) Any liens submitted for collection by the ALC shall be ranked and collected in the following order:

- (1) Taxes due the state;
  - (2) Delinquent child support; and
  - (3) All other judgments and liens in order of the date entered or perfected.
- (g) Any list of debt from a claimant agency to the ALC must be updated and electronically submitted to the ALC during the first week of every calendar quarter. The ALC is not obligated to retain the lists beyond that quarter or deduct debts for lists that are not current. The claimant agency shall pay to the ALC for any and all costs incurred by the ALC for the setting off of debts.
- (h) The ALC and any claimant agency shall incur no civil or criminal liability for good faith adherence to this section.

**7.14 Prize Claim Option Final.** If a prize winner is given an option regarding the method of prize payment any payment method selected becomes final and may not be revoked or changed.

**7.15 Prize allocation.** Prize money allocated to the first prize category shall be divided equally by the number of purchased game plays winning a first prize.

**7.15 Discharge from Liability.** The State of Arkansas, its agents, officers, employees and representatives, the ALC, its Director, agents, officers, employees, and representatives are discharged of all liability upon payment of a prize or any one installment thereof to the holder of any winning lottery ticket or share or in accordance with the information set forth on any winning lottery ticket or share, any claim form, including but not limited to a winner claim form, request to divide prize form, beneficiary designation form, and relinquishment of ownership interest form.

**7.16 Disclosure of Winners.**

- A. The ALC may use the name, address, and likeness of a winner in any ALC promotional campaign, advertisement, or press release. A winner who receives a prize or prize payment from the ALC grants the ALC, its agents, officers, employees, and representatives the right to use, publish in print or by means of the Internet, and reproduce the winner's name, address, physical likeness, photograph, portraits, statements made by the winner, and use audio sound clips and video or film footage of the winner for the purpose of promoting the ALC and its games.
- B. If the ALC, its agents, officers, employees, and representatives deem it suitable for advertising, promotional or publicity use, or press use, a

winner further grants the ALC the right to use and reproduce the winner's likeness in print either alone or in any combination with other persons. Examples of permitted uses include but are not limited to: radio, television, newspapers, posters, billboards, commercials, magazines, print advertisements, and the ALC web site.

- C. Each winner releases the State of Arkansas, its agents, officers, employees, and representatives, the ALC, its Director, agents, officers, employees, and representatives from any liability arising out of any blurring, distortion, alteration, or use in composite form whether intentional or otherwise, that may occur, or be produced in the printing and production process towards the completion of any finished product. A winner waives any right to inspect or approve the finished products, whether it is for a promotional campaign, advertising, or publicity.
- D. Limitation: If the ALC uses the address of a winner, the address shall not contain the street or house number of the winner.

#### **Section 8. Advertising and Promotions.**

The ALC may engage in shared expense and other co-promotional activities with private or public enterprise including utilizing donated prizes, goods, services, direct payments or reduced fees which are intended to increase ticket sales, increase public goodwill or reduce the costs or expenses of the ALC.

#### **Section 9. Consumer Complaints.**

- A. If a ticket purchaser or ticket holder files a written complaint with the Director relating to the sale of a ticket, payment of a prize, conducting of a promotion or other activity relating to the ALC or an ALC product, the Director shall forward the complaint to appropriate staff for further review. Any such complaint shall be filed in a reasonable amount of time after complainant becomes aware of the facts upon which the complaint is based.
- B. All matters contained in this policy that call for action of the Director may be executed by a designee appointed by the Director.
- C. The complaint will be reviewed to determine its validity and to determine if the information provided is sufficient. Although the burden may shift on a particular matter, the complainant has the burden of going forward and of proof. If the review of the complaint indicates that additional information is necessary for an appropriate response, the complainant may be required to provide additional information, including but not limited to:

1. The name, address, and telephone number of the complainant and the name address and telephone number of the complainant's legal counsel, if any;
  2. A detailed statement of facts supporting the complainant's position;
  3. A detailed statement outlining the reason(s) for the complaint, including any law or other authority upon which the complainant relies;
  4. The name(s), address(es), and telephone number(s) of witness(es) who may need a subpoena to appear;
  5. Any other relevant information the ALC may reasonably prescribe; and
  6. The evidence, clearly identified, to be considered by the Director.
- D. The complainant will be notified in writing if more information is needed and will be afforded a reasonable time to respond. If any information requested is not provided within the prescribed time period, or if the information submitted fails to present a claim for which relief may be granted, the complaint may be dismissed by the Director. In his discretion, upon receipt of sufficient information, the Director may schedule a hearing rather than issuing a decision on the written material submitted. If a hearing is denied, the complainant may request reconsideration.
- E. The request for reconsideration for a hearing must be in writing, and must be submitted to ALC within thirty (30) days of the date of the determination or dismissal.
- F. The Director may require or the complainant may request a conference in an attempt to expedite the orderly conduct of the hearing or the settlement of the complaint prior to the scheduled hearing. A complainant may represent his or her own interest or may be represented by an attorney at law licensed to practice law in the State of Arkansas. Other than the complainant or the attorney representing complainant, no person or organization may represent the interests of a complainant.
- G. If a complainant fails to appear at a hearing after due notice, the Director may dismiss, continue, or decide the matter. Upon timely application and proper notice, the Director may grant a motion for a continuance or other change in the date, time and place of the hearing.
- H. The hearing need not be conducted or controlled by either the Arkansas Rules of Evidence or the Arkansas Rules of Civil Procedure. The hearing will be conducted to the extent and fashion deemed appropriate by the Director. Unless objection or exception is made, sustained and duly noted on the record, all

evidence appearing in the record shall be deemed to have been properly admitted for consideration.

- I. All hearings will be recorded by a certified court reporter. If a complainant desires the testimony be transcribed into a transcript or files an appeal, the complainant shall order directly from the reporter an original and one copy, both of which are the financial responsibility of the complainant ordering the transcript. The original transcript shall be filed by the reporter directly with the ALC.
  
- J. Any decision of the Director regarding a ticket purchaser or holder's written complaint, including decisions regarding denial or dismissal of a complaint without a hearing or decisions made after hearing all of the testimony, facts and evidence presented, must:
  - 1. Be in writing and sent by United States Postal Service certified mail, a commercial overnight delivery service or hand-delivered to the complainant as soon as practicable;
  - 2. Explain the basis for the determination;
  - 3. Explain the information necessary to file an appeal and the time periods in which an appeal must be filed with the Commissioners; and
  - 4. Inform the complainant that he or she may request a hearing before the Commissioners, or in lieu of a hearing, may request that an appeal may be decided upon the written materials presented for the appeal.
  
- K. A complainant aggrieved by a decision of the Director may request a hearing before the Commissioners, subject to the provisions of paragraph (M) below, within fifteen (15) days of the written determination by the Director. The complainant must be granted a hearing before the Commissioners or its designee as soon as practicable but not later than sixty (60) days after the written determination of the Director.
  
- L. The Commissioners, pursuant to the power granted to it in Arkansas Code Ann. §23-115-205, may authorize its Legal Committee to hear and dispose of administrative appeals from the Director, as the Committee deems appropriate, including, but not limited to, designating one of its members to consider an act on an appeal on behalf of the Commissioners. Therefore, references herein to "Commissioners" shall be read to take this delegation of authority into account.
  
- M. The Commissioners shall adopt the record of the proceedings before the Director. Based upon the record, the Commissioners may reverse a decision of the Director if the appellant proves the decision to be:
  - 1. In violation of constitutional or statutory provisions;

2. In excess of the statutory authority of the Director;
  3. In excess of the authority granted to the Director by the Commissioners;
  4. Made upon unlawful procedure;
  5. Affected by other error of law;
  6. Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
  7. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- N. The Commissioners may remand an appeal to the Director for further consideration or investigation.
- O. The Commissioners' determination must be in writing and must:
1. Be sent by United States Postal Service certified mail, a commercial overnight delivery service or hand delivered to the appellant; and
  2. Explain the basis for the Commissioner's determination.
- P. A determination from the Commissioners is final and non-appealable.
- Q. This Section on Consumer Complaints is not applicable to:
1. Complaints relating to retailers;
  2. Petition for Declaratory Order from the Commissioners;
  3. A claim in contract or tort against the ALC, its Commissioners, employees or agents;
  4. Any retailer, vendor, or applicant for a contract or retailer license aggrieved by an action of the ALC.

**Section 9. Powers.**

All powers not specifically defined in these rules are reserved to the ALC under the Act.

**Section 10. Notices.**

A. The following notices must be posted in a conspicuous manner at any site where lottery games or shares are sold:

1. Game information, including participant eligibility requirements, the beginning and end date of the promotions, when and how winners will be selected and when and how prizes will be awarded, if available;

Deleted: applicable

2. Phone Number for the ALC where a Player can call during normal ALC business hours to report any problems with the purchasing or redeeming of lottery games and shares; and

Deleted: Approximate odds of winning each prize if those odds can be determined with reasonable accuracy at the outset, otherwise, the written rules will state that the odds of winning a prize cannot be determined in advance and set forth those factors that ultimately will determine the odds;

3. Other contact information for the ALC including the physical address where claims can be redeemed or mailed.

Deleted: 3

Deleted: 4

B. The website for the Arkansas Scholarship Lottery shall be the central location for all information concerning the Arkansas Scholarship Lottery and the ALC. The following notices or information must be posted:

1. Game and Promotion information including whether or not a game has been postponed or cancelled;

2. Game rules including participant eligibility requirements, the beginning and end date of the promotions, when and how winners will be selected and when and how prizes will be awarded, if applicable;

3. Approximate odds of winning each prize if those odds can be determined with reasonable accuracy at the outset, otherwise, the written rules will state that the odds of winning a prize cannot be determined in advance and set forth those factors that ultimately will determine the odds;

4. Information on how and where to file consumer complaints;

5. Information concerning the identification and treatment of a compulsive gambling disorder;

6. All rules, regulations and orders promulgated or issued by the ALC; and contact information for the ALC.

C. The following notices will be provided on the backs of all lottery games, if practicable:

1. Approximate odds of winning each prize if those odds can be determined with reasonable accuracy at the outset;

2. Gambling hotline number; and
3. Any other information that the ALC deems relevant for that particular game.

## Arkansas Scholarship Lottery

124 West Capitol Avenue, Suite 1400  
Post Office Box 3238  
Little Rock, AR 72203-3238  
(501) 683-1890

### Competitive Sealed Bid / IFB

Send Quotation To: Arkansas Lottery Commission P.O. Box 3238 Little Rock, AR 72203-3238	THIS IS NOT AN ORDER Bid No: ALC – IFB – 9002 Date: October 7, 2009 Telephone (501) 683-1890 Fax (501) 683-1878 Quote due on: October 30, 2009, 2:30 p.m. (CDT)
--	---

Arkansas Lottery Commission Bid No: ALC – IFB – 9002  
Bid opening date and time: October 30, 2009 at 2:30 p.m. (CDT)  
Ordering Agency: Arkansas Lottery Commission  
Commodity Type: Directors and Officers Liability Insurance

Inquiries concerning bid and procedures:  
Arkansas Lottery Commission  
Bishop Woosley, Director of Procurement  
Telephone Number: 501-683-1890  
Fax Number: (501) 683-1878  
E-mail address: bishop.woosley@arkansas.gov

Bidder's Company Name: BancorpSouth Insurance Services, Inc.

Contact Representative Name and Title Jerry Davis, Senior Vice President

Address: 8315 Cantrell Road, Little Rock AR 72225

Telephone Number: 501-614-1116

Fax Number: 501-614-1416

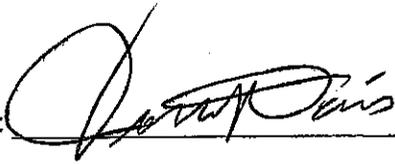
E-mail address: jerry\_davis@rkfl.com

Federal ID Number: 72-1381997

Vendor Quote Information Submitted by:

Printed Name: Jerry Davis

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

10/29/09

**THIS IS FORMAL SEALED BID. FAXED BIDS CAN NOT BE ACCEPTED. THE ARKANSAS LOTTERY COMMISSION WILL ACCEPT BIDS UNTIL THE DATE AND TIME SPECIFIED. THE BID ENVELOPE MUST BE SEALED AND SHOULD BE PROPERLY MARKED WITH THE STATE PROCUREMENT REFERENCED TRACKING NUMBER, DATE AND HOUR OF BID OPENING AND THE BIDDERS RETURN ADDRESS. IT IS NOT NECESSARY TO RETURN "NO BIDS."**

**MAILING ADDRESS AND BID OPENING LOCATION:**

Arkansas Lottery Commission  
124 West Capitol Avenue, Suite 1400  
P.O. Box 3238  
Little Rock, AR 72203

Vendors are responsible for delivery of their bid documents to the Arkansas Lottery Commission prior to the scheduled time for opening of the particular bid. When appropriate, vendors should consult with delivery providers to determine whether the bid documents will be delivered to the ALC office street address prior to the scheduled time for bid opening.

**MINORITY AND FEMALE OWNED BUSINESS POLICY**

Participation by minority-owned and female-owned businesses is encouraged in this and all other procurements by state agencies. "Member of a minority" is defined at Arkansas Code Annotated § 23-115-103(15) as "a lawful permanent resident of this state who is: (A) African American; (B) Hispanic American; (C) American Indian; (D) Asian American; or (E) Pacific Islander American". "Minority-owned business" is defined at Arkansas Code Annotated § 23-115-103(16) as "a business that is owned by: (A) An individual who is a member of a minority who reports as his or her personal income for Arkansas income tax purposes the income of the business; (B) A partnership in which a majority of the ownership interest is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or (C) A corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation". The Arkansas Economic Development Commission conducts a certification process for minority businesses. Vendors unable to include minority-owned business as subcontractors "may explain the circumstances preventing minority inclusion".

"Female-owned business" is defined at Arkansas Code Annotated § 23-115-103(5) as "a business: (A) Whose management and daily business operations are under the control of one (1) or more females; and (B) Either: (i) Individually owned by a female who reports as her personal income for Arkansas income tax purposes the income of the business; (ii) Which is a partnership

in which a majority of the ownership interest is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or (iii) Which is a corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation".

**EQUAL EMPLOYMENT OPPORTUNITY POLICY:** In compliance with Act 2157 of 2005, the Office of State Procurement is required to have a copy of the bidder's Equal Opportunity Policy prior to issuing a contract award. EO Policies may be submitted in electronic format to the following email address: [eeopolicy.osp@dfa.state.ar.us](mailto:eeopolicy.osp@dfa.state.ar.us) or as a hard copy accompanying the bid response. The Office of State Procurement will maintain a file of all vendor EO policies submitted in response to solicitations issued by this office. The submission is a onetime requirement but vendors are responsible for providing updates or changes to their respective policies and of supplying EO policies upon request to other state agencies that must also comply with this statute. Vendors that do not have an established EO policy will not be prohibited from receiving a contract award, but are required to submit a written statement to that effect.

#### **TECHNOLOGY ACCESS FOR THE BLIND**

Please reference Section 508 of the federal Rehabilitation Act, 29 U.S.C. 794d and Arkansas Code Annotated § 25-26-201 et seq. The Vendor expressly acknowledges that State funds may not be expended in connection with the purchase of information technology unless that system meets certain statutory requirements, in accordance with the State of Arkansas technology policy standards, relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to the Arkansas Lottery Commission that the technology provided to the Arkansas Lottery Commission for purchase is capable either by virtue of features included within the technology or because it is readily adaptable by use with other technology of:

- Providing equivalent access for effective use by both visual and non-visual means;
- Presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- After being made accessible, it can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

**ACT 157 of 2007 EMPLOYMENT OF ILLEGAL IMMIGRANTS**

Pursuant to Act 157 of 2007 (Ark. Code Ann. § 19-11-105), all Vendors must certify prior to award of the contract that they do not employ or contract with any illegal immigrants in its contract with the State. Vendors shall certify online at:

[http://www.arkansas.gov/dfa/procurement/pro\\_index.html](http://www.arkansas.gov/dfa/procurement/pro_index.html)

Any subcontractors used by the Vendor at the time of the Vendor's certification shall also certify that they do not employ or contract with any illegal immigrant. Certification by the subcontractors shall be submitted within thirty (30) days after contract execution. Before entering the information on the web-site, please screen print a copy and attach to our bid.

**ADDENDUMS:** Vendors are cautioned to ensure they have received or obtained and responded to any and all addendums to the proposal prior to submission. It is the responsibility of the vendor to check the ALC website, <http://lotterycommission.arkansas.gov/vendors.html> for any and all addendums up to that time.

**ALTERATION OF ORIGINAL IFB DOCUMENTS:** The original written or electronic language of the IFB shall not be changed or altered except by approved written addendum issued by the Arkansas Lottery Commission. This does not eliminate an Offeror from taking exception(s) to these documents, but does clarify that the Offeror cannot change the original documents written or electronic language. If the Offeror wishes to make exception(s) to any of the original language, it must be submitted by the Offeror in separate written or electronic language in a manner that clearly explains the exception(s). If Offerors/Contractors submittal is discovered to contain alterations/changes to the original written or electronic documents, the Offerors response may be declared as non-responsible and the response shall not be considered.

The Arkansas Lottery Commission objects to and shall not consider any additional terms or conditions submitted by a bidder, including any appearing in documents attached as part of a bidder's response. In signing and submitting its bid, a bidder agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a bid, shall be grounds for rejecting a bid.

**TERM OF CONTRACT:** The term of the contract shall be for a period of one (1) year with an option to renew six (6) additional years in one-year increments or portions thereof. The maximum period for the contract is seven (7) years. All parties must mutually agree upon any extension.

**PAST PERFORMANCE:** In accordance with provisions of The State Procurement Law, R7: 19-11-229 Competitive Sealed Bidding – Bid Evaluation paragraph (E)(i) & i : a vendor's past performance with this solicitation. The past performance should not be greater than three years old and must be supported by written documentation on file in the Office of State Procurement at the time of the bid opening. Documentation may be in the form of either a written or electronic report, VPR; memo, file or any other appropriate authenticated notation of performance to the vendor files.

**CURRENCY:** All bid and proposal pricing and cost must be listed in United States dollars and cents.

**LANGUAGE:** Bids and proposals will only be accepted in the English language.

**CANCELLATION:** In the event the ALC no longer needs the service or commodity specified in the Contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding, the ALC may cancel the Contract or purchase order by giving the Vendor written notice of such cancellation thirty (30) days prior to the date of cancellation and a right to a hearing before the Commission.

