



## Appendix A - Standard Subcontract Provisions

These standard subcontract provisions are applicable to the Subcontract for Marketing Research/Insights Services pursuant to the Marketing Research/Insights Services Vendor Qualification Request for Proposals RFP #19-MIR-719 (“RFP”), between Northstar New Jersey Lottery Group, LLC (“Northstar”), on behalf of the New Jersey Division of Lottery (“Division of Lottery”), and

(the “Subcontractor”) (Northstar and Subcontractor shall sometimes collectively be referred to herein as the “Parties” and individually as a “Party”).

Pursuant to the provisions of a Lottery Growth Management Services Agreement (“Services Agreement”) between the Division of Lottery and Northstar dated June 20, 2013, as amended, Northstar provides, among other things, various sales and marketing services to the Division of Lottery, and Northstar is authorized to award subcontracts to vendors for such goods and services, including Marketing Research/Insights Services, as are needed to support the Division of Lottery’s sales, marketing, advertising, promotional and research activities.

These standard subcontract provisions replace any contract provisions that may have been agreed upon by the Parties orally or in writing prior to executing these standard subcontract provisions, with the exception of the Appendix B – Non-Disclosure Agreement executed and delivered in connection with the RFP. These standard subcontract provisions, together with the RFP and the Subcontractor’s Proposal submitted in response to the RFP are incorporated into each other, constitute one integrated agreement, and may be referred to collectively herein as the “Subcontract.” Any inconsistency, conflict, or ambiguity among these standard subcontract provisions, the RFP and the Subcontractor’s Proposal submitted in response to the RFP shall be resolved by giving preference and effect to these standard subcontract provisions.

Subcontractor acknowledges and agrees that Subcontractor is not guaranteed any work from Northstar, the State of New Jersey or the Division of Lottery as a result of Subcontractor being placed on the Marketing Research/Insights Services Qualified Vendors List developed as a result of the RFP, as a result of Subcontractor’s participation in the RFP process, as a result of Subcontractor’s execution of these standard subcontract provisions, or otherwise. Any purchase order or invoice between Northstar and Subcontractor for any Marketing Research/Insights Services pursuant to the RFP shall be subject to these standard subcontract provisions and these standard subcontract provisions shall take priority over any conflicting terms in any such purchase order or invoice.

Capitalized terms used but not defined in these standard subcontract provisions shall have the meanings ascribed to such terms in the Services Agreement and/or the Division of Lottery Operating Standards (as such term is defined in the Services Agreement), and in the event that the same term is defined in both the Services Agreement and the Operating Standards, then the defined term as defined in the Services Agreement shall control.

The Parties agree that:

(a) Nothing in the Subcontract or any prior agreement between the Subcontractor and the Division of Lottery or Northstar shall be interpreted to require the Division of Lottery or Northstar to indemnify the Subcontractor against any risk or loss.

(b) The Subcontract shall be interpreted and construed in accordance with the laws of the State of New Jersey regardless of any conflict of laws rules. Subcontractor agrees to submit to the in person jurisdiction of a court of competent jurisdiction located in Mercer County, New Jersey in connection with any disputes arising under or relating to, among other things, these terms and conditions, the Subcontract or any purchase order or invoice issued in connection with the Subcontract.

The Parties also agree to the following provisions:

**1. Term; Price(s).** The term (“Term”) of the Subcontract shall begin on the date Northstar publishes the Qualified Vendors List for Marketing Research/Insights Services on Northstar’s website, and shall continue for two (2) years thereafter unless earlier terminated by Northstar or the two (2) year period of the Qualified Vendors List is extended by Northstar in its discretion. Each time Northstar orders Marketing Research/Insights Services pursuant to the Subcontract, the price(s) payable to Subcontractor shall be determined by reference to Subcontractor’s customary price(s) then in effect, all discounts and allowances included. Northstar reserves the right not to order Marketing Research/Insights Services from Subcontractor for any reason including if the price(s) so determined is (are) deemed, in the sole discretion of Northstar, to be unreasonable.

**2. Termination for Convenience.** Northstar may terminate the Subcontract in whole or in part, at any time and for any reason, including but not limited to if the Division of Lottery terminates the Services Agreement with Northstar or when Northstar determines in its sole discretion that it is in the best interest of Northstar or the Division of Lottery to terminate the Subcontract in whole or in part. Termination shall be effected by delivery to the Subcontractor

of a Termination Notice at least thirty (30) days prior to the termination effective date specified therein. If the Subcontract is so terminated, Northstar shall be liable only for payment in accordance with the provisions of the Subcontract for services rendered by the Subcontractor and accepted by Northstar prior to the effective date of termination.

