

## **APPENDIX B – NON-DISCLOSURE AGREEMENT**

### **NON-DISCLOSURE AGREEMENT**

This **NON-DISCLOSURE AGREEMENT** (this “Agreement”) is hereby entered into as of this \_\_\_ day of \_\_\_\_\_ 2018, by and between **NORTHSTAR NEW JERSEY LOTTERY GROUP, LLC**, a New Jersey limited liability company, on behalf of itself and its Affiliates (“Northstar”), and \_\_\_\_\_, a \_\_\_\_\_ (“Company” and, together with Northstar, the “Parties”). For purposes of this Agreement, “Affiliates” of a person or entity shall mean any person, corporation, partnership, limited liability company, professional organization, enterprise, sole proprietorship or other entity or association that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, Northstar or in which such person has an economic or voting interest of at least ten percent (10%) of common equity.

### **BACKGROUND**

**WHEREAS**, Northstar and the State of New Jersey, Department of the Treasury, Division of Purchase and Property, on behalf of the State of New Jersey (the “State”), and the New Jersey Department of the Treasury, Division of State Lottery (the “Division of Lottery”) entered into that certain State of New Jersey Lottery Services Agreement on June 20, 2013 (the “Services Agreement”) under which Northstar shall provide certain services, goods, and equipment to the Division of Lottery in connection with the operation of the State-conducted lottery (the “Transaction”);

**WHEREAS**, pursuant to the provisions of the Services Agreement, Northstar must require all of its Subcontractors and Manager Personnel having access to Confidential Information (as defined below) to be subject to a written agreement of confidentiality and non-disclosure that contains terms and conditions substantially similar to those set forth in Section 9 of the Services Agreement;

**WHEREAS**, Company has submitted a proposal to provide services to Northstar (“Company Proposal”);

**WHEREAS**, the Company may need, from time to time, access or use of Confidential Information in furtherance of the Company Proposal, and Northstar may need, from time to time, to disclose to Company such Confidential Information; and

**WHEREAS**, the Parties now wish to enter into this Agreement to protect the Confidential Information and restrict its use strictly to the purposes stated herein.

### **AGREEMENT**

**NOW, THEREFORE**, and in consideration of the promises and covenants hereinafter set forth, and for such other good and valuable consideration, the receipt and sufficiency of which are

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hereby acknowledged by the Parties, and with the foregoing recitals being incorporated into this Agreement by this reference, the Parties hereby agree as follows:

### 1. Definitions.

(a) Confidential Information. For purposes of this Agreement, “Confidential Information” shall mean (i) all information marked confidential, restricted or proprietary by Northstar, the State and/or the Division of Lottery; and (b) any other information that is treated as confidential by Northstar, the State and/or the Division of Lottery and would reasonably be understood to be confidential, whether or not so marked. In the case of the State and the Division of Lottery, Confidential Information also shall include State Intellectual Property, State Data, attorney-client privileged materials, attorney work product, customer lists, customer contracts, customer information and transaction data, rates and pricing, information with respect to competitors, strategic plans, account information, research information, financial/accounting information (including assets, expenditures, mergers, acquisitions, divestitures, billings collections, revenues and finances), IT and personnel information, marketing/sales information, information regarding businesses, plans, operations, Third Party contracts, licenses, internal or external audits, law suits, regulatory compliance or other information or data obtained, received, transmitted, processed, stored, archived or maintained by Northstar under this Agreement.

(b) Other Definitions. Capitalized words or phrases used, but not defined, in this Agreement (including any schedules, exhibits, or other documents attached to or otherwise made a part of this Agreement) shall have those meanings ascribed to them in the Services Agreement.

### 2. Obligations of Confidentiality.

(a) Company understands and agrees that it will be deemed to be in a relationship of confidence with respect to the Confidential Information disclosed to it by Northstar. Company shall not disclose, and shall maintain the confidentiality of, all Confidential Information disclosed to it. Company shall use at least the same degree of care to safeguard and prevent the disclosure of the Confidential Information as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care.