**ANTICIPATION OF AWARD:** After complete evaluation of the bid or proposal, the anticipated award will be posted on the Arkansas Lottery Commission website [http://www.arkansas.gov/dfa/procurement/pro\\_index.html](http://www.arkansas.gov/dfa/procurement/pro_index.html) and/or the legal section of a newspaper of statewide circulation. The purpose of the posting is to establish a specific time in which vendors and agencies are aware of the anticipated award. The bid results will be posted for a period of three (3) days prior to the issuance of an award. Vendors and agencies are cautioned that these are preliminary results only, and no official award will be issued prior to the end of the posting period. Accordingly, any reliance on these preliminary results is at the agency's/vendor's own risk. The Arkansas Lottery Commission reserves the right to waive this policy, the Anticipation to Award, when it is in the best interests of the State. Vendors are responsible for viewing the Anticipation to Award section of the ALC web site at: <http://lotterycommission.arkansas.gov/vendors.html>

## **SCOPE**

The Arkansas Lottery Commission is an independent agency of the State of Arkansas. The Legislation creating Arkansas Lottery Commission (ALC) was signed into law on March 26, 2009 (the Arkansas Scholarship Lottery Act, Ark. Code Ann. § 23-115-101 et seq. and § 6-85-201 et seq.).

The ALC has 9 Commission Members appointed by the Governor, President Pro Tempore and the Speaker of the House. The Commission Members have all of the powers necessary to operate, supervise and regulate the Arkansas Scholarship Lottery, subject only to the Arkansas and U.S. Constitution. These powers include the ability to bring suits to enforce demands, administer oaths and issue subpoenas. A list of the Commission members is attached hereto as Exhibit "A" to this document. A current copy of the ALC Rules of Practice and Procedure are attached hereto as Exhibit "B." A copy of both attachment can also be found at the ALC website at : <http://lotterycommission.arkansas.gov/vendors.html>

The Arkansas Lottery Commission (ALC) is requesting bids for Directors and Officers liability insurance fidelity bonds for its Commission Members as specified herein. The ALC is not a tax exempt organization and does not currently have any other coverage for its directors and officers. There are no currently any claims pending against the ALC, or any individual proposed for insurance coverage that is based upon or arises from acts, errors or omissions in a capacity as Director, Commissioner, Officer or Employee of the Commission. There are no known facts

involving any fact, circumstance or situation involving the Organizations which he/she has reason to believe might result in any future claims which might fall within the scope of the requested coverage.

**Specifications:**

Name of Insured: Arkansas State Lottery Commission

Number of insured: All Arkansas Lottery Commission commissioners -- Blanket coverage for nine (9) commissioners

**Financial Limits/Effective Dates:**

Policy Period: Responses to this bid shall provide premium quotes for a six (6) month policy period and a one (1) year policy period for the following coverage. Please note that all requested coverages may not be selected by the agency.

Insurance Agreements	Limits of Insurance Per Occurrence	Deductible Amount per occurrence
Directors and Officers Liability Insurance	Please provide quotes for limits of both \$10,000,000, \$5,000,000, 2,500,000 and \$1,000,000	Please provide quotes for the limits previously listed with deductibles in the amount of \$10,000 and \$50,000

Deductible for all requested coverages: Proposed deductibles are \$10,000 and \$50,000. Please provide bids containing the pricing for the limits described with these two (2) deductibles.

Claims Made Form: Yes

Retroactive date: None

Prior litigation date: date of inception

**Definition of Insured:**

The plan sponsor (the insured entity and any subsidiary)

All future plans (requires written notice within 60 days of employment)

Past, present and future: Directors, Commissioners, Officers, Estates, heirs, legal representatives, or assigns of deceased, incapacitated or bankrupt insured persons.

Coverage responds to any proceedings initiated against insured person or entity before any court or governmental body authorized to enforce a judgment or order for money damages or other relief.

Bids must show premium for all coverage specified. No bid for partial coverage will be accepted.

Bidders (agents) must be licensed to do business in the State of Arkansas.

Bidders must have a minimum A.M. Best Rating of A VIII.

Bidders must specify the carrier's name within their response to this request for quote.

The Arkansas Lottery Commission reserves the right to choose the legal counsel to be retained by the ALC for defense against any action initiated which may include claims covered under the coverage requested herein. Any bidders submitting a Bid in response to this quote must expressly agree to these terms in their quote.

### INVITATION FOR BID PRICING SECTION

(Please place price quotes in the following section)

Carrier's name: Chartis Insurance  
A.M. Best Rating: A XV

Please quote premiums below for a policy with a deductible in the amount of \$10,000

#### Coverage amount

\$1,000,000	Premium amount \$ <u>8,817.00</u>
\$2,500,000	Premium amount \$ <u>14,029.00</u>
\$5,000,000	Premium amount \$ <u>No Bid</u>
\$10,000,000	Premium amount \$ <u>No Bid</u>

Please quote premiums below for a policy with a deductible in the amount of \$50,000

#### Coverage amount

\$1,000,000	Premium amount \$ <u>6,706.00</u>
\$2,500,000	Premium amount \$ <u>10,908.00</u>
\$5,000,000	Premium amount \$ <u>16,443.00</u>
\$10,000,000	Premium amount \$ <u>26,654.00</u>

### IFB STANDARD TERMS AND CONDITIONS

**GENERAL:** Any special terms and conditions included in the invitation for bid override these standard terms and conditions. The standard terms and conditions and any special terms and Optional pricing for Employment Practices Liability shared limit with Directors & Officers Liability, \$50,000 Deductible

Coverage Amount	Premium Amount	\$19,877.00
\$10,000,000		

conditions become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.

**ACCEPTANCE AND REJECTION:** The state reserves the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the state.

**BID SUBMISSION:** Bids must be submitted to the Arkansas Lottery Commission on this form, with attachments when appropriate, on or before the date and time specified for bid opening. If this form is not used, the bid may be rejected. The bid must be typed or printed in ink. The signature must be in ink. Unsigned bids will be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Each bid should be placed in a separate envelope completely and properly identified. Late bids will not be considered under any circumstances.

**PRICES:** Unless otherwise specified, the bid must be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the bid invitation.

**BRAND NAME REFERENCES:** Any catalog brand name or manufacturer's reference used in the bid invitation is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid must show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The state reserves the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the state may require the bidder to supply additional descriptive material. The bidder guarantees that the product offered will meet or exceed specifications identified in this bid invitation. If the bidder takes no exception to specifications or reference data in this bid he will be required to furnish the product according to brand names, numbers, etc., as specified in the invitation.

**AMENDMENTS:** The bid cannot be altered or amended after the bid opening except as permitted by regulation.

**TAXES AND TRADE DISCOUNTS:** Do not include state or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.

**AWARD:** Term Contracts: A contract award will be issued to the successful bidder. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contracts: A written state purchase order authorizing shipment will be furnished to the successful bidder.

**DELIVERY ON FIRM CONTRACTS:** The invitation for bid will show the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the

bidder cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Arkansas Lottery Commission has the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost will be borne by the vendor.

**DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Arkansas Lottery Commission. Delivery shall be made during agency work hours only 8:30 a.m. to 5:00 p.m., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.

**STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.

**DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications authorize the Arkansas Lottery Commission to cancel this contract or any full increase, if any, in cost and handling to the defaulting contractor. The contractor must give written notice to the Arkansas Lottery Commission and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the bidders list or suspension of eligibility for award.

**INVOICING:** The contractor shall be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the invitation for bid, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary state agencies. Invoices must be sent to the "Invoice To" point shown on the purchase order.

**STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder shall remain property of the state, be kept confidential, be used only as expressly authorized and returned at the contractor's expense to the F.O.B. point properly identifying what is being returned.

**PATENTS OR COPYRIGHTS:** The contractor agrees to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.

**ASSIGNMENT:** Any contract entered into pursuant to this invitation for bid is not assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.

**REMEDIES:** The parties further agree that any and all disputes which may arise from this Contract shall be governed and resolved under the Arkansas Lottery Commission Rules for Claims in Contracts or Torts.

**DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the bidder agrees that:

(a) the bidder will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin;

b) in all solicitations or advertisements for employees, the bidder will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the bidder to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the bidder will include the provisions of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

**CONTINGENT FEE:** The bidder guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business.

**ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this invitation for bid, the bidder named on the front of this invitation for bid, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this state for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.

**DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

ALC 1FB 9002

**CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR: SUBCONTRACTOR NAME:

Yes  No

Bancorp South Insurance Services, Inc

IS THIS FOR:  Goods?

Services?  Both?

TAXPAYER ID NAME: Services, Inc

FIRST NAME: Jerry

MI: D

YOUR LAST NAME: Davis

STATE: AR

ZIP CODE: 72225

COUNTRY: USA

ADDRESS: 8315 Cantrell Road

CITY: Little Rock

**AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:**

**FOR INDIVIDUALS \***

Indicate below if you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (✓)		Name of Position of Job Held <small>(Senator, representative, name of board, commission, data entry, etc.)</small>	For How Long?		What is the person(s) name and how are they related to you? <small>(i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.)</small>	Person's Name(s)	Relation
	Current	Former		From MM/YY	To MM/YY			
General Assembly	<input type="checkbox"/>	<input type="checkbox"/>						
Constitutional Officer	<input type="checkbox"/>	<input type="checkbox"/>						
State Board or Commission Member	<input type="checkbox"/>	<input type="checkbox"/>						
State Employee	<input type="checkbox"/>	<input type="checkbox"/>						

**FOR AN ENTITY (BUSINESS) \***

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (✓)		Name of Position of Job Held <small>(Senator, representative, name of board, commission, data entry, etc.)</small>	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?	Ownership Interest (%)	Position of Control
	Current	Former		From MM/YY	To MM/YY			
General Assembly	<input type="checkbox"/>	<input type="checkbox"/>						
Constitutional Officer	<input type="checkbox"/>	<input type="checkbox"/>						
State Board or Commission Member	<input type="checkbox"/>	<input type="checkbox"/>						
State Employee	<input type="checkbox"/>	<input type="checkbox"/>						

None of the above applies

# Contract and Grant Disclosure and Certification Form

***Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.***

***As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:***

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.
2. I will include the following language as a part of any agreement with a subcontractor:  
*Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.*
3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

***I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.***

Signature *Jerry Davis* Title *Senior Vice President* Date *10/29/2009*  
Vendor Contact Person *Jerry D. Davis* Title *Senior Vice President* Phone No. *501-614-1116*

Agency use only	Agency	Agency	Contact	Contact
Agency Number	Agency Name	Agency Contact Person	Phone No.	or Grant No.



# *Not-for-Profit Risk Protector<sup>SM</sup>*

*Management & Professional Liability Insurance  
for Non-Profit Organizations*

**COVERAGE INSIGHTS**



**Companies<sup>®</sup>**

Not-for-Profit Risk Protector<sup>SM</sup> is a flexible insurance package that allows non-profit organizations of any size to obtain precisely the protection they need for the risks that threaten their organization, management, employees, volunteers, boards of directors, and others.

Underwritten by the AIG companies<sup>®</sup>, Not-for-Profit Risk Protector lets organizations choose one or more of six coverages and combine them in one comprehensive program—with shared or separate limits. Coverages include:

- ▶ Directors, Officers, and Not-for-Profit Organization Liability Insurance
- ▶ Employment Practices Liability Insurance
- ▶ Fiduciary Liability Insurance
- ▶ Fidelity and Crime Insurance
- ▶ Employed Lawyers Professional Liability Insurance
- ▶ Kidnap and Ransom/Extortion Insurance

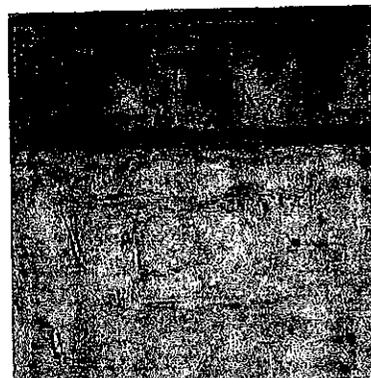
Each exceptionally broad coverage comes with the industry-leading financial strength and litigation management services of the AIG companies. Certain coverages give non-profits access to specialized services designed to mitigate ultimate damages and optimize claims recovery—from training in sound workplace practices, to crisis management expertise to help resolving kidnappings.

---

*Drawing on nearly 40 years of experience underwriting non-profit risks, AIG companies created Not-for-Profit Risk Protector to ensure sound precision-fit protection for any non-profit from a small homeowners association, to the largest healthcare and higher education institutions.*

---

**Coverage Insights** spotlights key risk issues facing non-profits and how Not-for-Profit Risk Protector enables organizations of any size to address these issues head on with insurance and services that fit their needs.



## WHO IS COVERED

- **Risk:** Certain entities and individuals can be left at risk if coverage does not specifically contemplate their exposure, or if the organization does not update coverage in a timely fashion as its structure grows or changes. The consequences of such an oversight can be substantial: a claim against one uninsured entity can sap cash flow and disrupt the organization's mission. Individuals left without coverage can find their personal wealth at stake; the assets of their spouse, domestic partner or heirs may be exposed in litigation as well.

---

*Built-in entity coverage helps safeguard  
the organization's cash flow.*

---

- **Solution:** The D&O Coverage Section of the Not-for-Profit Risk Protector provides coverage for a wide range of entities and individuals who find their assets at risk. Covered entities include the named organization and any non-profit or for-profit subsidiaries that exist at policy inception. Coverage automatically extends to non-profit subsidiaries created or acquired during the policy period if their assets total less than 30% of the total assets of the named organization, and to for-profit subsidiaries created or acquired during the policy period if their assets total less than 20% of the total assets of the named organization. Larger subsidiaries created or formed during the policy period are automatically covered for 60 days, allowing sufficient time for the insured to submit underwriting information on the new entity, so that underwriters can propose coverage beyond the 60 day auto-coverage period. Affiliated organizations can be added by endorsement.

Coverage encompasses a broad range of individuals operating on behalf of any insured entity, including trustees, directors, officers, employees, leased employees, independent contractors, and volunteers.<sup>1</sup> The estates, heirs, spouses, or domestic partners of insured individuals are also protected in claims arising from that individual insured's service to the organization.

<sup>1</sup> Coverage for leased employees and independent contractors is only provided if the organization indemnifies such individuals in the same manner as it indemnifies its own employees.

## *Directors, Officers, and Not-For-Profit Organization Liability Insurance*

### **VIOLATIONS OF THE SHERMAN ANTITRUST ACT**

- ▶ **Risk:** Courts have ruled that non-profit organizations may be liable for violations of antitrust laws. Such laws prohibit a conspiracy to restrain trade and the operation of illegal monopolies.
- ▶ **Solution:** Not-for-Profit Risk Protector provides coverage to non-profit organizations, such as hospitals, fundraising organizations, universities and labor unions, for claims arising under antitrust laws, the Sherman Antitrust Act or similar federal, state or local statutes or rules.

### **MITIGATING A CRISIS MANAGEMENT EVENT**

- ▶ **Risk:** Properly handling a brewing crisis is critical to keeping issues from developing into severe claims. Many non-profit organizations do not have the in-house public relations resources or expertise to manage potential crises.
- ▶ **Solution:** Not-for-Profit Risk Protector's CrisisFund<sup>SM</sup> coverage, automatically provided under its Directors, Officers, and Not-for-Profit Organization Liability Coverage Section, provides up to \$50,000 for the insured to hire a leading crisis management firm to help prevent or mitigate a severe claim and control damages.

### **OUTSIDE ENTITY EXECUTIVE LIABILITY COVERAGE**

- ▶ **Risk:** Executives at non-profits are often asked to serve on the boards of outside non-profit organizations for the benefit of their own organization. Such service exposes both the organization and the individuals serving it to liabilities that might not be covered under the standard D&O policy, putting both the assets of the organization and the personal assets of individuals at risk.
- ▶ **Solution:** Not-for-Profit Risk Protector includes coverage for executives of the insured organization serving at the request of the insured organization, trustee emeritus, governor or an equivalent management position of any non-profit organization, excess of insurance and indemnity provided by the outside entity.

## PUNITIVE DAMAGES COVERAGE

- ▶ **Risk:** Juries routinely hand down astronomical verdicts to punish perceived improper conduct, yet coverage for punitive damages is often excluded or severely limited for non-profits. Many states restrict or prohibit the insurability of punitive damages.
- ▶ **Solution:** Not-for-Profit Risk Protector covers punitive damages utilizing "most favorable venue" language. This is the best possible approach for an insured, since coverage is applied as allowed by laws governing punitive damages in the applicable state most favorable to their insurability.

## EXCEPTIONS TO THE INSURED VERSUS INSURED EXCLUSION

- ▶ **Risk:** There are multiple claim scenarios that could pit insureds against each other in court. An example is when board members disagree on policy matters. Excluding a claim made by one of the policy's insureds against another leaves a non-profit susceptible to serious losses.
- ▶ **Solution:** Not-for-Profit Risk Protector modifies the industry-standard "insured versus insured" exclusion. Instead, coverage is excluded only in a situation in which a not-for-profit would probably not want coverage to apply: the rare event that a claim is made by the organization against an individual insured.

## *Employment Practices Liability Insurance*

### EMPLOYMENT DISCRIMINATION CLAIMS

- ▶ **Risk:** Employment discrimination is the most frequent allegation made against non-profit organizations and those who serve them. Evolving legal theories continue to increase organizations' vulnerability in claims.
- ▶ **Solution:** Not-for-Profit Risk Protector offers exceptionally expansive protection for employment-related claims, covering 12 named perils, including wrongful termination, discrimination and harassment.

### NON-EMPLOYMENT DISCRIMINATION & HARASSMENT CLAIMS

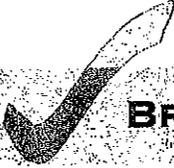
- ▶ **Risk:** Vendors, potential beneficiaries of a non-profit's services, and other third parties frequently sue, alleging discriminatory practices or harassment. In fact, many large recent discrimination verdicts and settlements have involved allegations by third parties. If an insurer remains "silent," not specifically addressing this risk in its insurance contract, a non-profit could be left with a potentially devastating hole in coverage.
- ▶ **Solution:** Not-for-Profit Risk Protector expressly covers discrimination and harassment claims brought by non-employee third parties, such as volunteers, students, patients or members.