**3. No Lottery Responsibility.** Neither the Division of Lottery nor Northstar shall pay Subcontractor any amount claimed under the Subcontract arising out of indemnity claims against the Division of Lottery or Northstar. Subcontractor shall not have any right against the Division of Lottery for labor, services, materials, or equipment furnished for or under the Subcontract, unless the Subcontract is assigned to the Division of Lottery or a new Lottery Growth Management Services provider in accordance with the Services Agreement. Northstar acknowledges that its contractual obligations to the Subcontractor shall include all payment for services, materials, or equipment furnished to and accepted without dispute by Northstar pursuant to the Subcontract, except to the extent the Subcontract is assigned to the Division of Lottery or a new Lottery Growth Management Services provider in accordance with the Services Agreement.

**4. Lottery Removal and Replacement Rights.** The Division of Lottery shall have the right to require Northstar to remove and replace Subcontractor and/or terminate the Subcontract in whole or in part for any reason, including but not limited to: (a) non-performance by Subcontractor in the Division of Lottery’s reasonable determination that is not cured within a reasonable amount of time, or (b) engagement by the Subcontractor in illegal activity or material violation of any obligation defined in the Services Agreement that is not cured in a reasonable amount of time. Neither the Division of Lottery nor Northstar shall be liable for penalties, fees or damages as a result of the Division of Lottery requiring Northstar to replace the Subcontractor or terminate the Subcontract in accordance with these standard subcontract provisions.

**5. Penalties, Interest, Attorney’s Fees.** Northstar will in good faith perform its required obligations of the Subcontract and does not agree to pay any penalties, interest, or attorney’s fees, unless required by applicable New Jersey law.

**6. Compliance with Laws; Indemnification.** The Subcontractor shall comply with all applicable federal, State and local laws, rules, regulations, ordinances and orders applicable to the Subcontract and to the goods delivered and/or services performed thereunder, including Marketing Research/Insights Services. Subcontractor agrees to indemnify and hold Northstar and the Division of Lottery harmless



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from any loss, damage or liability resulting from a violation on the part of Subcontractor, its employees, officers, directors, affiliates and subcontractors, of such applicable laws, rules, regulations, ordinances and/or orders.

### 7. Requirements Regarding Subcontractor Personnel

(a) Probity Investigations by the Division of Lottery. Subcontractor acknowledges and agrees that the Division of Lottery shall have the right to conduct probity investigations of any Subcontractor Personnel prior to and during the Term of the Subcontract.

(b) Background checks for Subcontractor Personnel. Subcontractor shall ensure that Subcontractor Personnel are authorized to work in any jurisdiction in which they are assigned to perform services, including Marketing Research/Insights Services, pursuant to the Subcontract and are not otherwise disqualified from performing such services required under the Subcontract. To the extent allowed by applicable law, Subcontractor shall conduct its standard background check for all Subcontractor Personnel and shall review the results of each background check to verify that Subcontractor Personnel meet Subcontractor's standards for employment. Such background check shall be in the form generally used by Subcontractor in its initial hiring of an employee or awarding a contract, as applicable, during the employment screening process.

(c) Equal Employment. Subcontractor and Subcontractor Personnel shall comply, and shall require all of its own subcontractors to comply, with all laws and regulations that pertain to, or otherwise touch upon, the employment relationship, including without limitation, all applicable provisions of State and federal laws and regulations pertaining to discrimination against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex or any other protected category set forth in N.J.S.A. 10:5-12(a) or other applicable local, State, and federal law. Upon request by the Division of Lottery, Subcontractor shall furnish to the Division of Lottery written certification that Subcontractor is in compliance with all non-discrimination laws applicable to private sector employers. Subcontractor hereby covenants and agrees that no person shall be (i) excluded from participation in, or be denied the benefits of, this Subcontract where such participation or benefits are obligated by this Subcontract or applicable laws, or (ii) excluded from employment, denied any of the benefits of employment or otherwise be subjected to discrimination on the grounds of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability,

nationality or sex or any other protected category set forth in N.J.S.A. 10:5-12(a) or other applicable local, State, and federal law. Subcontractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of this nondiscrimination policy.

**8. Record Keeping.** Subcontractor shall maintain documentation for all fees or charges incurred by the Division of Lottery and/or Northstar under the Subcontract or any modification or amendment of the Subcontract. The books, documents, papers, accounting records and other evidence pertaining to products and/or services, including Marketing Research/Insights Services, to be provided or performed or money received under the Subcontract shall be (i) maintained for a period of five (5) full years from the date of the final payment and (ii) subject to audit or inspection at any reasonable time and upon reasonable notice by Northstar, the State of New Jersey or the Division of Lottery, or its duly appointed representative(s). Subcontractor shall make such materials available at its offices, and copies thereof shall be furnished to Northstar, the State of New Jersey or the Division of Lottery, or its duly appointed representative(s) by the Subcontractor, at no cost to Northstar, the State of New Jersey or the Division of Lottery, or its duly appointed representative(s), if so requested. Such records shall be maintained in accordance with GAAP and any other applicable requirements established by the Division of Lottery from time to time.