(b) Company shall insure that its directors, officers and employees shall have access to the Confidential Information only to the extent necessary for such director, officer or employee to perform his or her obligations under or with respect to the Services Agreement or as otherwise naturally occurs in such director’s, officer’s or employee’s scope of responsibility; provided that such access is not in violation of any State Policies and Rules. Company may disclose Confidential Information to its Affiliates, auditors, attorneys, accountants, consultants, contractors and subcontractors (collectively, “Representatives”), where: (i) use by such Person is authorized by Company; (ii) such disclosure is necessary for the performance of such Person’s obligations under or with respect to the Services Agreement or otherwise naturally occurs in such Person’s scope of responsibility; and (iii) such Person (and its applicable officers and employees) agrees to confidentiality obligations that meet the requirements of this Agreement. Company agrees to instruct all such Representatives to perform his, her, or its obligations in accordance with the terms and conditions of this Agreement and not to disclose such Confidential Information to any third parties, and not to use the Confidential Information for any purpose (other than in connection with the provision of Services under the Services Agreement), without the prior written permission of Northstar. Company hereby assumes full responsibility for the acts or omissions of

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its directors, officers, employees and Representatives and shall ensure that the Confidential Information is not disclosed or used in contravention of this Agreement. Any disclosure to a Representative shall be under the terms and conditions as provided herein.

(c) Company shall not: (i) make any use or copies of the Confidential Information disclosed to it except as contemplated by this Agreement; (ii) acquire any right in or assert any lien against the Confidential Information disclosed to it; (iii) sell, assign, transfer, lease or otherwise dispose of Confidential Information disclosed to it to Third Parties or commercially exploit such information; or (iv) refuse for any reason to promptly provide the Confidential Information (including copies thereof) to Northstar, the State or the Division of Lottery if requested by Northstar, the State or the Division of Lottery to do so.

3. Exclusions. Section 2 shall not apply to any particular information which Company can demonstrate: (a) is, at the time of disclosure to it, generally available to the public other than through a breach of Company's or a Third Party's confidentiality obligations; (b) after disclosure to it, is published by Northstar, the State or the Division of Lottery, as the case may be, or otherwise becomes generally available to the public other than through a breach of Company's or a Third Party's confidentiality obligations; (c) is lawfully in the possession of Company at the time of disclosure to it; (d) is received from a Third Party having a lawful right to disclose such information without any restriction on further disclosure; or (e) is independently developed by Company without reference to or use of Confidential Information; provided, however, that the exclusions in the foregoing subsections (a), (b) and (c) shall not be applicable to the extent that the disclosure or sharing of such information is subject to any limitation, restriction, consent or notification requirement under any applicable Data Privacy Law then in effect. The Parties acknowledge and agree that Confidential Information that is not generally available to the public shall not be deemed public or subject to this exclusion merely because it is combined with information that is generally available to the public.

### 4. Required Disclosure.

(a) Company may disclose Confidential Information to the extent disclosure is based on the good faith written advice of Company's legal counsel that disclosure is required by Regulatory Requirement; provided, however, that Company shall give advance notice of such requested disclosure to Northstar and shall use commercially reasonable efforts to obtain a protective order or otherwise protect the confidentiality of the Confidential Information and, in the case of Confidential Information of the State and/or the Division of Lottery, to the extent the State and/or the Division of Lottery reasonably determines it is appropriate and consistent with the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1, et seq.) and/or the common law right to know as established under New Jersey law. Notwithstanding the foregoing, Northstar reserves the right to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. For purposes of this Section 4, Company's in-house counsel or law department may act as their respective legal counsel.

(b) Company, and its directors, officers, employees and Representatives will at all times cooperate timely and fully with Northstar to protect the confidentiality of the Confidential Information and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information, and will disclose only so much of the Confidential Information as it is legally compelled to disclose (which shall mean and include an effort to redact or "sanitize" any information required to be disclosed to the maximum extent permitted by law).

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### **5. Notification, Mitigation and Remedy.**

(a) In the event of any impermissible disclosure, loss or destruction of Confidential Information, Company shall immediately notify Northstar and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information.