### MITIGATING DISCRIMINATION AND OTHER EMPLOYMENT CLAIMS

- ▶ **Risk:** Organizations must do more than ever to avoid or mitigate employment practices claims. For example, organizations must now produce evidence of proper employee sensitivity training and education programs in order to successfully defend certain discrimination claims. Many non-profits do not have access to the expertise and resources to instill proper practices and procedures, and manage potential employment crises.

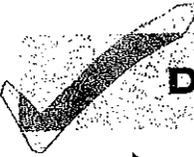
- ▶ **Solution:** Every Not-for-Profit Risk Protector insured receives EPL Pak® Premier, a package of loss prevention products and services designed to help them institute proper workplace training and practices, and document due diligence in doing so. EPL Pak Premier includes:

- ✓ Title VII Plus, a Web-enabled training, testing and tracking program designed to help sensitize employees to Title VII of the Civil Rights Act of 1964 and other major federal discrimination laws.
- ✓ The HR Compliance Reference System, an Internet-based human resource compliance system, which provides access to:
  - Information on current, detailed state and federal employment legislation
  - The Recruiting, Retaining and Terminating Employees Manual
  - HR Comply Newsletter Abstracts
  - An HR Helpline



## BREACH OF EMPLOYMENT CONTRACT CLAIMS

- ▶ **Risk:** Employees frequently bring suit against employers for breach of their employment contracts. Such suits can be costly for non-profit organizations to defend.
- ▶ **Solution:** Not-for-Profit Risk Protector provides coverage for defense costs in breach of written employment contract claims.



## DAMAGES COVERED

- ▶ **Risk:** When certain types of severe damages are not expressly covered in an EPL policy, the insured is vulnerable.
- ▶ **Solution:** Not-for-Profit Risk Protector spells out coverage for *emotional distress* damages in employee and third party discrimination claims and specifically states its intent to pay front pay, back pay, and pre- and post-judgment interest costs in employment claims.

## *Fiduciary Liability Insurance*

### **PROTECTION FOR THE PERSONAL ASSETS OF DIRECTORS, OFFICERS, TRUSTEES AND OTHER POTENTIAL "FIDUCIARIES"**

- ▶ **Risk:** Employees, their beneficiaries, and regulators now routinely seek to hold individuals personally responsible if they perceive mismanagement or improper handling of pension and welfare benefit plans. Consequently, inside and independent directors and trustees as well as an organization's officers and employees have become targets of fiduciary liability litigation. Without proper insurance, their personal assets are at risk in claims alleging breach of fiduciary duty.
- ▶ **Solution:** Not-for-Profit Risk Protector provides broad coverage extending to all of the insured organization's directors, officers, and employees who may have fiduciary or administrative responsibility for employee benefit plans including individuals who may not realize they have direct discretionary authority but may still be considered fiduciaries under applicable law. The plan sponsor is covered, including, automatically, newly-acquired subsidiaries whose assets do not exceed specified thresholds. The plans themselves are also insured under the policy.

### **COVERAGE FOR WIDE-RANGING ALLEGATIONS**

- ▶ **Risk:** The Employee Retirement Income Security Act of 1974 (ERISA), which governs employee benefit plans and regulates fiduciary responsibility, has been steadily amended to expand protection for plan participants and make fiduciaries significantly more accountable. Many types of investments may be alleged to be imprudent and trigger fiduciary liability lawsuits. Allegations of lack of plan oversight and failure to monitor plan investments are also particular concerns.
- ▶ **Solution:** Not-for-Profit Risk Protector provides broad coverage for the many types of claims fiduciaries can face, including those arising from alleged lack of plan oversight, imprudent investments, failure to monitor and disclose plan fees, and more.

---

*Thousands of ERISA civil actions are filed annually against small and mid-sized organizations that sponsor 401(k), profit sharing, pension, medical and other benefit plans for employees.*

---

## COVERAGE FOR NUMEROUS TYPES OF ORGANIZATIONS AND PLANS

- ▶ **Risk:** Exposure for sponsors of 403(b) plans is growing, with increasing liability for breaches of fiduciary duty. Executives of organizations with such plans should ensure they are well protected against claims alleging breach of fiduciary duty. Executives of organizations with "prototype" and "self-directed" 401(k) plans are vulnerable too, although they often fail to recognize the exposure until they are named in a lawsuit.
- ▶ **Solution:** Not-for-Profit Risk Protector broadly addresses the exposures of both large and small organizations. It covers, with no listing,<sup>2</sup> the various types of plans an organization might maintain worldwide, including pension and welfare plans that are sold or terminated during the policy period and qualified and non-qualified plans.

## SUPPORT AVOIDING FIDUCIARY CLAIMS

- ▶ **Risk:** If an organization does not act quickly to correct a recognized plan defect it could face significant fiduciary liability.
- ▶ **Solution:** Not-for-Profit Risk Protector supports insureds' proactive efforts to remedy operational or administrative plan defects. It can cover certain fees and penalties imposed by the Internal Revenue Service (IRS) or the Department of Labor (DOL) when an insured acts to correct such defects under the IRS' Voluntary Fiduciary Correction Program, the IRS' Employee Plans Compliance Resolution System, and the DOL's and IRS' Delinquent Filer Voluntary Compliance Program.

### *Court Advocates Insurance for Fiduciaries*

When individuals are held personally liable for plan losses, the judge in the case of *Barker v. American Mobil Power Corporation* noted the availability of fiduciary liability insurance and stated that "prudent" fiduciaries would have their plan or employers secure it.

<sup>2</sup> Except for Employee Stock Option Plans (ESOPs).

## *Fidelity and Crime Insurance*

### **AN EXPANDED DEFINITION OF EMPLOYEE**

- ▶ **Risk:** Theft can be perpetrated by any number of individuals within the organization.
- ▶ **Solution:** Not-for-Profit Risk Protector can respond to losses caused by these individuals. Its definition of employee can be expanded to include directors, trustees, and non-compensated officers performing employee duties, as well as students gaining work experience. The policy can be enhanced to cover losses resulting from terminated employees during the first 45 days post-termination.

### **COVERAGE RESPONDS TO THE UNIVERSE OF POTENTIAL LOSSES**

- ▶ **Risk:** Organizations of all sizes are susceptible to losses due to employee theft. These losses can take many forms, from forgery and alteration, to computer/funds transfer fraud, to misallocation of contributions. Since losses perpetrated by "insiders" tend to accumulate over many years, they often reach devastating proportions before detection.
- ▶ **Solution:** Not-for-Profit Risk Protector responds to a wide range of losses arising from employee theft. The basic policy can be enhanced to respond to losses caused by non-employees arising from forgery and alteration, theft of money and securities, robbery and safe burglary, and computer/funds transfer fraud. It can also include coverage for newly acquired subsidiaries.

## AVOIDING LONG, COSTLY LOSS INVESTIGATIONS

- ▶ **Risk:** Once an incident of employee theft is discovered, the insured organization typically conducts an investigation of the loss at its own expense. The fidelity insurer hires its own forensic accountant to do a similar investigation. If the results are not aligned, settling the claim can be difficult. Either way, conducting two separate investigations makes the process protracted and expensive.
- ▶ **Solution:** Not-for-Profit Risk Protector includes the Fidelity Research and Investigative Settlement Clause (FRISC), a unique provision that sets the stage for an efficient, cooperative loss investigation and settlement process. When a loss occurs, the insured selects an independent investigative specialist or forensic accountant to determine the facts of the case and quantify the loss. The AIG companies shares the investigation expense equally with the insured. Settlement can be reached quickly, with the cooperation of both parties, based on the objective report of one independent investigator. Even if the loss is ultimately determined uninsurable under the policy, the AIG companies still shoulders half the investigative expenses.

---

*FRISC promotes quick and efficient settlement,  
with cooperation of both parties.*

---

## Employed Lawyers Professional Liability Insurance

### IN-HOUSE COUNSEL SUSCEPTIBLE TO MYRIAD OF CLAIMS

- ▶ **Risk:** In-house attorneys typically perform diverse legal services for an organization from complex mergers/consolidations, to routine contract negotiations. All of these services potentially expose the in-house attorney to claims of negligence. These claims are typically initiated by donors, vendors and business partners.
- ▶ **Solution:** Not-for-Profit Risk Protector addresses the spectrum of claims commonly brought against in-house counsel and the non-profits employing them, including:
  - ✓ Employment-related claims arising out of an in-house attorney's legal work
  - ✓ Legal licensing procedures
  - ✓ Civil, administrative or arbitration proceedings against an employed lawyer

### EMPLOYED LAWYERS' PERSONAL ASSETS AT RISK

- ▶ **Risk:** Without proper insurance the personal assets of an organization's in-house attorneys can be jeopardized in professional malpractice claims.
- ▶ **Solution:** Not-for-Profit Risk Protector protects an organization's entire in-house legal team, including: past, present and future full-time in-house attorneys and their paralegals and clerical staff.

### PRO BONO AND MOONLIGHTING SERVICES HEIGHTEN RISK

- ▶ **Risk:** Many employed lawyers perform *pro bono* services on behalf of the organization they serve. This raises the risk that actual or perceived errors could result in a claim against the individual attorney and the employer organization.

Employed lawyers also often provide legal services outside the scope of their employment, such as representations in real estate closings, or small claims for other not-for-profit entities. If the recipient of the "moonlighting" services is dissatisfied with the outcome, a claim could result.

- ▶ **Solution:** Not-for-Profit Risk Protector covers individuals in claims of negligence or breach of duty in legal services provided to their employers, as well as moonlighting and *pro bono* services.

## *Kidnap & Ransom/Extortion Insurance*

### **ADDRESSING FINANCIAL LOSSES FROM EXTORTION AND RANSOM DEMANDS**

- ▶ **Risk:** Kidnapping and extortion are significant threats to non-profits and those who serve them around the world. Most vulnerable are organizations with workers based or traveling overseas, high profile organizations, and operations that handle large amounts of cash, or work with sensitive information or technology. While rarely publicized, these incidents happen frequently in the U.S. as well.
- ▶ **Solution:** Not-for-Profit Risk Protector protects organizations against the financial loss that can arise when an insured is seized or detained for ransom (including during a hijacking) or payment demands following a threat to the organization, its data or to an insured person. Among the covered losses are death or dismemberment benefits arising from an insured incident; ransom/extortion payment; loss of in-transit payment; judgment, settlements and defense costs; recall costs; business interruption; consultant costs and related expenses ranging from salary continuation to medical costs.

### **ENSURING AN EFFECTIVE CRISIS RESPONSE**

- ▶ **Risk:** Properly managing a kidnapping, extortion, or hijacking incident is essential to protect the life and well being of the victim as well as the organization's assets. Non-profits typically do not have the experience and resources to manage and resolve these incidents successfully.
- ▶ **Solution:** Not-for-Profit Risk Protector gives organizations immediate access to leading crisis management and security consultants who have the experience to anticipate how an event will unfold and work with perpetrators, employees, and victims' family members to develop and execute strategies that will secure the best possible outcome for victims and the organization.

## *Additional Coverage Features*

### **CUSTOMIZED COVERAGE FOR SPECIFIC SEGMENTS**

- ▶ ***Risk:*** Certain segments of the non-profit world, notably healthcare institutions, educational institutions, and homeowners associations, face unique exposures not covered under traditional management and professional liability policies.
- ▶ ***Solution:*** Not-for-Profit Risk Protector expands coverage via endorsement to include specific named insureds and offer coverage for the types of claims relevant to specialized segments. For example, specialized endorsements protect healthcare organizations in claims arising out of peer review and credentialing practices; provide educators legal liability coverage for educational organizations; and respond to the property management exposures of condo, co-op and homeowners associations.

### **CARRIER FINANCIAL STRENGTH & MARKET COMMITMENT**

- ▶ ***Risk:*** Liability claims can arise years after a policy is issued and/or take years to resolve. If a carrier does not have substantial financial strength, it may not be able to fulfill its obligations to policyholders. If a carrier does not have a strong commitment to underwriting a line, it is not likely to have the expertise and resources to effectively support policyholders in claims or litigation.
- ▶ ***Solution:*** AIG is world-leading insurance and financial services organization with over 85 years of experience. In addition, the AIG companies have a proven commitment to underwriting the lines of business comprised in Not-for-Profit Risk Protector. We have been dedicated to writing and to serving the not-for-profit sector for nearly 40 years.

### **DEDICATED CLAIM SPECIALISTS**

- ▶ ***Risk:*** Management and professional liability claims often involve complex, specialized issues. If claims handling is outsourced to third-party administrators, the level of expertise brought to an insured's claim is usually uncertain at best.
- ▶ ***Solution:*** The AIG companies devote specialists to managing non-profit D&O, Employment Practice Liability and Fiduciary claims as well as Professional Liability and Fidelity Matters. The experience of the claims teams standing behind Not-for-Profit Risk Protector is unparalleled.

## **LITIGATION MANAGEMENT**

- ▶ ***Risk:*** The quality of the defense an insured receives is pivotal in determining the outcome of a claim. Judging the quality of a carrier's litigation resources can be difficult to dissect before a claim.
- ▶ ***Solution:*** When litigation is necessary, D&O and EPL, and Fiduciary Liability insurance policyholders can access their choice of the AIG companies' Panel Counsel firms, which include the nation's top legal defense firms specializing in D&O and employment, and ERISA-related lawsuits. For Fiduciary Liability claims, the AIG companies have access to Panel Counsel firms which include the nation's top legal defense firms specializing in ERISA related lawsuits. Fiduciary Liability policyholders also have the flexibility to assume the duty-to-defend, in which case such policyholders have access to the AIG companies' Panel Counsel firm.

**To learn more about Not-for-Profit Risk Protector, contact your insurance broker or your local AIG companies representative. You can also email [managementliability@aig.com](mailto:managementliability@aig.com) or visit us at [www.aignationalunion.com](http://www.aignationalunion.com).**

*Insurance underwritten by member companies of American International Group, Inc.(AIG). The description herein is a summary only. It does not include all terms, conditions and exclusions of the policy described. Please refer to the actual policies for complete detail of coverage and exclusions. Coverage may not be available in all states. Issuance of coverage is subject to underwriting.*

*American International Group, Inc. (AIG), world leaders in insurance and financial services, is the leading international insurance organization with operations in more than 130 countries and jurisdictions. AIG companies serve commercial, institutional and individual customers through the most extensive worldwide property-casualty and life insurance networks of any insurer. In addition, AIG companies are leading providers of retirement services, financial services and asset management around the world. AIG's common stock is listed on the New York Stock Exchange, as well as the stock exchanges in Paris, Switzerland and Tokyo.*



EXECUTIVE OFFICES

70 Pine Street

New York, NY 10270

212.770.7000

[www.aignationalunion.com](http://www.aignationalunion.com)

# Arkansas Scholarship Lottery

124 West Capitol Avenue, Suite 1400  
Post Office Box 3238  
Little Rock, AR 72203-3238  
(501) 683-1890

## Competitive Sealed Bid / IFB

Send Quotation To:  
Arkansas Lottery Commission  
P.O. Box 3238  
Little Rock, AR 72203-3238

THIS IS NOT AN ORDER  
Bid No: ALC - IFB - 9002  
Date: October 7, 2009  
Telephone (501) 683-1890  
Fax (501) 683-1878  
Quote due on: October 30, 2009, 2:30 p.m.  
(CDT)

Arkansas Lottery Commission Bid No: ALC - IFB - 9002  
Bid opening date and time: October 30, 2009 at 2:30 p.m. (CDT)  
Ordering Agency: Arkansas Lottery Commission  
Commodity Type: Directors and Officers Liability Insurance

Inquiries concerning bid and procedures:  
Arkansas Lottery Commission  
Bishop Woosley, Director of Procurement  
Telephone Number: 501-683-1890  
Fax Number: (501) 683-1878  
E-mail address: [bishop.woosley@arkansas.gov](mailto:bishop.woosley@arkansas.gov)

Bidder's Company Name: Regions Insurance, Inc.

Contact Representative Name and Title Eric Herget, SVP

Address: 1500 Riverfront Drive, Little Rock, AR 72202

Telephone Number: 501-661-4800

Fax Number: 501-748-3842

E-mail address: Eric.Herget@RegionsInsurance.com

Federal ID Number: 71-0621654

Vendor Quote Information Submitted by:

Printed Name: Eric Herget

Signature: E. Herzog  
Date: 10/27/09

**THIS IS FORMAL SEALED BID. FAXED BIDS CAN NOT BE ACCEPTED. THE ARKANSAS LOTTERY COMMISSION WILL ACCEPT BIDS UNTIL THE DATE AND TIME SPECIFIED. THE BID ENVELOPE MUST BE SEALED AND SHOULD BE PROPERLY MARKED WITH THE STATE PROCUREMENT REFERENCED TRACKING NUMBER, DATE AND HOUR OF BID OPENING AND THE BIDDERS RETURN ADDRESS. IT IS NOT NECESSARY TO RETURN "NO BIDS."**

**MAILING ADDRESS AND BID OPENING LOCATION:**

Arkansas Lottery Commission  
124 West Capitol Avenue, Suite 1400  
P.O. Box 3238  
Little Rock, AR 72203

Vendors are responsible for delivery of their bid documents to the Arkansas Lottery Commission prior to the scheduled time for opening of the particular bid. When appropriate, vendors should consult with delivery providers to determine whether the bid documents will be delivered to the ALC office street address prior to the scheduled time for bid opening.

**MINORITY AND FEMALE OWNED BUSINESS POLICY**

Participation by minority-owned and female-owned businesses is encouraged in this and all other procurements by state agencies. "Member of a minority" is defined at Arkansas Code Annotated § 23-115-103(15) as "a lawful permanent resident of this state who is: (A) African American; (B) Hispanic American; (C) American Indian; (D) Asian American; or (E) Pacific Islander American". "Minority-owned business" is defined at Arkansas Code Annotated § 23-115-103(16) as "a business that is owned by: (A) An individual who is a member of a minority who reports as his or her personal income for Arkansas income tax purposes the income of the business; (B) A partnership in which a majority of the ownership interest is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or (C) A corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation". The Arkansas Economic Development Commission conducts a certification process for minority businesses. Vendors unable to include minority-owned business as subcontractors "may explain the circumstances preventing minority inclusion".