**9. Subcontractor Qualified to do Business in New Jersey.** (a) Subcontractor warrants that it is qualified to conduct business in the State of New Jersey, that it has a valid Business Registration Certificate on file with the State of New Jersey, Division of Revenue, and that it will maintain good standing with the State of New Jersey, Division of Revenue throughout the Term of the Subcontract.

(b) Subcontractor warrants that it is not debarred or prohibited by any public entity in the State of New Jersey.

**10. State Liabilities and Debt Set-off.** Subcontractor shall file appropriate tax returns as required by New Jersey law. Subcontractor certifies that neither it nor its principal(s) are in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of New Jersey. Subcontractor agrees that any payments due to the State of New Jersey by it or its principal(s) may be withheld and set off from payments due to Subcontractor under the Subcontract. Any payments that Northstar may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.

**11. Non-Collusion and Acceptance.** The undersigned attests, subject to the penalties for perjury, that he or she is the Subcontractor, or that he or she is the properly authorized representative, agent, member or officer of the Subcontractor, that he or she has not, nor has any other member, employee, representative, agent or officer of the Subcontractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he or she has not received or paid, any sum of money or other consideration for the execution of these standard subcontract provisions other than that which appears upon the face of these standard subcontract provisions.

**12. Subcontractor is Independent Contractor.** It is expressly understood and agreed that Subcontractor's relationship with Northstar for all purposes is that of an independent contractor and nothing in these standard subcontract provisions or the Subcontract is intended to or should be construed to create a relationship other than that of an independent contractor.

**13. Insurance.** During the Term of the Subcontract, and for an additional one (1) year thereafter, Subcontractor shall provide and maintain, at its sole cost and expense, insurance of the types and levels which are acceptable and prudent business practices for the type of goods and/or services, including Marketing Research/Insights Services, that may be provided to Northstar, upon request under this Subcontract.

### 14. Intellectual Property Rights.

a. Subcontractor acknowledges and agrees that Northstar, the State of New Jersey and the Division of Lottery shall be the sole owners of all creations, products, inventions or discoveries, which are conceived, created, developed and paid for by Northstar under or in connection with the Subcontract together with all Intellectual Property rights relating to the foregoing. Subcontractor warrants that it is entitled to acknowledge and agree to such transfer of rights to Northstar, the State of New Jersey and the Division of Lottery, as appropriate, and has obtained all the rights and necessary authorizations from all parties concerned, including from any of its subcontractor(s) in order to do so.

b. Subcontractor shall cooperate in good faith to facilitate the full exercise and/or exploitation by Northstar, the State of New Jersey or the Division of Lottery of any of their Intellectual Property rights, and, where necessary, do all acts and procedures required to obtain and perfect all intellectual property rights in the names of Northstar, the State of New Jersey and the Division of Lottery. Subcontractor shall also in



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all circumstances refrain from any actions or from any abuse of Northstar's, the State of New Jersey's and/or the Division of Lottery's rights, including moral rights, which would prejudice such ownership, exercise or exploitation by Northstar, the State of New Jersey or the Division of Lottery.

c. All materials, including (without limitation) documents in written or pictorial forms, on magnetic or non-magnetic media, drawings, designs, computer programs, source codes, apparatus or models, developed by the Subcontractor for Northstar, the State of New Jersey and/or the Division of Lottery in pursuance of the Subcontract shall be and shall remain the property of Northstar, the State of New Jersey and/or the Division of Lottery and are specifically works made for hire.

d. Subcontractor hereby grants to Northstar a non-exclusive, non-transferable, irrevocable during Term of the Subcontract, fully paid-up license to access and use and to permit a Third Party, including the State of New Jersey or the Division of Lottery, to access, use, modify and create derivative works of Subcontractor's Intellectual Property for the benefit or use of Northstar, the State of New Jersey and/or the Lottery, until the expiration or termination of the Subcontract, to the extent that such access and use is reasonably required for Northstar to receive the products and services contemplated under the Subcontract; provided, however, that to the extent any of such licensed Intellectual Property constitutes Software, only the object code version of such Software shall be licensed. The rights of any Third Party shall be conditioned upon Subcontractor's right to protect such Intellectual Property.

e. Subcontractor shall not use any Intellectual Property for which it is unable to offer a license or other rights to Northstar.

f. Each Party agrees to reproduce copyright legends which appear on any portion of Intellectual Property and/or copies or materials embodying the Intellectual Property which may be owned by the other Party, the State of New Jersey, the Division of Lottery, or Third Parties.