(b) In the event that there is a breach of Company's obligations contained in this Agreement, or otherwise, involving Personal Information in the possession of Company, and such breach is the direct cause of an unauthorized disclosure of such Personal Information, then the cost of the notifications required by N.J.S.A. 56:8-163 shall be borne in full by Company and Company shall fully indemnify Northstar against any third party claims as a result of such unauthorized disclosure.

6. **Return/Destruction of Confidential Information.** Upon termination of this Agreement, and at any other time upon written request by Northstar or the State or the Division of Lottery, to the extent permitted by law and consistent with any applicable document retention policies, Company shall return to Northstar all applicable Confidential Information (including all documentation in any medium to the extent it contains, refers to, or relates to the Confidential Information) then in its possession or control, in whatever form, or, in the case of a written request by Northstar, the Confidential Information specified in such request as then in Company's possession or control, in whatever form, in any case within thirty (30) days following such termination or request. In addition, unless Northstar otherwise consents in writing, Company shall also deliver to Northstar or, if requested by Northstar, shall delete or destroy and provide a certification as to the deletion or destruction of, any copies, duplicates, summaries, abstracts or other representations of any such Confidential Information or any part thereof, in whatever form, then in the possession or control of the Company to the extent permitted by applicable law and consistent with any applicable document retention policies. Notwithstanding the foregoing, Company may retain a reasonable number of copies of documentation and data, excluding the State Data, for archival purposes or warranty support; provided, however, that any subsequent disclosure of such archived data shall comply with this Agreement. Company shall deliver to Northstar written certification of its compliance with this Section 6 signed by an authorized representative of Company.

7. **Ownership of Confidential Information.** Northstar, the State or the Division of Lottery, as the case may be, shall be deemed to be the owner of all Confidential Information disclosed by it, including all patent, copyright, trademark, trade secret and other proprietary rights and interests therein, and Company recognizes and agrees that nothing contained in this Agreement shall be construed as granting any rights, by license or otherwise, in or to any Confidential Information disclosed pursuant to this Agreement or in or to any such intellectual property rights therein.

8. **Injunctive Relief and Attorneys' Fees.** If Company or anyone acting on its behalf or operating under its control, publishes, transmits, releases, discloses or uses any Confidential Information in violation of this Agreement, or if Northstar reasonably anticipates that Company may violate or continue to violate any restriction set forth in this Agreement, then Northstar shall have the right to seek to have the provisions of this Agreement specifically enforced by any court having equity jurisdiction, without being required to post bond or other security and without having to prove the inadequacy of available remedies at law, it being acknowledged and agreed that any such violation shall cause irreparable injury to Northstar, the State and/or the Division of Lottery, as the case may be, and that monetary damages shall not provide an adequate remedy. In the event of an action to enforce the provisions of this Agreement, the Party seeking such enforcement, if it prevails, shall

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be entitled, in addition to any other relief granted, to recover from the other Party the reasonable costs and expenses of such enforcement, including reasonable attorneys' fees.

9. Duration; Survival. This Agreement shall remain in effect until written notice by Northstar to terminate this Agreement. Notwithstanding the termination of this Agreement, the confidentiality obligations set forth in this Agreement with respect to any Confidential Information shall survive the termination of this Agreement until such Confidential Information is publicly known.

10. State and Division of Lottery as Beneficiary. The Parties expressly acknowledge and agree that the State and the Division of Lottery shall be considered third-party beneficiaries under this Agreement, having all of the legal, equitable, or similar rights (or remedies or claims) that Northstar may have under this Agreement.

11. Miscellaneous. If any provision of this Agreement or any portion of any such provision shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the provision or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to or application of choice of law rules or principles. Nothing contained herein shall be deemed to obligate Northstar to deal exclusively with Company with respect to the Transaction, or any part thereof, and Northstar shall be free to engage other parties to perform the same or similar work as is being requested of Company with respect to the Transaction. This Agreement constitutes the entire agreement of the parties regarding the subject matter hereof and may not be modified except by a written instrument signed by an authorized representative of each Party and the State and the Division of Lottery.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**NORTHSTAR NEW JERSEY LOTTERY GROUP, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_