"Female-owned business" is defined at Arkansas Code Annotated § 23-115-103(5) as "a business: (A) Whose management and daily business operations are under the control of one (1) or more females; and (B) Either: (i) Individually owned by a female who reports as her personal income for Arkansas income tax purposes the income of the business; (ii) Which is a partnership

in which a majority of the ownership interest is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or (iii) Which is a corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation".

**EQUAL EMPLOYMENT OPPORTUNITY POLICY:** In compliance with Act 2157 of 2005, the Office of State Procurement is required to have a copy of the bidder's Equal Opportunity Policy prior to issuing a contract award. EO Policies may be submitted in electronic format to the following email address: [eeopolicy.osp@dfa.state.ar.us](mailto:eeopolicy.osp@dfa.state.ar.us) or as a hard copy accompanying the bid response. The Office of State Procurement will maintain a file of all vendor EO policies submitted in response to solicitations issued by this office. The submission is a onetime requirement but vendors are responsible for providing updates or changes to their respective policies and of supplying EO policies upon request to other state agencies that must also comply with this statute. Vendors that do not have an established EO policy will not be prohibited from receiving a contract award, but are required to submit a written statement to that effect.

#### **TECHNOLOGY ACCESS FOR THE BLIND**

Please reference Section 508 of the federal Rehabilitation Act, 29 U.S.C. 794d and Arkansas Code Annotated § 25-26-201 et seq. The Vendor expressly acknowledges that State funds may not be expended in connection with the purchase of information technology unless that system meets certain statutory requirements, in accordance with the State of Arkansas technology policy standards, relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to the Arkansas Lottery Commission that the technology provided to the Arkansas Lottery Commission for purchase is capable either by virtue of features included within the technology or because it is readily adaptable by use with other technology of:

- Providing equivalent access for effective use by both visual and non-visual means;
- Presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- After being made accessible, it can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

#### **ACT 157 of 2007 EMPLOYMENT OF ILLEGAL IMMIGRANTS**

Pursuant to Act 157 of 2007 (Ark. Code Ann. § 19-11-105), all Vendors must certify prior to award of the contract that they do not employ or contract with any illegal immigrants in its contract with the State. Vendors shall certify online at:

[http://www.arkansas.gov/dfa/procurement/pro\\_index.html](http://www.arkansas.gov/dfa/procurement/pro_index.html)

Any subcontractors used by the Vendor at the time of the Vendor's certification shall also certify that they do not employ or contract with any illegal immigrant. Certification by the subcontractors shall be submitted within thirty (30) days after contract execution. Before entering the information on the web-site, please screen print a copy and attach to our bid.

**ADDENDUMS:** Vendors are cautioned to ensure they have received or obtained and responded to any and all addendums to the proposal prior to submission. It is the responsibility of the vendor to check the ALC website, <http://lotterycommission.arkansas.gov/vendors.html> for any and all addendums up to that time.

**ALTERATION OF ORIGINAL IFB DOCUMENTS:** The original written or electronic language of the IFB shall not be changed or altered except by approved written addendum issued by the Arkansas Lottery Commission. This does not eliminate an Offeror from taking exception(s) to these documents, but does clarify that the Offeror cannot change the original documents written or electronic language. If the Offeror wishes to make exception(s) to any of the original language, it must be submitted by the Offeror in separate written or electronic language in a manner that clearly explains the exception(s). If Offerors/Contractors submittal is discovered to contain alterations/changes to the original written or electronic documents, the Offerors response may be declared as non-responsible and the response shall not be considered.

The Arkansas Lottery Commission objects to and shall not consider any additional terms or conditions submitted by a bidder, including any appearing in documents attached as part of a bidder's response. In signing and submitting its bid, a bidder agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a bid, shall be grounds for rejecting a bid.

**TERM OF CONTRACT:** The term of the contract shall be for a period of one (1) year with an option to renew six (6) additional years in one-year increments or portions thereof. The maximum period for the contract is seven (7) years. All parties must mutually agree upon any extension.

**PAST PERFORMANCE:** In accordance with provisions of The State Procurement Law, R7: 19-11-229 Competitive Sealed Bidding – Bid Evaluation paragraph (E)(i) & i : a vendor's past performance with this solicitation. The past performance should not be greater than three years old and must be supported by written documentation on file in the Office of State Procurement at the time of the bid opening. Documentation may be in the form of either a written or electronic report, VPR; memo, file or any other appropriate authenticated notation of performance to the vendor files.

**CURRENCY:** All bid and proposal pricing and cost must be listed in United States dollars and cents.

**LANGUAGE:** Bids and proposals will only be accepted in the English language.

**CANCELLATION:** In the event the ALC no longer needs the service or commodity specified in the Contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding, the ALC may cancel the Contract or purchase order by giving the Vendor written notice of such cancellation thirty (30) days prior to the date of cancellation and a right to a hearing before the Commission.

**ANTICIPATION OF AWARD:** After complete evaluation of the bid or proposal, the anticipated award will be posted on the Arkansas Lottery Commission website [http://www.arkansas.gov/dfa/procurement/pro\\_index.html](http://www.arkansas.gov/dfa/procurement/pro_index.html) and/or the legal section of a newspaper of statewide circulation. The purpose of the posting is to establish a specific time in which vendors and agencies are aware of the anticipated award. The bid results will be posted for a period of three (3) days prior to the issuance of an award. Vendors and agencies are cautioned that these are preliminary results only, and no official award will be issued prior to the end of the posting period. Accordingly, any reliance on these preliminary results is at the agency's/vendor's own risk. The Arkansas Lottery Commission reserves the right to waive this policy, the Anticipation to Award, when it is in the best interests of the State. Vendors are responsible for viewing the Anticipation to Award section of the ALC web site at:  
<http://lotterycommission.arkansas.gov/vendors.html>

## **SCOPE**

The Arkansas Lottery Commission is an independent agency of the State of Arkansas. The Legislation creating Arkansas Lottery Commission (ALC) was signed into law on March 26, 2009 (the Arkansas Scholarship Lottery Act, Ark. Code Ann. § 23-115-101 et seq. and § 6-85-201 et seq.).

The ALC has 9 Commission Members appointed by the Governor, President Pro Tempore and the Speaker of the House. The Commission Members have all of the powers necessary to operate, supervise and regulate the Arkansas Scholarship Lottery, subject only to the Arkansas and U.S. Constitution. These powers include the ability to bring suits to enforce demands, administer oaths and issue subpoenas. A list of the Commission members is attached hereto as Exhibit "A" to this document. A current copy of the ALC Rules of Practice and Procedure are attached hereto as Exhibit "B." A copy of both attachment can also be found at the ALC website at : <http://lotterycommission.arkansas.gov/vendors.html>

The Arkansas Lottery Commission (ALC) is requesting bids for Directors and Officers liability insurance fidelity bonds for its Commission Members as specified herein. The ALC is not a tax exempt organization and does not currently have any other coverage for its directors and officers. There are no currently any claims pending against the ALC, or any individual proposed for insurance coverage that is based upon or arises from acts, errors or omissions in a capacity as Director, Commissioner, Officer or Employee of the Commission. There are no known facts involving any fact, circumstance or situation involving the Organizations which he/she has

reason to believe might result in any future claims which might fall within the scope of the requested coverage.

**Specifications:**

**Name of Insured:** Arkansas State Lottery Commission

**Number of insured:** All Arkansas Lottery Commission commissioners – Blanket coverage for nine (9) commissioners

**Financial Limits/Effective Dates:**

**Policy Period:** Responses to this bid shall provide premium quotes for a six (6) month policy period and a one (1) year policy period for the following coverage. Please note that all requested coverages may not be selected by the agency.

Insurance Agreements	Limits of Insurance Per Occurrence	Deductible Amount per occurrence
Directors and Officers Liability Insurance	Please provide quotes for limits of both \$10,000,000, \$5,000,000, 2,500,000 and \$1,000,000	Please provide quotes for the limits previously listed with deductibles in the amount of \$10,000 and \$50,000

Deductible for all requested coverages: Proposed deductibles are \$10,000 and \$50,000. Please provide bids containing the pricing for the limits described with these two (2) deductibles.

**Claims Made Form:** Yes

**Retroactive date:** None

**Prior litigation date:** date of inception

**Definition of Insured:**

The plan sponsor (the insured entity and any subsidiary)

All future plans (requires written notice within 60 days of employment)

Past, present and future: Directors, Commissioners, Officers, Estates, heirs, legal representatives, or assigns of deceased, incapacitated or bankrupt insured persons.

Coverage responds to any proceedings initiated against insured person or entity before any court or governmental body authorized to enforce a judgment or order for money damages or other relief.

Bids must show premium for all coverage specified. No bid for partial coverage will be accepted.

Bidders (agents) must be licensed to do business in the State of Arkansas.

Bidders must have a minimum A.M. Best Rating of A VIII.

Bidders must specify the carrier's name within their response to this request for quote.

The Arkansas Lottery Commission reserves the right to choose the legal counsel to be retained by the ALC for defense against any action initiated which may include claims covered under the coverage requested herein. Any bidders submitting a Bid in response to this quote must expressly agree to these terms in their quote.

### INVITATION FOR BID PRICING SECTION

(Please place price quotes in the following section)

Carrier's name: ACE - Westchester Fire Insurance Company  
A.M. Best Rating: A+ XII

**Please quote premiums below for a policy with a deductible in the amount of \$10,000**

**Coverage amount**

\$1,000,000	Premium amount \$ <u>50,341</u>
\$2,500,000	Premium amount \$ <u>73,296</u>
\$5,000,000	Premium amount \$ <u>N/A</u>
\$10,000,000	Premium amount \$ <u>N/A</u>

**Please quote premiums below for a policy with a deductible in the amount of \$50,000**

**Coverage amount**

\$1,000,000	Premium amount \$ <u>39,835</u>
\$2,500,000	Premium amount \$ <u>62,790</u>
\$5,000,000	Premium amount \$ <u>77,204</u>
\$10,000,000	Premium amount \$ <u>101,271</u>

### IFB STANDARD TERMS AND CONDITIONS

**GENERAL:** Any special terms and conditions included in the invitation for bid override these standard terms and conditions. The standard terms and conditions and any special terms and conditions become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.

**ACCEPTANCE AND REJECTION:** The state reserves the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the state.

**BID SUBMISSION:** Bids must be submitted to the Arkansas Lottery Commission on this form, with attachments when appropriate, on or before the date and time specified for bid opening. If this form is not used, the bid may be rejected. The bid must be typed or printed in ink. The signature must be in ink. Unsigned bids will be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Each bid should be placed in a separate envelope completely and properly identified. Late bids will not be considered under any circumstances.

**PRICES:** Unless otherwise specified, the bid must be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the bid invitation.

**BRAND NAME REFERENCES:** Any catalog brand name or manufacturer's reference used in the bid invitation is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid must show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The state reserves the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the state may require the bidder to supply additional descriptive material. The bidder guarantees that the product offered will meet or exceed specifications identified in this bid invitation. If the bidder takes no exception to specifications or reference data in this bid he will be required to furnish the product according to brand names, numbers, etc., as specified in the invitation.

**AMENDMENTS:** The bid cannot be altered or amended after the bid opening except as permitted by regulation.

**TAXES AND TRADE DISCOUNTS:** Do not include state or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.

**AWARD:** Term Contracts: A contract award will be issued to the successful bidder. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contracts: A written state purchase order authorizing shipment will be furnished to the successful bidder.

**DELIVERY ON FIRM CONTRACTS:** The invitation for bid will show the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the bidder cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Arkansas Lottery Commission has the right to extend delivery if reasons appear

valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost will be borne by the vendor.

**DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Arkansas Lottery Commission. Delivery shall be made during agency work hours only 8:30 a.m. to 5:00 p.m., unless prior approval for other delivery has been obtained from the agency. Packing memoranda shall be enclosed with each shipment.

**STORAGE:** The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.

**DEFAULT:** All commodities furnished will be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications authorize the Arkansas Lottery Commission to cancel this contract or any full increase, if any, in cost and handling to the defaulting contractor. The contractor must give written notice to the Arkansas Lottery Commission and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the bidders list or suspension of eligibility for award.

**INVOICING:** The contractor shall be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the invitation for bid, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary state agencies. Invoices must be sent to the "Invoice To" point shown on the purchase order.

**STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder shall remain property of the state, be kept confidential, be used only as expressly authorized and returned at the contractor's expense to the F.O.B. point properly identifying what is being returned.

**PATENTS OR COPYRIGHTS:** The contractor agrees to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.

**ASSIGNMENT:** Any contract entered into pursuant to this invitation for bid is not assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.

**REMEDIES:** The parties further agree that any and all disputes which may arise from this Contract shall be governed and resolved under the Arkansas Lottery Commission Rules for Claims in Contracts or Torts.

**DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the bidder agrees that:

(a) the bidder will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin;

b) in all solicitations or advertisements for employees, the bidder will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the bidder will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the bidder to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the bidder will include the provisions of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

**CONTINGENT FEE:** The bidder guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business.

**ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this invitation for bid, the bidder named on the front of this invitation for bid, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this state for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.

**DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.



**Swett & Crawford**

3715 Northside Parkway, N.W.  
200 Northcreek, Suite 800  
Atlanta, GA 30327-2806  
Phone: 404-240-5200  
Fax: 404-240-5393

To: Sarah Hudgens  
Regions Insurance, Inc.  
PO Box 3198  
Little Rock, AR 72203

Date: October 29, 2009  
From: Rachel Scharfnorth  
Email: rachel\_scharfnorth@swett.com

Agency Fax: 501 666-9592  
Retail Producer Fax:

Agency Phone: 501-661-4800  
Retail Producer Phone:

## REVISED INDICATION

This Indication for coverage is subject to the terms and conditions of the specified insurance company forms currently in use including any listed amendatory endorsements. THIS INDICATION FOR COVERAGE MAY NOT CONFORM TO THE TERMS AND CONDITIONS REQUESTED. Should a change in insurance company be involved, terms and conditions may vary from those currently in force. A copy of the form to be used is available upon request.

INSURED: Arkansas Lottery Commission  
Mailing Address: 124 West Capitol Avenue, Suite 1400  
Little Rock, AR 72201  
Company: Westchester Fire Insurance Company  
Effective Date: 11/23/2009 Expiration Date: 11/23/2010  
This Indication is valid for 30 days.  
Coverage: ACE Municipal Advantage Public Entity Liability  
Premium/Taxes/Fees: \$ Premium Options as Attached  
500.00 Broker Fee  
Commission: 10.0%  
Company is: Admitted

TERMS AND CONDITIONS: PLEASE SEE ATTACHED -

*You acknowledge that Swett & Crawford or one of its affiliates is acting as a wholesale insurance broker in connection with this placement. Specifically, it (1) is acting on your behalf (and you are transacting on behalf of the consumer), (2) is working as a wholesale broker to obtain appropriate Indications and/or placements on your behalf, (3) may be charging a broker fee for its services as set forth in the indication, Indication and/or binder and (4) may be entitled to receive compensation from the insurer for the purchase of insurance.*

Swett & Crawford

By: \_\_\_\_\_  
(Authorized Representative)



Professional Risk-  
Westchester Specialty  
Group [www.ace-ina.com](http://www.ace-ina.com)  
500 Colonial Center  
Parkway  
Suite 200  
Roswell, GA 30076

To:  
**Wendy Olsson**

Company/Department:  
**Swett & Crawford**

Tel:  
**404-240-5262**

Fax:  
**678-416-0244**

e-mail:  
**[wendy\\_olsson@swett.com](mailto:wendy_olsson@swett.com)**

Re: **Primary Indication**

From:  
**Beth Berthelsen**

Date:  
**October 28, 2009 - Revised**

Tel:  
**678-795-4238**

Fax:  
**678-795-4150**

e-mail:  
**[beth.berthelsen@acegroup.com](mailto:beth.berthelsen@acegroup.com)**

*This message is intended  
only for the use of the  
individual or entity to  
which it is addressed  
and may contain infor-  
mation that is privileged,  
confidential and exempt  
from disclosure under  
applicable law.*

**Insured:** Arkansas Lottery Commission  
**Insured Address:** 124 W. Capitol Avenue; Suite 1400  
Little Rock, AR 72203  
**Line of Coverage:** ACE Municipal Advantage<sup>SM</sup> Public Entity Liability  
**Type of Submission:** New  
**Insuring Company:** Westchester Fire Insurance Company (Admitted)  
**Effective & Expiration Dates:** 11/23/2009 to 11/23/2010

Dear Wendy,

I am pleased to offer the attached indication for **Arkansas Lottery Commission**.

Thank you for considering ACE Westchester as your market of choice. We look forward to working with you. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Beth Berthelsen  
Senior Underwriter  
ACE Westchester – Professional Risk



The Insurer hereby indicates the coverage described below. However, any obligations the Insurer may have under this indication are conditioned upon each of the following conditions having first been met:

1. The Applicant has submitted to the Insurer the following documents, and the Insurer has received such documents no later than close of business on **prior to binding**:
  - A. None
2. If coverage is subsequently bound by the Insurer, the Applicant has remitted the premium specified below to the Insurer so that the Insurer receives the premium no later than close of business on the 30th day from the date of this Binder or the Effective Date of this policy, whichever is later.