g. Each Party agrees to reasonably cooperate with and reasonably assist the other Party in connection with the investigation or pursuit of a Party in enforcing and/or investigating violations of the Intellectual Property rights of such Party, the State of New Jersey or the Division of Lottery with regard to the Intellectual Property that is owned by such Party, the State of New Jersey or the Division of Lottery. In addition, each Party agrees to execute any documents or take any other actions as may reasonably be necessary, or as the other Party may reasonably request, to perfect such other Party's, the State of New Jersey's or Lottery's ownership of, as applicable,

any Intellectual Property contemplated hereunder.

h. Nothing in this Subcontract shall restrict a Party from using the generic data processing or business process ideas, concepts, or know-how developed by or disclosed to a Party in connection with this Subcontract and inadvertently retained in the unaided memory of the receiving Party's employees and representatives (and not intentionally memorized for the purpose of later recording or use) who have rightful access to such information under the provisions of the Subcontract, provided that such use does not infringe or misappropriate the Intellectual Property rights of a Party, the State of New Jersey or the Division of Lottery or breach any confidentiality obligations or other obligations under the Subcontract or the Non-Disclosure Agreement.

i. Except as expressly specified in the Subcontract, nothing in the Subcontract shall be deemed to grant to one Party, by implication, estoppel or otherwise, license rights, ownership rights or any other Intellectual Property rights in any Intellectual Property owned by the other Party or owned by the State of New Jersey or the Division of Lottery.

j. Subcontractor acknowledges and agrees that Northstar, the State of New Jersey and the Division of Lottery shall be the sole owners of all creations, products, inventions or discoveries, which are conceived, created, developed under or in connection with this Subcontract together with all intellectual property rights relating to the foregoing, including (but not limited to) copyright and rights in software, source code, patents, trademarks, and trade names, in each case, as soon as they exist. Subcontractor warrants that it is entitled to acknowledge and agree to such transfer of rights to Northstar, the State of New Jersey and the Division of Lottery and has obtained all the rights and necessary authorizations from all parties concerned, including from any subcontractors in order to do so.

k. All materials supplied by Northstar to Subcontractor shall remain the property of Northstar, and shall be returned to Northstar, with all copies thereof, when this Subcontract expires or is earlier terminated, for whatever reason; or immediately upon request by Northstar, without the need to justify such a request. Subcontractor shall be responsible to obtain the return of all such materials from any Third Party immediately upon such person(s) ceasing to render any services hereunder to Northstar.

l. The ideas, concepts, know-how or techniques originated by Subcontractor or jointly by the Subcontractor and Northstar, in pursuance of this

Subcontract, can be used by Northstar in whatever way it may deem appropriate.

m. Subcontractor acknowledges and agrees that all worldwide right, title and interest in and to all State Intellectual Property is and shall be owned by the State of New Jersey. Subcontractor acknowledges and agrees that all worldwide right, title and interest in and to all Manager Intellectual Property is and shall be owned by Northstar. At the expiration or earlier termination of this Subcontract, Subcontractor shall have no right to use any State Intellectual Property or Manager Intellectual Property and Subcontractor shall promptly return to Northstar all State Intellectual Property and all Manager Intellectual Property, including all items embodying such State Intellectual Property and Manager Intellectual Property in Subcontractor's possession or in the possession of any of Subcontractor's subcontractors or, upon Northstar's request, destroy any copies of such items remaining in Subcontractor's or any of Subcontractor's subcontractor's possession and certify such destruction to the satisfaction of Northstar and/or the State of New Jersey.

n. The provisions of this paragraph 14 and the obligations of Subcontractor under this paragraph 14 shall survive the expiration or earlier termination of this Subcontract and shall remain in full force and effect thereafter.

### 15. Standard Prohibiting Conflicts of Interest.

Subcontractor acknowledges and agrees that:

a. Subcontractor shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which Subcontractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from Subcontractor shall be reported in writing forthwith by Subcontractor to the Office of the Attorney General for the State of New Jersey and the Executive Commission on Ethical Standards.

c. Subcontractor may not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not



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pursuant to employment, contract or other agreement, express or implied, or sell any interest in Subcontractor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. Subcontractor shall not influence, or attempt to influence, or attempt to cause or influence, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. Subcontractor shall not cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Subcontractor or any other person.

The provisions cited above in this paragraph 15 shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with the Subcontractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

**16. Financial Condition.** Subcontractor warrants that it possesses and will continue to possess for the Term of the Subcontract, sufficient financial resources to comply with all of the requirements of Subcontractor under the Subcontract, including but not limited to any contingent obligations under any subcontract or vendor contract entered into by Subcontractor in connection therewith. If Subcontractor experiences a change in its financial condition that would materially and adversely affect its ability to perform under the Subcontract and/or provide the goods and/or services, including Marketing Research/Insights Services required under the Subcontract, then it shall promptly notify Northstar of such change.

### Northstar New Jersey Lottery Group, LLC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### Subcontractor's Business Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date