**PREMIUM INDICATION(S):**

**ACE Municipal Advantage Public Entity Liability Terms:**

Limit of Liability Each Claim and in the Aggregate for all Claims Including Claims Expenses:	Crisis Management Fund	Retention* Each Claim	Premium (Policy Period)	Terrorism Risk Insurance Act Premium	Total Premium Due
\$ 1,000,000 / \$ 1,000,000	\$ 25,000	A. \$ 0 B. \$ 10,000 C. \$ 10,000	\$ 50,341	\$ 0	\$ 50,341
\$ 1,000,000 / \$ 1,000,000	\$ 25,000	A. \$ 0 B. \$ 50,000 C. \$ 50,000	\$ 39,835	\$ 0	\$ 39,835
\$ 3,000,000 / \$ 3,000,000	\$ 25,000	A. \$ 0 B. \$ 10,000 C. \$ 10,000	\$ 73,296	\$ 0	\$ 73,296
\$ 3,000,000 / \$ 3,000,000	\$ 25,000	A. \$ 0 B. \$ 50,000 C. \$ 50,000	\$ 62,790	\$ 0	\$ 62,790
\$ 5,000,000 / \$ 5,000,000	\$ 25,000	A. \$ 0 B. \$ 50,000 C. \$ 50,000	\$ 77,204	\$ 0	\$ 77,204
\$ 10,000,000 / \$ 10,000,000	\$ 25,000	A. \$ 0 B. \$ 50,000 C. \$ 50,000	\$ 101,271	\$ 0	\$ 101,271

\*(A. Public Officials' Liability B. Public Entity Reimbursement & Public Entity Liability C. Employment Practices Liability)

**Please note the following:**



1. The policy includes terrorism coverage required by the Terrorism Risk Insurance Act of 2002. The Premium for the coverage is set forth above.
2. HR Helpline Loss Control Fee: An additional \$250 fee will be charged for HR Helpline if Insured elects this feature. Additional information can be found at: [www.westchesterhelpline.com](http://www.westchesterhelpline.com)

**Policy Form Number:** PF-23535 / PF-23536 (01/08)

**Extended Reporting Period:** 12 months for 100% of last annual premium

**The following Endorsements will be added to the basic contract(s):**

1. Signature Endorsement – CC1K11e
2. Trade or Economic Sanctions Endorsement ALL21101 (07/06)
3. Producer Compensation Notice – ALL20887 (10/06)
4. Bond Exclusion – PF-23541 (01/08)
5. Network Security or Privacy Liability Exclusion – PF-25586 (05/09)
6. Notice – General Counsel, Risk Manager – PF-23558 (01/08)
7. Non-Monetary Damages – Variable Sublimit – PF-23556 (01/08)
8. Professional Services Exclusion Amended – PF-25620 (07/09)
9. Lottery Amendatory Endorsement – TBD by legal

**State Amendatory Endorsement(s) added to basic contract(s):**

1. AR Amendatory Endorsement – PF-23574 (01/08)
2. AR Notice to Policyholders – ALL-2Y31a (02/06)

**TRIA Endorsements and "OFAC" notices added to basic contract(s):**

1. Policy Holder Disclosure – Notice of Terrorism Insurance Coverage – TRIA12b (01/08)
2. Cap on Losses From Certified Acts of Terrorism – PF-17705a (01/08)
3. U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") Advisory Notice to Policyholders PF-17914 (2/05)

This indication will remain valid until: **November 23, 2009**

If between the date of this Indication and the Effective Date of the policy there is a significant adverse change in the condition of this Applicant, or an occurrence of an event, or other circumstances which could substantially change the underwriting evaluation of the Applicant, then, at the Insurer's option, this quotation may be withdrawn by written notice thereof to Applicant. The Insurer also reserves the right to modify the final terms and conditions upon review of the completed application and any other information requested by the underwriter herein. If such material change in the risk is discovered after binding, the insurance coverage will be void ab initio ("from the beginning").

Note: If the Insuring Company noted above is either Westchester Surplus Lines Insurance Company or Illinois Union Insurance Company, then this insurance is issued pursuant to the state Surplus Lines laws



that the insured is domiciled. Persons insured by Surplus Lines carriers do not have the protection of the above captioned state's Guaranty Act to the extent of any right of recovery for the obligation of an insolvent unlicensed insurer.

Any applicable taxes, surcharges or countersignature fees, etc., are in addition to the above quoted figures. Your office is responsible for making State Surplus Lines Filings and complying with all applicable laws.

Sincerely,



## U.S. Treasury Department's Office Of Foreign Assets Control ("OFAC") Advisory Notice to Policyholders

This Policyholder Notice shall not be construed as part of your policy and no coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

# SIGNATURES

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective Date of Endorsement
Issued By (Name of Insurance Company)			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THE ONLY SIGNATURES APPLICABLE TO THIS POLICY ARE THOSE REPRESENTING THE COMPANY NAMED ON THE FIRST PAGE OF THE DECLARATIONS.

By signing and delivering the policy to you, we state that it is a valid contract.

**INDEMNITY INSURANCE COMPANY OF NORTH AMERICA**  
436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

**BANKERS STANDARD FIRE AND MARINE COMPANY**  
436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

**BANKERS STANDARD INSURANCE COMPANY**  
436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

**ACE INDEMNITY INSURANCE COMPANY**  
436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

**ACE AMERICAN INSURANCE COMPANY**  
436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

**ACE PROPERTY AND CASUALTY INSURANCE COMPANY**  
436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

**INSURANCE COMPANY OF NORTH AMERICA**  
436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

**PACIFIC EMPLOYERS INSURANCE COMPANY**  
436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

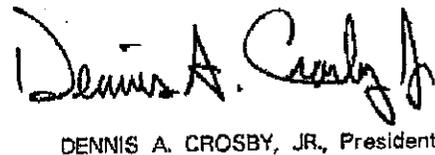
**ACE FIRE UNDERWRITERS INSURANCE COMPANY**  
436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

  
GEORGE D. MULLIGAN, Secretary

  
JOHN J. LUPICA, President

**WESTCHESTER FIRE INSURANCE COMPANY**  
1133 Avenue of the Americas, 32nd Floor, New York, NY 10036

  
GEORGE D. MULLIGAN, Secretary

  
DENNIS A. CROSBY, JR., President

\_\_\_\_\_  
Authorized Agent



## **ACE Producer Compensation Practices & Policies**

ACE believes that policyholders should have access to information about ACE's practices and policies related to the payment of compensation to brokers and independent agents. You can obtain that information by accessing our website at <http://www.aceproducercompensation.com> or by calling the following toll-free telephone number: 1-866-512-2862.

## TRADE OR ECONOMIC SANCTIONS ENDORSEMENT

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
			to
Issued By (Name of Insurance Company)			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

—This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims. All other terms and conditions of policy remain unchanged.

\_\_\_\_\_  
Authorized Agent

## NETWORK SECURITY OR PRIVACY LIABILITY POLICY

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period	Effective
			to
Issued By (Name of Insurance Company)			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

### **PUBLIC ENTITY LIABILITY POLICY**

1. It is agreed that Section III, Definitions, is amended by adding the following definition:

- **Network Security or Privacy Breach** means:

1. the failure by the **Insured** to properly handle, manage, store, destroy or otherwise control confidential corporate or personally identifiable information;
2. any violation of the **Insured's** privacy policy, or any violation by the **Insured** of the following statutes or regulations: (a) Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191); (b) Gramm-Leach-Bliley Act of 1999; (c) the California Security Breach Notification Act (CA SB 1386); (d) Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), but solely for alleged violations of unfair or deceptive acts or practices in or affecting commerce; or (e) any violation of any other similar state, federal, and foreign identity theft and privacy protection legislation that requires commercial entities that collect personal information to post privacy policies, adopt specific privacy or security controls, or notify individuals in the event that personal information has potentially been compromised; or
3. a failure in network security, including but not limited to activities performed by the **Insured** to protect against unauthorized access to, unauthorized use of, a denial of service attack directed against, or transmission of malicious code to the **Insured's** computer system.

2. It is agreed that Section IV, Exclusions, is amended by adding the following exclusion:

- alleging, based upon, arising out or attributable to a **Network Security or Privacy Breach**.

All other terms and conditions of this **Policy** remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Public Entity			Endorsement Number
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
			to
Issued By (Name of Insurance Company)			

**Notice – Risk Manager, Legal Counsel Endorsement**

It is agreed that Section X, Notice, subsection A is amended by deleting the phrase “, but in no event later than 30 days after the later of the end” and replacing it with the phrase “after the Risk Manager or legal counsel for the **Public Entity** is first made aware of such **Claim**, but in no event later than the termination”.

All other terms and conditions of this **Policy** remain unchanged.

\_\_\_\_\_  
Authorized Representative

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Public Entity			Endorsement Number
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
			to
Issued By (Name of Insurance Company)			

**Non-Monetary Damages – Variable Sublimit Endorsement**

It is agreed that Section IV, Exclusions, subsection C is amended by deleting "\$100,000" and inserting "\$\_\_\_\_\_".

All other terms and conditions of this **Policy** remain unchanged.

\_\_\_\_\_  
Authorized Representative

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Public Entity			Endorsement Number
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
			to
Issued By (Name of Insurance Company)			

**Bond Exclusion**

It is agreed that Section IV, Exclusions, is amended by adding the following:

- alleging, based upon, arising out of or attributable to the failure to pay any bond, interest on any bond, any debt, financial guarantee or debenture.

All other terms and conditions of this **Policy** remain unchanged.

\_\_\_\_\_  
Authorized Representative

**PROFESSIONAL SERVICES EXCLUSION AMENDED  
ARCHITECT AND ENGINEER SERVICES EXCLUDED**

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period To	Effective Date of Endorsement
Issued By (Name of Insurance Company)			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**PUBLIC ENTITY LIABILITY POLICY**

It is agreed that Section IV, Exclusions, subsection N is deleted in its entirety and replaced with the following:

N. alleging, based upon, arising out of or attributable to the rendering or failure to render:

1. medical services, including **Incidental Medical Malpractice**,
2. professional services provided by any lawyer or accountant to any person or entity other than the **Public Entity**, or
3. professional services provided by any architect or engineer to any person or entity.

All other terms and conditions of this **Policy** remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
			to
Issued By (Name of Insurance Company)			

**Cap On Losses From Certified Acts Of Terrorism**

It is agreed that the Limit(s) of Liability section is amended by adding the following:

- Notwithstanding anything in this **Policy** to the contrary, if aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and the **Insurer** has met its deductible under the Terrorism Risk Insurance Act, the **Insurer** shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

All other terms and conditions of this **Policy** remain unchanged.

\_\_\_\_\_  
Authorized Representative

# DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective Date of Endorsement
Issued By (Name of Insurance Company)			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### Disclosure Of Premium

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown in this endorsement or in the policy Declarations.

### Disclosure Of Federal Participation In Payment Of Terrorism Losses

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

### Cap On Insurer Participation In Payment Of Terrorism Losses

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

We are providing you with the terrorism coverage required by the Act. We have not established a separate price for this coverage; however the portion of your annual premium that is reasonably attributable to such coverage is: \$0.00.

\_\_\_\_\_  
Authorized Agent

Includes copyrighted material of Insurance Services office, Inc., with its permission

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period	Effective
			to
Issued By (Name of Insurance Company)			

**AMENDATORY ENDORSEMENT – ARKANSAS**

It is agreed that:

1. The DEFINITIONS section of the **Policy** is amended as follows:
  - A. Definition E, **Damages**, is amended by deleting Item 3 and replacing it with the following:
    3. **Punitive or Exemplary Damages**, or the multiple portion of any multiplied damage award;
  - B. The following definition is added:
 

**Punitive or Exemplary Damages** means **Damages** imposed to punish a wrongdoer and to deter others from similar conduct.
  
2. The TERMINATION OF THE **POLICY** section of the **Policy** is deleted in its entirety and replaced by the following:
 

**TERMINATION OF THE POLICY**

  - A. This **Policy** shall terminate at the earliest of the following times:
    1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
    2. 10 days before the effective date of termination if the **Insurer** terminates this **Policy** for nonpayment of premium, in which case the notice of termination will include the reason for termination;
    3. 30 days before the effective date of termination if the **Insurer** terminates this **Policy** for any other reason;
    4. upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations; or
    5. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.
  - B. If this **Policy** has been in effect for 60 days or less, the **Insurer** may terminate this **Policy** for any reason.
  - C. If this **Policy** has been in effect for more than 60 days, the **Insurer** may terminate this **Policy** only for one of the following reasons:
    1. nonpayment of premium;
    2. fraud or material misrepresentation made by or with the knowledge of the **Named Insured** in obtaining the **Policy**, continuing the **Policy**, or in presenting a **Claim** under the **Policy**;
    3. a material change in the risk that substantially increases any hazard insured against after **Policy** issuance;
    4. violation of any local fire, health, safety, building, or construction regulation or ordinances with respect to any insured property or the occupancy of the property that substantially increases any hazard insured against under the **Policy**;
    5. nonpayment of membership dues in those cases in which the **Insurer** issuing the **Policy** require payment as a condition of the issuance and maintenance of the **Policy**; or
    6. a material violation of a material provision of the **Policy**.

- D. All notices of termination will be mailed or delivered to the **Named Insured** at the last address known to the **Insurer** and to any lienholder or loss payee, listed in the **Policy**. If notice is mailed, proof of mailing will be sufficient proof of notice.
- E. If the **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If the **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

3. The SUBROGATION section of the **Policy** is amended by adding of the following:

The **Insurer** will be entitled to recovery only after the **Insured** has been fully compensated for the loss or **Damages** sustained, including **Claims Expenses** incurred in obtaining full compensation for the loss or **Damages**.

4. The following Sections are added to the **Policy**:

- **NONRENEWAL OF THE POLICY**

If the **Insurer** decides not to renew this **Policy**, the **Insurer** will mail to the **Named Insured**, at the mailing address last known to the **Insurer**, written notice of nonrenewal at least 60 days before the end of the **Policy Period**.

- **REQUIRED CONSUMER INFORMATION**

The Arkansas Insurance Department Consumer Services Division may be contacted at the following address and telephone numbers:

Arkansas Insurance Department  
Consumer Services Division  
1200 West 3<sup>rd</sup> Street,  
Little Rock, AR 72201-1904  
Phone: (800) 852-5494 or (501) 371-2640

5. The ALTERNATIVE DISPUTE RESOLUTION section of the **Policy** is amended by deleting the first paragraph and inserting the following:

The **Insured's** and the **Insurer** may, upon mutual agreement, submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process set forth in this section.

6. The **EXTENDED REPORTING PERIODS** section of the **Policy** is amended by deleting subsections B and D in their entirety and replacing them with the following:

B. **Optional Extended Reporting Period**

The **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 8A of the Declarations, to an **Optional Extended Reporting Period**, for the period set forth in Item 8B of the Declarations following the effective date of such termination or nonrenewal, but only for **Claims** first made during such **Optional Extended Reporting Period** and arising from **Wrongful Acts** taking place on or subsequent to the **Retroactive Date** and prior to the effective date of such termination or nonrenewal.

This right to continue coverage shall lapse unless written notice of such election is given by the **Named Insured** to the **Insurer**, and the **Insurer** receives payment of the additional premium, within 60 days following the effective date of termination or nonrenewal.

The first 60 days of the **Optional Extended Reporting Period**, if it becomes effective, shall run concurrently with the Automatic **Extended Reporting Period**.

- D. The Limits of Liability applicable to the Automatic **Extended Reporting Period** shall be part of and not in addition to the Limits of Liability for the immediately preceding **Policy Period**. The Automatic **Extended Reporting Period** shall not increase or reinstate the Limits of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and the Automatic **Extended Reporting Period**, combined.

The Limits of Liability applicable to the Optional **Extended Reporting Period**, if elected, shall be the greater of the unexhausted Limits of Liability of the immediately preceding **Policy Period** or 50% of the full amount of the Limits of Liability set forth in Item 4 of the Declarations at the inception of the immediately preceding **Policy Period**, for the additional period of time purchased (hereinafter referred to as "**Optional Extended Reporting Period Limits of Liability**"). The **Optional Extended Reporting Period Limits of Liability** shall only be available to pay **Damages** for **Claims** first made and reported during the Optional **Extended Reporting Period** and arising from **Wrongful Acts** taking place on or subsequent to the **Retroactive Date** and prior to the effective date of termination or nonrenewal (hereinafter referred to as "**Optional Extended Reporting Period Damages**"). The maximum liability for all **Optional Extended Reporting Period** is the **Optional Extended Reporting Period Limits of Liability**.

If any **Claim** is covered, in whole or in part, under both the Automatic **Extended Reporting Period** and the Optional **Extended Reporting Period**, if elected, only the **Optional Extended Reporting Period Limits of Liability** shall apply.

All other terms and conditions of this **Policy** remain unchanged.

---

Authorized Representative



## Arkansas Notice to Policyholders

### QUESTIONS ABOUT YOUR INSURANCE?

If You have questions about your insurance, need coverage information, or require assistance in resolving complaints, do not hesitate to contact either your insurance agent, or ACE USA, Customer Service Department, 436 Walnut Street, Philadelphia, PA 19106-3703, telephone 1-800-352-4462.

If you wish to contact the Arkansas Insurance Department, their address and toll-free number are:

Arkansas Insurance Department  
1200 West Third Street  
Little Rock, AR 72201-1904  
1-800-282-9134

ALL2Y31a (02-06)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period	Effective
to			
Issued By (Name of Insurance Company)			

### **LOTTERY AMENDATORY ENDORSEMENT**

It is agreed that Section III., of the Policy, Exclusions, is amended to include the following exclusion:

- based upon or arising out of the calculation of, payment of, or obligation for any monetary award, prize or other valuable consideration or redemption in excess of the total contracted or expected amount of awards, prizes or other valuable consideration from promotion, games sweepstakes contests and other games of chance.



ACE American Insurance Company  
 Illinois Union Insurance Company  
 Westchester Fire Insurance Company  
 Westchester Surplus Lines Insurance Company  
 [LIST ONLY THE COMPANY THAT APPLIES]

# ACE Municipal Advantage<sup>SM</sup> Public Entity Liability Policy Declarations

This Policy is issued by the stock insurance company listed above.

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, AND WHICH ARE THE RESULT OF WRONGFUL ACTS COMMITTED BEFORE THE END OF THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED DAMAGES SHALL BE REDUCED BY AMOUNTS INCURRED FOR CLAIMS EXPENSES. FURTHER NOTE THAT AMOUNTS INCURRED FOR DAMAGES AND CLAIMS EXPENSES SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT.

TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.

<b>Policy No.</b>	
Item 1. <b>Public Entity:</b>	Principal Address:
Item 2. <b>Policy Period:</b>	From 12:01 a.m. To 12:01 a.m. (Local time at the address shown in Item 1)
Item 3. Limits of Liability Each <b>Claim</b> and in the Aggregate for all <b>Claims</b> including <b>Claims Expenses:</b>	\$
Item 4. Retention	
A. For <b>Damages</b> and <b>Claims Expenses</b> under Insuring Agreement IA.1:	\$ Zero each <b>Claim</b>
B. For <b>Damages</b> and <b>Claims Expenses</b> under Insuring Agreement IA.2 and IB:	\$ each <b>Claim</b>
C. For <b>Damages</b> and <b>Claims Expenses</b> under Insuring Agreement IC:	\$ each <b>Claim</b>





ACE American Insurance Company  
Illinois Union Insurance Company  
Westchester Fire Insurance Company  
Westchester Surplus Lines Insurance Company  
[LIST ONLY THE COMPANY THAT APPLIES]

# ACE Municipal Advantage<sup>SM</sup> Public Entity Liability Policy

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions, limit of liability and other provisions of this **Policy**, the **Insureds** and the **Insurer** agree as follows:

## I. INSURING AGREEMENTS

### A. Public Entity Management Liability

#### 1. Public Officials' Liability

The **Insurer** will pay on behalf of the **Insured Persons** all **Damages** and **Claims Expenses** for which the **Insured Persons** are not indemnified by the **Public Entity** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

#### 2. Public Entity Reimbursement

The **Insurer** will pay on behalf of the **Public Entity** all **Damages** and **Claims Expenses** for which the **Public Entity** has indemnified the **Insured Persons** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

### B. Public Entity Liability

The **Insurer** will pay on behalf of the **Public Entity** all **Damages** and **Claims Expenses** for which the **Public Entity** becomes legally obligated to pay by reason of a **Claim** first made against the **Public Entity** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

### C. Employment Practices Liability

The **Insurer** will pay on behalf of the **Insureds** all **Damages** and **Claims Expenses** for which the **Insureds** becomes legally obligated to pay by reason of a **Claim** first made against them and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

### D. Public Entity Crisis Management Coverage

The **Insurer** will pay on behalf of the **Public Entity** the **Crisis Management Expense** for which the **Public Entity** becomes legally obligated to pay by reason of a **Crisis Event** first occurring during the **Policy Period**, but only up to the limit of liability for the **Crisis Management Fund**.

## II. DEFENSE

- A. The **Insurer** shall have the right and duty to defend any covered **Claim** made against the **Insured** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**, even if such **Claim** is groundless, false or fraudulent. The **Insured** shall not admit or assume liability or settle or negotiate to settle any **Claim** or incur any **Claims Expenses** without the prior written consent of the **Insurer**, and the **Insurer** shall have

the right to appoint counsel and to make such investigation and defense of a covered **Claim** as it deems necessary.

- B. Solely with respect to Insuring Agreements I.A.2, **Public Entity** Reimbursement, and I.B, **Public Entity** Liability, the **Insurer** shall not settle any **Claim** without the written consent of the **Public Entity**. The **Insurer** shall have the right to settle any **Claim** at its sole discretion with respect to all other Insuring Agreements. If the **Public Entity** refuses to consent to a settlement or a compromise recommended by the **Insurer** and acceptable to the claimant, then the **Insurer's** Limit of Liability under this **Policy** with respect to such **Claim** shall be reduced to (1) the amount of **Damages** for which the **Claim** could have been settled plus all **Claims Expenses** incurred until the date of such refusal, and (2) 50% of all subsequent covered **Claims Expenses** in excess of such amount, which sum shall not exceed the unexhausted Limits of Liability specified in Item 3 of the Declarations. The remaining 50% of **Claims Expenses** and all subsequent **Damages** shall be borne uninsured by the **Insureds** and at their own risk. In such event, the **Insurer** shall tender a check to the **Insured** for the recommended settlement amount, and shall be relieved of any further duty or obligation, except as otherwise stated in this subsection B.
- C. The **Insurer** shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle, any **Claim** after any applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted by payment of **Damages and Claims Expenses**, or by any combination thereof, or after the **Insurer** has deposited the remainder of any unexhausted applicable Limit of Liability into a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from the investigation, defense, payment or settlement of such **Claim** and shall tender the investigation, defense and control of such **Claim** to the **Insured**.
- D. The **Insureds** shall cooperate with the **Insurer**, and provide to the **Insurer** all information and assistance which the **Insurer** reasonably requests including but not limited to attending hearings, depositions and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim** covered by this **Policy**. The **Insureds** shall do nothing that may prejudice the **Insurer's** position. The **Insureds** shall immediately forward to the **Insurer**, at the address indicated in Item 5A of the Declarations, every demand, notice, summons, or other process or pleadings received by the **Insured** or its representatives.

### III. DEFINITIONS

When used in this **Policy**:

- A. **Adverse Publicity** means the publication of unfavorable information regarding the **Public Entity** which can reasonably be considered to materially reduce public confidence in the competence, integrity or viability of the **Public Entity** to conduct business. Such publication must occur in a report about an **Insured** appearing in:
1. a daily newspaper of general circulation; or
  2. a radio or television news program.
- B. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any **Policy** of which this **Policy** is a direct or indirect renewal or replacement or which it succeeds in time. All such applications, attachments, information and materials are deemed attached to and incorporated in this **Policy**.
- C. **Bodily Injury** means physical injury to the body, physical pain, sickness, disease, and death. **Bodily Injury** also means mental distress, mental injury, mental anguish, mental tension, pain and suffering, shock and humiliation (collectively "**Mental Distress**"), but only if such **Mental Distress** arises from and is accompanied by injury to the claimant's body, sickness, disease or death.

D. **Claim** means:

1. a written demand against any **Insured** for monetary **Damages** or non-monetary or injunctive relief;
2. a civil proceeding against any **Insured** seeking monetary **Damages** or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
3. a binding arbitration proceeding, only if the **Insurer** has provided its prior written consent to such proceeding, against any **Insured** seeking monetary **Damages** or non-monetary or injunctive relief;
4. a civil, administrative or regulatory proceeding against any **Insured** commenced by the issuance of a notice of charge or formal investigative order, including without limitation any such proceeding by or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world;
5. a civil, administrative or regulatory investigation against any **Insured**, commenced by the service upon or other receipt by any **Insured** of a written notice or subpoena from the investigating authority identifying any **Insured** as an individual against whom a civil, administrative or regulatory investigation or proceeding is to be commenced; or
6. solely with respect to coverage provided under Insuring Agreement I.C, a written request of the **Insured** to toll or waive a statute of limitations applicable to a **Claim** described in paragraphs 1 through 5 above.

including any appeal therefrom. However, **Claim** shall not include a labor or grievance arbitration or proceeding which is subject or pursuant to a collective bargaining agreement

E. **Claims Expenses** means:

1. reasonable and necessary attorneys' fees, expert witness fees and other fees and costs incurred by the **Insurer**, or by the **Insured** with the **Insurer's** prior written consent, in the investigation and defense of covered **Claims**;
2. reasonable and necessary premiums for any appeal bond, attachment bond or similar bond, provided the **Insurer** shall have no obligation to apply for or furnish such bond; and
3. prejudgment and post-judgment interest awarded in any **Claim**.

**Claims Expenses** shall not include wages, salaries, fees or costs of directors, officers or **Employees** of the **Insurer** or the **Insured** or **Crisis Management Expenses**.

F. **Crisis Event** means one of the following, except where coverage is otherwise excluded under Exclusions H and R of the **Policy**.

1. **Management Event**: The incapacity, death or state or federal criminal indictment of an **Insured Person** for whom the **Public Entity** has purchased and continues to maintain key individual life insurance;
2. **Funding Cancellation**: The cancellation, withdrawal or revocation of \$500,000 or more in funding, donation(s), grant(s) or bequest(s) by a non-government entity or person to the **Public Entity**;
3. **Bankruptcy**: The disclosure by the **Public Entity** of (a) its intention to file or its actual filing for protection under federal bankruptcy laws, or (b) a third-party's intention to file or its actual filing of an involuntary bankruptcy petition under federal bankruptcy laws with respect to the **Public Entity**;
4. **Employment Event**: The disclosure by the **Public Entity** of the threatened or actual commencement by a third-party of an action, audit or investigation alleging a **Wrongful Employment Practice** by the **Public Entity** which has caused or is reasonably likely to cause **Adverse Publicity**; and

5. **Material Event:** Any other material event which, in the good faith opinion of the **Public Entity**, has caused or is reasonably likely to result in **Adverse Publicity**, but only if such material event is scheduled for coverage by written endorsement to this **Policy**.
- G. **Crisis Management Expense** means the following expenses incurred by the **Public Entity** during a period beginning ninety (90) days prior to and in reasonable anticipation of a **Crisis Event** and ending ninety (90) days after an actual or reasonably anticipated **Crisis Event**, irrespective of whether a **Claim** is actually made with respect to the subject **Crisis Event**; provided, however, that the **Insurer** must have been notified of the **Crisis Management Expense** within thirty (30) days of the date the **Public Entity** first incurs the subject **Crisis Management Expense**:
1. The reasonable and necessary expenses directly resulting from a **Crisis Event** which the **Public Entity** incurs for **Crisis Management Services** provided to the **Public Entity** by a **Crisis Management Firm**, and
  2. The reasonable and necessary expenses directly resulting from a **Crisis Event** which the **Public Entity** incurs for (a) advertising, printing, or the mailing of matter relevant to the **Crisis Event**, and (b) out of pocket travel expenses incurred by or on behalf of the **Public Entity** or the **Crisis Management Firm**; provided, however, **Crisis Management Expense** does not include those amounts which otherwise would constitute compensation, benefits, fees, overhead, charges or expenses of an **Insured** or any of the **Insured's Employees**.
- H. **Crisis Management Firm** means a marketing firm, public relations firm, law firm, or other professional services entity retained by the **Insurer**, or by the **Public Entity** with the **Insurer's** prior written consent, to perform **Crisis Management Services** arising from a **Crisis Event**.
- I. **Crisis Management Fund** means the amount specified in Item 8 of the Declarations.
- J. **Crisis Management Services** means the professional services provided by a **Crisis Management Firm** in counseling or assisting the **Public Entity** in reducing or minimizing the potential harm to the **Public Entity** caused by the public disclosure of a **Crisis Event**.
- K. **Damages** means compensatory damages, judgments, any award of prejudgment and post-judgment interest, and settlements which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies. Such damages include punitive and exemplary damages and the multiple portion of any multiplied damage award, if and to the extent such damages are insurable under the law of the applicable jurisdiction most favorable to the insurability of such damages.

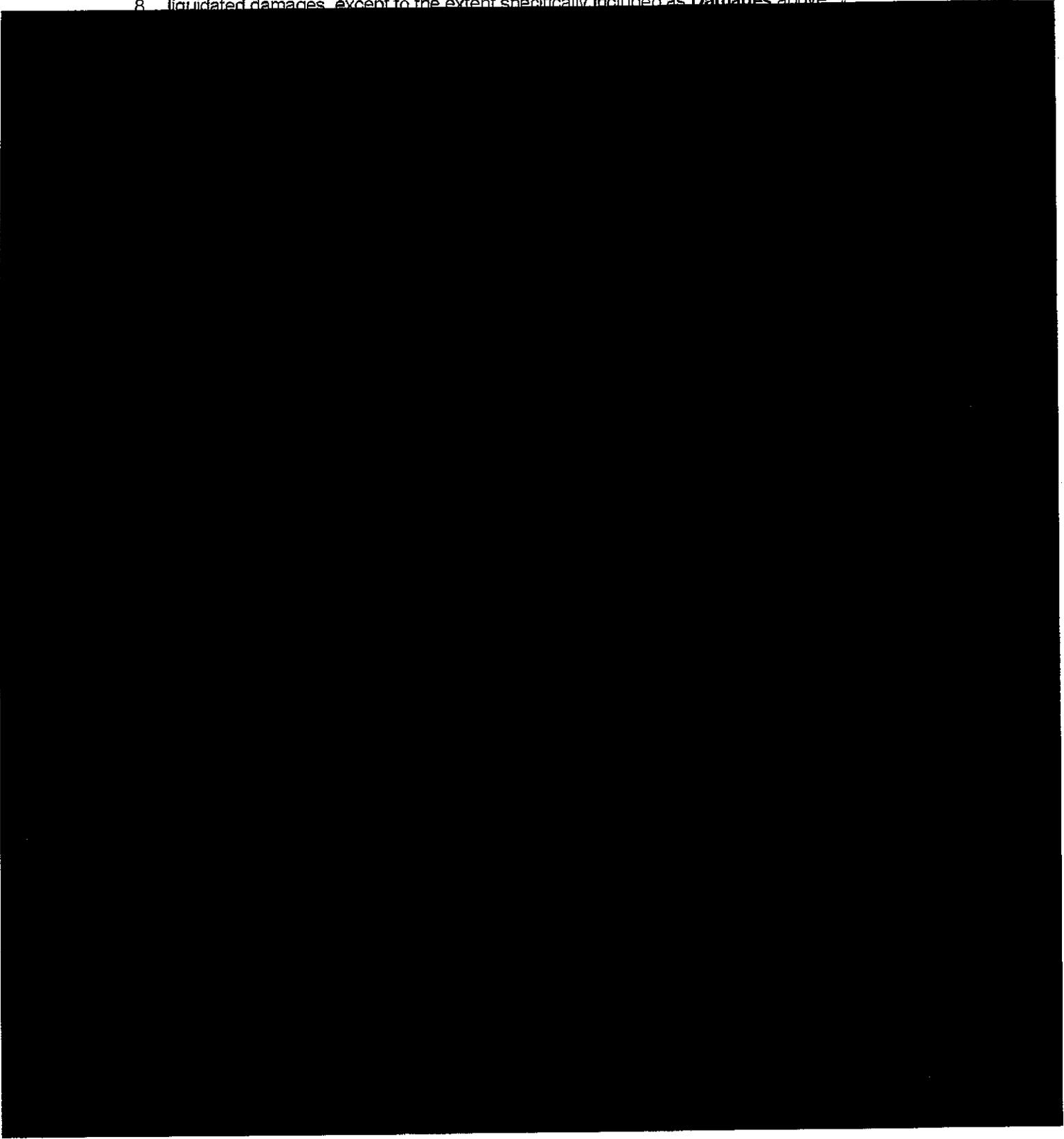
With respect to any **Claim** arising out of a **Wrongful Employment Practice**, **Damages** shall also mean:

1. front-pay and back-pay, except as otherwise stated below; and
2. liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act.

**Damages** shall not include:

1. any amount for which the **Insured** is not financially liable or legally obligated to pay;
2. taxes, fines or penalties;
3. matters uninsurable under the laws pursuant to which this **Policy** is construed;
4. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation;

5. the cost to comply with any injunctive or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief;
6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar;
7. **Crisis Management Expenses;** or
8. liquidated damages, except to the extent specifically included as Damages above;



- R. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- S. **Personal Injury** means injury arising out of one or more of the following offenses:
1. false arrest, detention or imprisonment;
  2. malicious prosecution;
  3. libel, slander or other defamatory or disparaging material;
  4. publication or an utterance in violation of an individual's right to privacy; and
  5. wrongful entry or eviction, or other invasion of the right to private occupancy.
- T. **Policy** means, collectively, the Declarations, the **Application**, this **Policy**, including any endorsements.
- U. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XIV, Termination of the **Policy**.
- V. **Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, including materials to be recycled, reconditioned, or reclaimed. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi) and electric or magnetic or electromagnetic field.
- W. **Property Damage** means:
1. physical injury to, or loss or destruction of, tangible or intangible property, including the loss of use thereof; and
  2. loss of use of tangible or intangible property which has not been physically injured, lost, damaged or destroyed.
- X. **Public Entity** means the municipality, governmental body, department or unit which is named in Item 1 of the Declarations.
- Y. **Retaliation** means retaliatory treatment on account of:
1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;
  2. the filing of any claim under any statute, rule or regulation to protect an **Employee** from discrimination by his or her employer if such **Employee** discloses or threatens to disclose to a superior or a governmental agency, or if such **Employee** gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;
  3. the disclosure or threat of disclosure by an **Employee** of the **Public Entity** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or
  5. any strike of any **Employee** of the **Public Entity**
- Z. **Sexual Abuse and Molestation** means any actual, attempted or alleged criminal sexual conduct of a person by another person, or persons acting in concert, which causes physical and/or mental injuries. **Sexual Abuse and Molestation** includes: sexual molestation, sexual assault, sexual exploitation or sexual injury. **Sexual Abuse and Molestation** does not include **Sexual Harassment**.
- AA. **Sexual Harassment** means any actual or alleged unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature, of a person by another person, or persons acting in concert, which causes physical and/or mental injuries. **Sexual Harassment** includes:
1. the above conduct when submission to or rejection of such conduct is made either explicitly or implicitly a condition of a person's employment, or a basis for employment decisions affecting a person; or
  2. the above conduct when such conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile or offensive work environment.

**Sexual Harassment** does not include **Sexual Abuse and Molestation**

BB. **Wrongful Act** means:

1. with regard to Insuring Agreements I.A.1 and 1.A.2, any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by an **Insured Person** while acting in his or her capacity as such and on behalf of the **Public Entity**;
2. with regard to Insuring Agreements I.B., any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Public Entity**; or
3. with regard to Insuring Agreement I.C.
  - a. solely with respect to **Claims** brought and maintained by or on behalf of any **Employee** or applicant for employment with the **Public Entity**, **Wrongful Act** means a **Wrongful Employment Practice** committed or attempted by the **Public Entity** or by any **Insured Person** in his or her capacity as such and on behalf of the **Public Entity**; or
  - b. with respect to all other **Claims**, **Wrongful Act** means only, or a violation of discrimination laws, including but not limited to, violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or a violation of a natural person's civil rights relating to such discrimination or **Sexual Harassment**, in either case, whether direct, indirect, intentional or unintentional, committed by an **Insured Person** in his or her capacity as such and on behalf of the **Public Entity**.

CC. **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination, whether actual or constructive;
2. employment-related misrepresentation;
3. any violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. **Sexual Harassment** or unlawful workplace harassment;

5. wrongful deprivation of a career opportunity or wrongful demotion;
6. failure to employ or promote;
7. wrongful discipline;
8. **Retaliation**;
9. negligent evaluation;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. failure to grant tenure; and
12. with respect to paragraphs S.1 through S.11 above, inclusive, negligent hiring, retention, training or supervision; infliction of emotional distress or mental anguish; failure to provide or enforce adequate or consistent corporate policies and procedures; or violation of an individual's civil rights.

of any past, present or prospective full-time, part-time, seasonal and temporary **Employee** or volunteer or leased **Employee(s)** or applicant for employment of the **Public Entity**.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

#### IV. EXCLUSIONS

Except as limited under Insuring Agreement I.D, **Public Entity** Crisis Management Coverage, the **Insurer** shall not be liable for **Damages** or **Claims Expenses** on account of any **Claim**:

- A. alleging, based upon, arising out of or attributable to any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law by an **Insured** ("**Excluded Conduct**"); however, this exclusion shall not apply: (1) unless and until there is an adverse admission by, finding of fact, or final adjudication against any **Insured** as to such **Excluded Conduct**, at which time the **Insured** shall reimburse the Company for all **Damages** and **Claims Expenses** paid or incurred on account of such **Claim**; or (2) to any **Claim** alleging any **Wrongful Employment Practice**.
- B. alleging, based upon, arising out of or attributable to the gaining in fact of any profit, remuneration or advantage to which any **Insured** was not legally entitled; however, this exclusion shall not apply to any **Claim** alleging any **Wrongful Employment Practice**.
- C. seeking relief or redress in any form other than monetary damages, or **Claims Expenses** for a **Claim** seeking injunctive or other non-monetary relief. However, the **Insurer** shall defend such a **Claim** in accordance with Section II, Defense, subject to a **Policy Period** aggregate limit of liability of \$100,000. This limit shall be part of the Limit of Liability stated in Item 3 of the Declarations.
- D. alleging, based upon, arising out of or attributable to any:
  1. **Bodily Injury**, other than **Mental Distress** arising out of a **Wrongful Employment Practice**;
  2. **Property Damage**;
  3. **Personal Injury**, other than libel, slander or defamation in any form arising out of a **Wrongful Employment Practice**; or
  4. any allegation relating to the foregoing D.1, D.2 and D.3 that an **Insured** negligently employed, investigated, supervised or retained a person, or based on an alleged practice, custom or policy and including, without limitation, any allegation that the violation of a civil right caused or resulted from such **Damages**, **Claims Expenses** or **Claim**.
- E. alleging, based upon, arising out of or attributable to the operation of the laws, and principles of eminent domain, condemnation, inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use.

- F. alleging, based upon, arising out of or attributable to strikes, riots or civil commotions;
- G. alleging, based upon, arising out of or attributable to the failure to effect or maintain any insurance or bond, which shall include, but not be limited to, insurance provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, retention groups, reciprocal exchanges or any other plan or agreement of risk transfer or assumption. However, this exclusion shall not apply to **Claims Expenses**.
- H. alleging, based upon, arising out of or attributable to:
1. the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
  2. any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- I. alleging, based upon, arising out of or attributable to the planning, construction, maintenance, operation or use of any nuclear reactor, nuclear waste storage or disposal site or any other nuclear facility; the transportation of nuclear material; or any nuclear reaction or radiation, or radioactive contamination, regardless of its cause.
- J. brought by or on behalf of any **Insured**; provided, however, with respect to any **Claim** alleging any **Wrongful Employment Practice**, this exclusion shall only apply to cross-claims or counter-claims brought by one **Insured** against another **Insured**.
- K. alleging, based upon, arising out of or attributable to:
1. breach of any express, implied, actual or constructive contract, warranty, guarantee or promise. However, this subsection of this exclusion shall not apply to any **Claim** alleging any **Wrongful Employment Practice**; or
  2. any construction, architectural or engineering contracts and/or agreements or the actual or alleged liability assumed by the **Insured** under any express, implied, actual or constructive contract or agreement, unless such liability would have attached to the **Insured** even in the absence of such contract or agreement.
- L. alleging, based upon, arising out of or attributable to any misappropriation of any trade secret or infringement of patent, collective mark, certification mark, registered mark, service mark, trademark, trade dress, trade name, domain, title, slogan, copyright or service name.
- M. alleging, based upon, arising out of or attributable to the operation of or activities of any schools, hospitals, clinics, nursing homes or other health care operations, jails or detention facilities, law enforcement agencies or fire fighting authorities.
- N. alleging, based upon, arising out of or attributable to the rendering or failure to render:
1. medical services, including **Incidental Medical Malpractice**, or
  2. professional services provided by any lawyer, architect, engineer or accountant to any person or entity other than the **Public Entity**.
- O. alleging, based upon, arising out of or attributable to any **Insured's** activities as a trustee or fiduciary as respects any type of **Employee** benefit plan, including any pension, savings, or profit sharing plan or to any amounts or benefits due under any fringe benefit program, retirement program, incentive program, perquisite program, entitlement program or other benefits owed to any **Employee**, including, but not limited to any actual or alleged violation of the responsibilities, obligations or duties imposed by the **Employee** Retirement Income Security Act of 1974, any similar state or local laws, and any rules and regulations promulgated thereunder and amendments thereto.

- P. alleging, based upon, arising out of or attributable to the improper administration or collection of taxes, or loss that reflects any tax obligations.
- Q. alleging, based upon, arising out of or attributable to:
1. any prior or pending litigation or administrative or regulatory proceeding, or any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, filed on or before the effective date of the first policy issued and continuously renewed by the **Insurer**, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein; or
  2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** underlying or alleged in such prior or pending proceeding, would constitute **Interrelated Wrongful Acts**
- R. alleging, based upon, arising out of, or attributable to:
1. any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
  2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**.
- S. alleging, based upon, arising out of or attributable to any **Wrongful Act** prior to the inception date of the first policy issued by the **Insurer** or any affiliate thereof, and continuously renewed and maintained, if, on or before such date, any **Insured** knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim**.
- T. solely with respect to any **Claim** arising out of a **Wrongful Employment Practice**:
1. alleging, based upon, arising out of or attributable to any violation of the responsibilities, obligations or duties imposed by any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**;
  2. for an actual or alleged violation of: (1) the **Employee Retirement Income Security Act** of 1974 (except section 510 thereof); (2) the **Fair Labor Standards Act** (except the **Equal Pay Act**), (3) the **National Labor Relations Act**, (4) the **Worker Adjustment and Retraining Notification Act**, (5) the **Consolidated Omnibus Budget Reconciliation Act**, (6) the **Occupational Safety and Health Act**; or any similar federal, state or local laws, and any rules and regulations promulgated thereunder and amendments thereto anywhere in the world. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**;
  3. alleging, based upon, arising out of or attributable to any costs or liability incurred by any **Insured** to provide any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the **Americans With Disabilities Act of 1992**, as amended, or any similar federal, state or local law, regulation or ordinance, including the modification of any building, property or facility to make it more accessible or accommodating to any disabled person; or
  4. alleging, based upon, arising out of, or attributable to improper payroll deductions or any **Claims** for unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee of a Public Entity**, or any violation of any federal state, local or foreign statutory law or common law that governs the same topic or subject, and any rules, regulations and amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

The **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person** for the purpose of determining the applicability of Exclusions IV.A. and IV.B. above.

## V. CRISIS MANAGEMENT COVERAGE PROVISIONS

- A. There shall be no Retention applicable to **Crisis Management Expenses** and the **Company** shall pay such **Crisis Management Expenses** from the first dollar subject to all other terms and conditions of this policy, including the **Policy** limit.
- B. An actual or anticipated **Crisis Event** shall be reported to the **Company** as soon as practicable, but in no event later than thirty (30) days after the **Public Entity** first incurs **Crisis Management Expenses** for which coverage will be requested under this **Policy**.

## VI. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners of **Insureds** shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or legally recognized domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from a natural person **Insured** to the spouse or legally recognized domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or legally recognized domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Damages** and **Claims Expenses** incurred by **Insureds** shown in Item 4 of the Declarations, shall also apply to **Damages** and **Claims Expenses** incurred by such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners.

## VII. EXTENDED REPORTING PERIODS

If the **Insurer** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), or if the **Public Entity** terminates or does not renew this **Policy** and does not obtain replacement coverage as of the effective date of such cancellation or non-renewal, the **Public Entity** shall have the right, upon payment of the additional premium described below, to a continuation of the coverage granted by this **Policy** for at least one **Extended Reporting Period** as follows:

### A. Automatic **Extended Reporting Period**

The **Public Entity** shall have continued coverage granted by this **Policy** for a period of 60 days following the effective date of such termination or nonrenewal, but only for **Claims** first made during such 60 days and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This Automatic **Extended Reporting Period** shall immediately expire upon the purchase of replacement coverage by the **Public Entity**.

### B. Optional **Extended Reporting Period**

The **Public Entity** shall have the right, upon payment of the additional premium set forth in Item 7A of the Declarations, to an Optional **Extended Reporting Period**, for the period set forth in Item 7B of the Declarations following the effective date of such cancellation or nonrenewal, but only for **Claims** first made during such Optional **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal.

This right to continue coverage shall lapse unless written notice of such election is given by the **Public Entity** to the **Insurer**, and the **Insurer** receives payment of the additional premium, within 30 days following the effective date of termination or nonrenewal.

The first 60 days of the Optional **Extended Reporting Period**, if it becomes effective, shall run concurrently with the Automatic **Extended Reporting Period**.

- C. The **Insurer** shall give the **Public Entity** notice of the premium due for the **Extended Reporting Period** as soon as practicable following the date the **Public Entity** gives such notice of such election, and such

premium shall be paid by the **Public Entity** to the **Insurer** within 10 days following the date of such notice by the **Insurer** of the premium due. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

- D. The **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.
- E. A change in **Policy** terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the Automatic or Optional **Extended Reporting Period**.

## VIII. LIMITS OF LIABILITY

### A. Payment of **Claims Expenses** without reduction of the Limit of Liability

1. The **Insurer** shall pay **Claims Expenses** in excess of the applicable Retention and up to an aggregate amount equal to the Limit of Liability stated in Item 3 of the Declaration without reduction of the applicable Limit of Liability. The total amount of such **Claims Expense** payments by the **Insurer** shall be capped at the amount of the Limit of Liability, and is not on a per **Claim** basis.
2. Once the **Insurer** has paid the amount set forth in Item 3 of the Declarations in aggregate **Claims Expenses** arising from or relating to any and all matters, all further payments by the **Insurer** of **Claims Expenses** shall reduce the applicable Limit of Liability.

### B. Limit of Liability

1. Except as otherwise stated in section VIII.A, the **Insurer's** maximum liability for the sum of all **Damages** and all **Claims Expenses** because of all **Claims**, (including all **Claims** alleging any **Interrelated Wrongful Acts**) first made and reported during the **Policy Period** shall never exceed the amount stated in Item 3 of the Declarations.
2. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Damages** and all **Claims Expenses** resulting from a single **Claim** shall be deemed a single **Damage** and **Claims Expense** and shall be allocable to the policy in effect on the date the Claim is first made, regardless of whether such date is before or during the Policy Period.
3. Except as otherwise stated in section VIII.A, any payment of **Damages** and/or **Claims Expenses** by the **Insurer** will reduce the Limit of Liability stated in Item 3 of the Declarations.
4. The **Insurer** is entitled to pay **Damages** and **Claims Expenses** as they become due and payable by the **Insureds**, without consideration of other future payment obligations.
5. Once the Limit of Liability has been exhausted by payments of any **Damages** (regardless of whether the payment by the **Insurer** of **Claims Expenses** under section VIII.A. has exhausted, reached or exceeded the amount set forth in Item 3 of the Declarations), the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished.
6. The **Crisis Management Fund** is the **Insurer's** maximum liability for all **Crisis Management Expenses** arising from any and all **Crisis Events** occurring during the **Policy Period**. This limit shall be the **Insurer's** maximum liability under this policy regardless of the number of **Crisis Events** reported during the **Policy Period**. The **Insurer's** obligation to pay **Crisis Management Expense** terminates and ends upon the exhaustion of the **Crisis Management Fund**. The **Crisis Management Fund** shall be in addition to the aggregate Limit of Liability set forth in Item 3 of the Declarations.

## IX. RETENTION

- A. The liability of the **Insurer** shall apply only to that part of **Damages** and **Claims Expenses** which are in excess of the applicable Retention amount shown in Item 4 of the Declarations. Such Retention shall be borne uninsured by the **Public Entity** and at the risk of all **Insureds**.
- B. A single Retention amount shall apply to **Damages** and **Claims Expenses** arising from all **Claims** alleging **Interrelated Wrongful Acts**.
- C. If different parts of a single **Claim** are subject to different Retentions, the applicable Retention shall be applied separately to each part of the **Damages** and **Claims Expenses**, but the sum of such Retentions shall not exceed the largest applicable Retention.

## X. NOTICE

For coverage under this **Policy** (other than coverage for a **Crisis Event**):

- A. The **Insured** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** as soon as practicable, but in no event later than 30 days after: (1) the end of the **Policy Period**, or (2) with respect to **Claims** first made during any applicable Automatic or Optional **Extended Reporting Period**, the end of such Automatic or Optional **Extended Reporting Period**.
- B. If, during the **Policy Period**, any **Insured** becomes aware of any specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** give written notice to the **Insurer** during the **Policy Period**, the Automatic **Extended Reporting Period**, or, if elected, the Optional **Extended Reporting Period** of:
  - 1. the identity of the potential claimants;
  - 2. a description of the anticipated **Wrongful Act** allegations;
  - 3. the identity of the **Insureds** allegedly involved;
  - 4. the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
  - 5. the consequences which have resulted or may result; and
  - 6. the nature of the potential monetary damages;

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

- C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Public Entity** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address set forth in Item 5A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address set forth in Item 5B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee, or one day following the date such notice is sent, whichever is earlier.

## XI. PRESUMPTIVE INDEMNIFICATION

- A. The **Public Entity** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The **Public Entity** further agrees to advance **Defense Costs** actually and reasonably incurred by any **Insured Person** in defending any threatened, pending or contemplated action, suit or proceeding prior to a final disposition of any such action, suit or proceeding and shall not require any determination or adjudication, interim or final, of the entitlement of the **Insured Person** to indemnification, where permitted by law to do so. The financial ability of any **Insured Person** to make repayment shall not be a prerequisite to the making of such an advance, and the right to receive advancement of **Claims Expenses** herein is a contractual right. The agreements contained in this paragraph are binding upon the **Public Entity** and enforceable by the **Insurer** or the **Insured Persons**.
- B. Notwithstanding anything in this section to the contrary, the **Public Entity's** indemnification obligations under this section shall not apply in the event the **Public Entity** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Public Entity**, or because of the **Public Entity** becoming a debtor-in-possession.

## XII. OTHER INSURANCE

If any **Damages** or **Claims Expenses** covered under this **Policy** are covered under any other valid and collectible insurance, then this **Policy** shall cover such **Damages** or **Claims Expenses**, subject to its terms and conditions, only to the extent that the amount of such **Damages** or **Claims Expenses** are in excess of the amount of such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided by this **Policy**.

## XIII. REPRESENTATIONS

- A. The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and:
1. are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and
  2. shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**.
- B. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.
- C. It is understood and agreed that if such representations or such information are not true, accurate and complete, this **Policy** shall be null and void in its entirety and the **Insurer** shall have no liability hereunder as to: (1) any **Insured Person** who knew the facts misrepresented or omitted, whether or not such **Insured Person** knew of the **Application** or this **Policy**; and (2) the **Public Entity**. For purposes of this subsection C, the knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**.

## XIV. TERMINATION OF THE POLICY

- A. This **Policy** shall terminate at the earliest of the following times:
1. the effective date of termination specified in a prior written notice by the **Public Entity** to the **Insurer**;
  2. 60 days after receipt by the **Public Entity** of a written notice of termination from the **Insurer**;
  3. 10 days after receipt by the **Public Entity** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 10 day period;

4. upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations; or
  5. at such other time as may be agreed upon by the **Insurer** and the **Public Entity**.
- B. If the **Policy** is terminated by the **Public Entity**, or by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

#### XV. TERRITORY AND VALUATION

- A. All premiums, limits, retentions, **Damages, Claims Expenses** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Damages** and **Claims Expenses** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Damages** or **Claims Expenses** is due, respectively or if not published on such date, the next date of publication of *The Wall Street Journal*.
- B. Coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made or **Damages** or **Claims Expenses** sustained anywhere in the world, provided the **Claim** is made within the jurisdiction of and subject to the laws of the United States of America, Canada or their respective territories or possessions.

#### XVI. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

#### XVII. ACTION AGAINST THE INSURER AND BANKRUPTCY

Except as set forth below in Section XX, Alternative Dispute Resolution, no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives. Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**.

#### XVIII. AUTHORIZATION CLAUSE

By the acceptance of this **Policy**, the **Public Entity** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim**, the giving or receiving of notice of termination or non renewal, the payment of premiums and the receiving of any premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, consenting to any settlement, exercising the right to the **Extended Reporting Period**, and the giving or receiving of any other notice provided for in this **Policy**, and all **Insureds** agree that the **Public Entity** shall so act on their behalf.

#### XIX. ALTERATION, ASSIGNMENT AND HEADINGS

- A. Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this **Policy** nor prevent the **Insurer** from asserting any right under the terms of this **Policy**.

- B. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**.
- C. The titles and headings to the various parts, sections, subsections and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

## XX. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process set forth in this section.

Either an **Insured** or the **Insurer** may elect the type of ADR process discussed below; provided, however, that the **Insured** shall have the right to reject the choice by the **Insurer** of the type of ADR process at any time prior to its commencement, in which case the choice by the **Insured** of ADR process shall control.

There shall be two choices of ADR process:

- A. non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or
- B. arbitration submitted to any arbitration facility to which the **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals.

In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs.

In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

Either ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Public Entity**. The **Public Entity** shall act on behalf of each and every **Insured** in connection with any ADR process under this section.

## XXI. INTERPRETATION

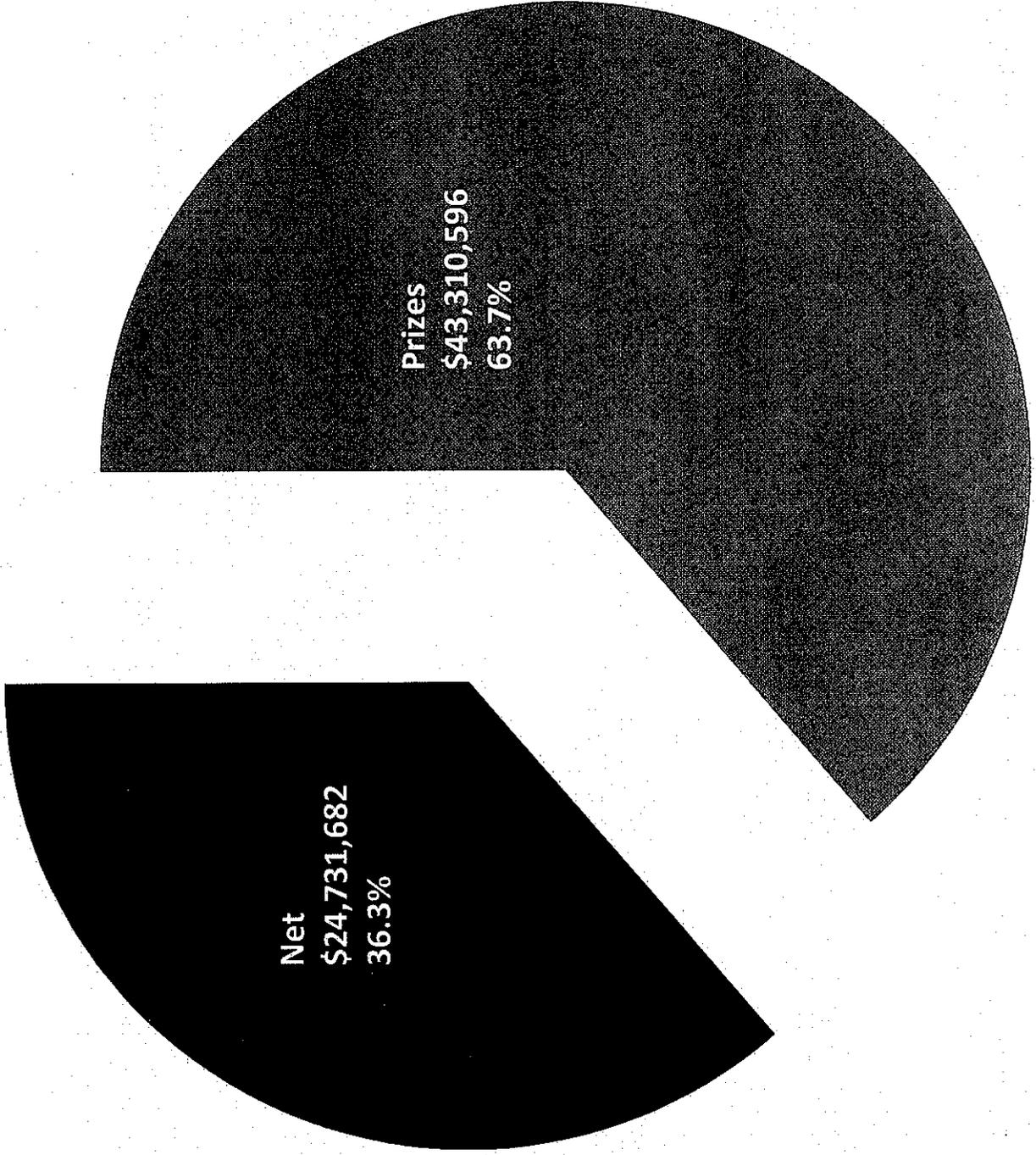
The terms and conditions of this **Policy** shall be interpreted and construed in an evenhanded fashion as between the parties. If the language of this **Policy** is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms and conditions, without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the **Insureds** or the **Insurer** and without reference to the reasonable expectations of either the **Insureds** or the **Insurer**.



# Scholarship Lottery

Fifty Day Report Card

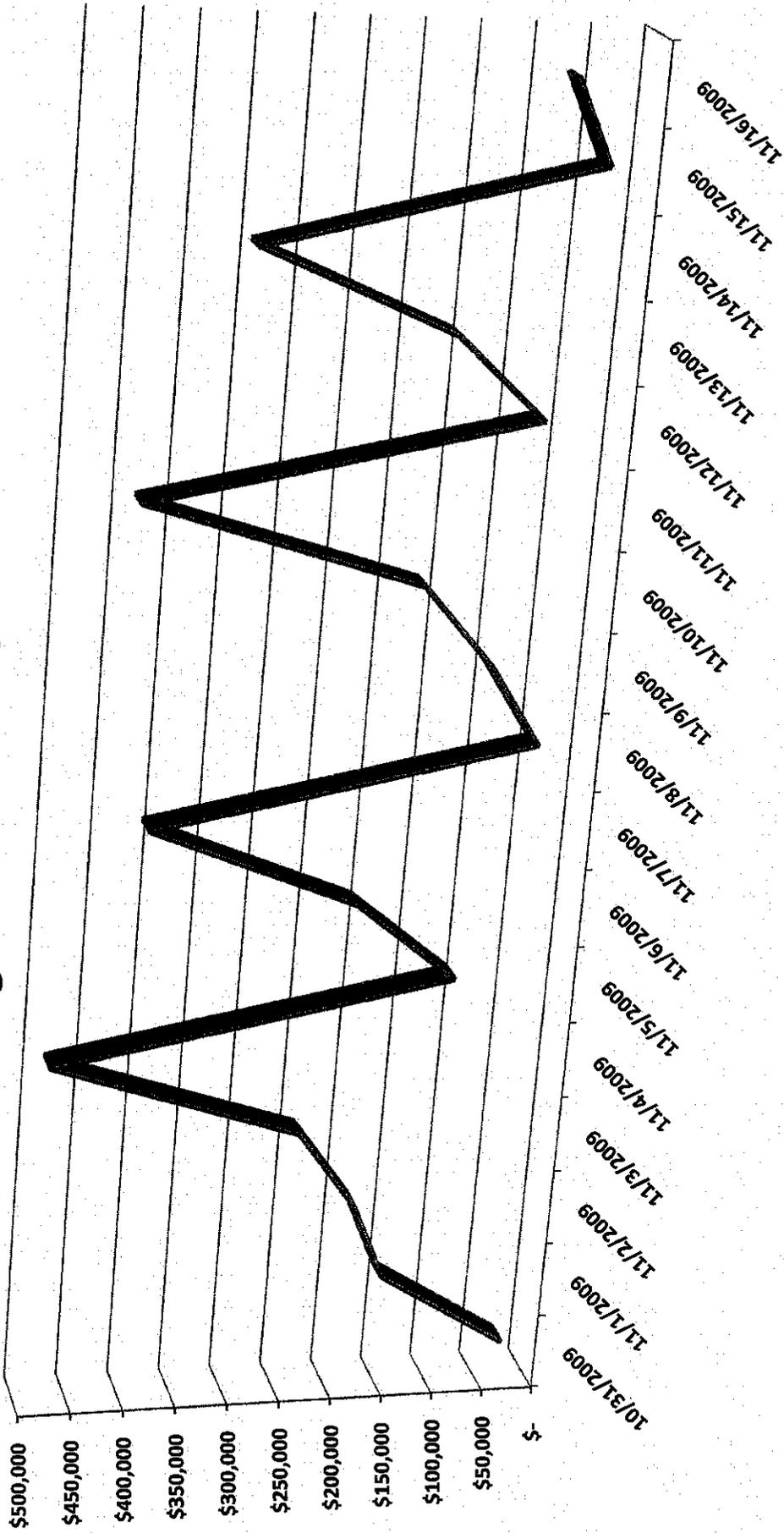
# Instant Ticket Gross Profit Analysis



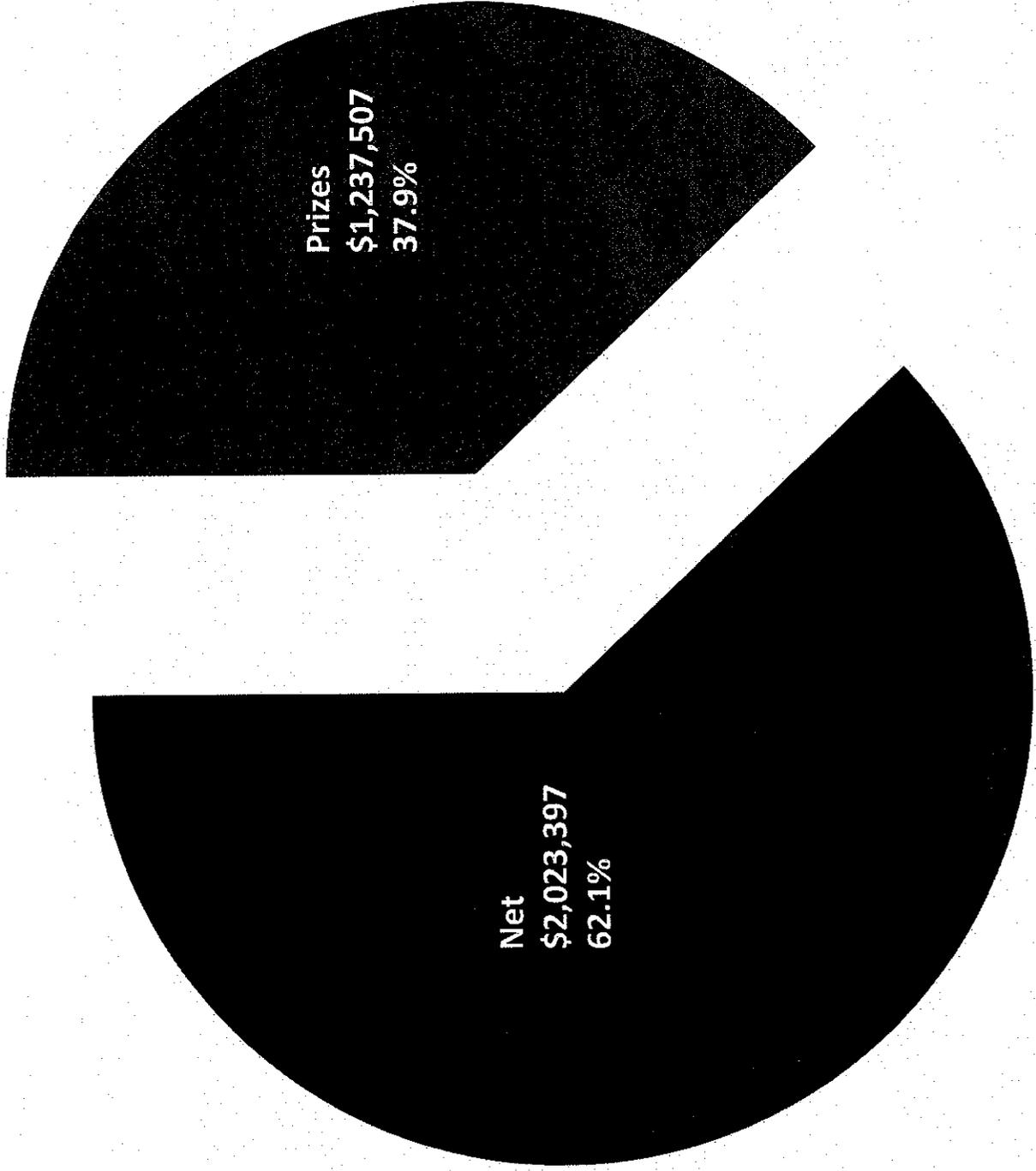
# Powerball Sales Per Day

Total Sales \$3,260,904

Average Sales Per Day \$203,807



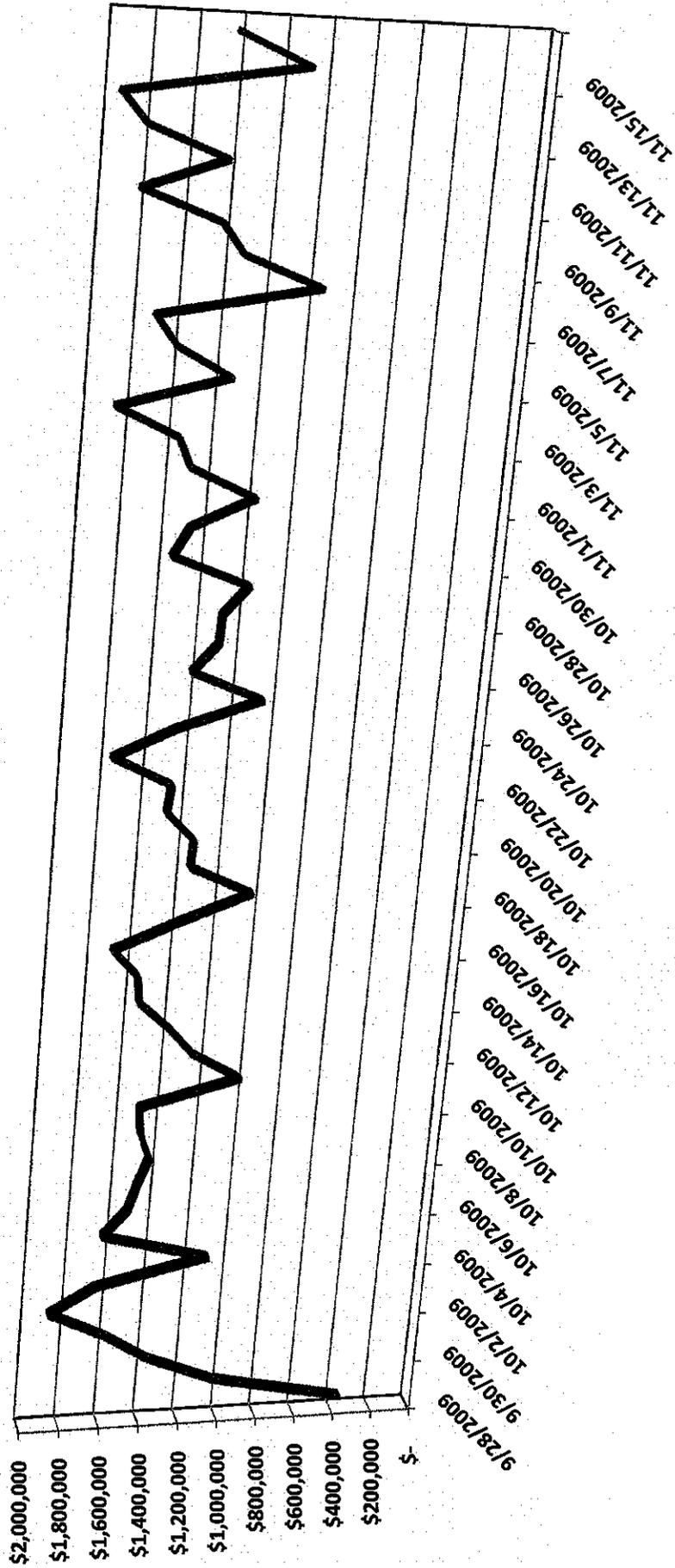
# Powerball Gross Profit Analysis



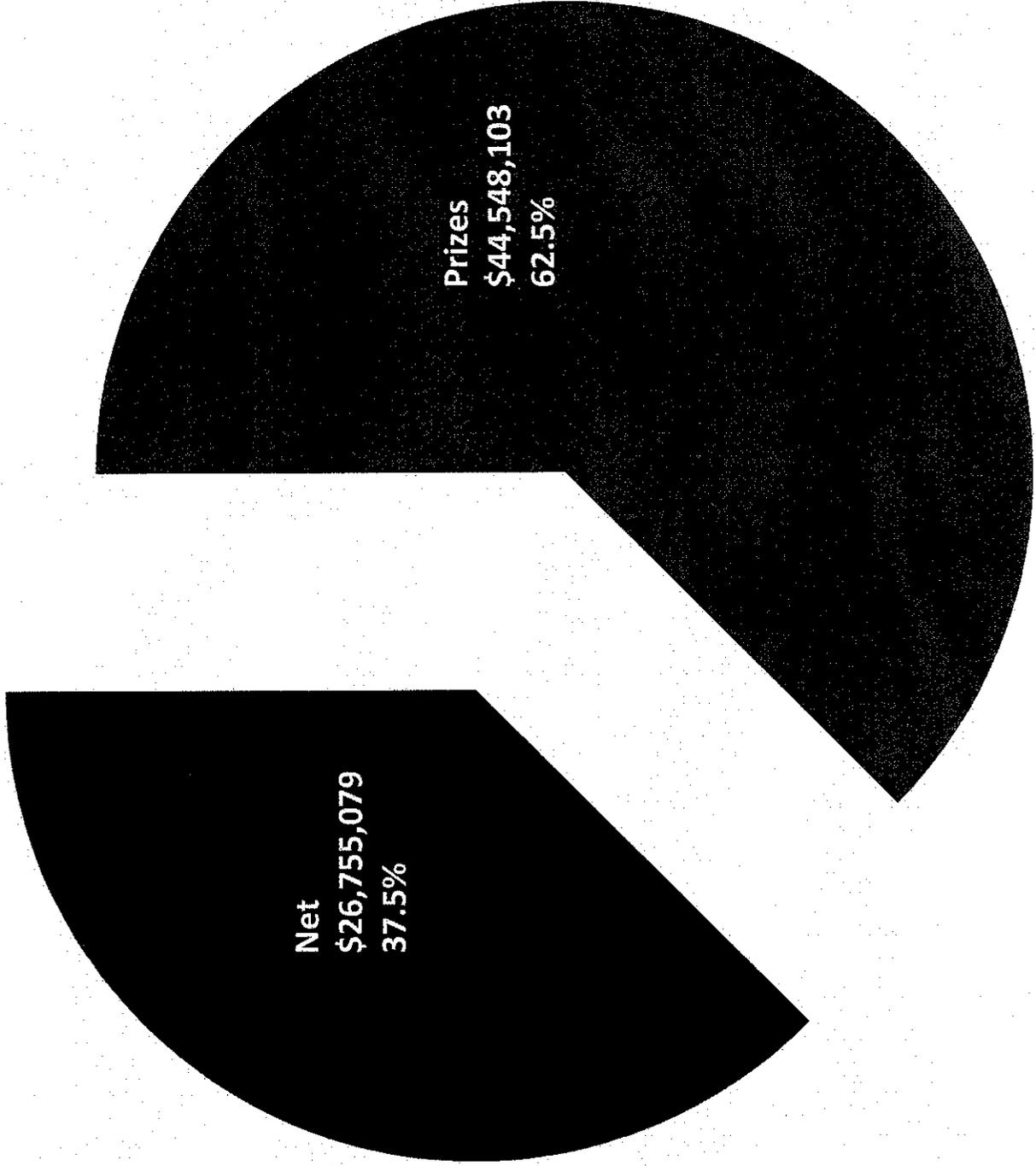
**Total Daily Sales Per Day**

**Total Sales \$71,303,182**

**Average Sales Per Day \$1,426,064**



# Total Sales Gross Profit Analysis



# Financial Statements Versus Actual Settlements

Revenues	Financial Statements	Settlements
Instant Ticket Sales	\$52,815,729	\$47,180,923 (A)
Instant Ticket Prizes	\$35,572,049	\$30,025,465 (B)
Prizes As A Percentage Of Sales	67.09%	63.64%

(A) Instant Ticket Sales for financial reporting based upon "Generally Accepted Accounting Principles".

(B) Instant Ticket Prizes reported under Settlements based upon actual validations (prizes paid)