

APPENDIX B – NON-DISCLOSURE AGREEMENT

NON-DISCLOSURE AGREEMENT

This **NON-DISCLOSURE AGREEMENT** (this “Agreement”) is hereby entered into as of this ___ day of _____ 2019, by and between NORTHSTAR NEW JERSEY LOTTERY GROUP, LLC, a New Jersey limited liability company, with its principal place of business at 1333 Brunswick Avenue, Trenton, New Jersey 08648, on behalf of itself and its Affiliates (“Northstar”), and _____, a _____, with its principal place of business at _____ (“Company”). Northstar and Company shall sometimes be collectively referred to herein as the “Parties” and individually as a “Party”. 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, as amended (the “Services Agreement”), under which Northstar shall provide certain services, goods, and equipment to the New Jersey Division of Lottery in connection with the operation of the State-conducted lottery; and

WHEREAS, pursuant to the provisions of the Services Agreement, Northstar must require all of its Subcontractors, Manager Personnel and vendors with whom Northstar has or may have a business and/or contractual relationship, 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; and

WHEREAS, Company may need, from time to time, to access or use the Confidential Information in furtherance of Company’s obligations to Northstar (the “Transaction”), and Northstar may need, from time to time, to disclose such Confidential Information to Company; 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 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 New Jersey 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 New Jersey 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 and analysis, 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, lawsuits, regulatory compliance or other information or data obtained, received, transmitted, processed, stored, archived or maintained by Northstar under this Agreement. In the case of Northstar, Confidential Information shall also include financial information, trade secrets, business strategies and plans, management and control systems, purchasing, distribution and product delivery systems, vendor lists, vendor information, pricing information, sales and transaction data, promotional tactics, inventory methods or levels, ordering methods, quality control methods, merchandising and display methods, training methods and procedures, product lines, promotions, marketing and/or sales plans, inventions, product development records, customer lists, architectural designs, architectural renderings, costing methods, marketing techniques, methods of operation and any other proprietary business information relating to Northstar.

(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. For avoidance of doubt, “State Intellectual Property”, “State Data”, “State Personal Data” and “Personal Information” are defined in the Services Agreement as follows:

(i) “State Data” means, in or on any media or other form of any kind: (a) all data that is in the possession of the State or the New Jersey Division of Lottery, as of the Agreement Effective Date, all data updating and/or manipulating such data and all data concerning or indexing such data (regardless of whether or not owned by the State or the New Jersey Division of Lottery or generated or compiled by or for the State or the New Jersey Division of Lottery); (b) all other records, data, technical information, sales and performance data, files, materials, reports, audits, surveys, plans, analyses, charts, literature, brochures, mailings, recordings, correspondence, pictures, drawings, graphic representations, written procedures and documents, memoranda, forms and other such items that may be gathered, originated, prepared, obtained, received, computed, developed, used or stored by Northstar from, or on behalf of the State or the New Jersey Division of Lottery, or in connection with the Services; and (c) State Personal Data.

(ii) “State Intellectual Property” means, collectively: (a) the Intellectual Property, including trademarks and service marks, that is (i) owned, acquired or developed by the State prior to or after June 20, 2013, including any trademarks or other Intellectual Property relating to the identity of the New Jersey Division of Lottery or any Lottery Game, or (ii) licensed or leased by the State from a Third Party prior to or after June 20, 2013; (b) State New Intellectual Property; and (c) Work Product. “State New Intellectual Property” means any modifications and enhancements to, and derivatives of, State Intellectual

Property, including all modifications and enhancements to, and derivatives of, Work Product. "Work Product" means any Intellectual Property or work method, modifications or enhancements to Intellectual Property and Related Documentation or work method developed pursuant to the Services Agreement by or on behalf of Northstar or any Subcontractor or any combination of Northstar or any Subcontractor and the State or the Division of Lottery, including any trademarks or other Intellectual Property relating to the identity of the New Jersey Division of Lottery or any Lottery Game.

(iii) "State Personal Data" shall mean, collectively, all data or information, in any form, that is provided to Northstar by or from a Third Party on behalf of the State or the New Jersey Division of Lottery or any data or information that is collected, generated or processed by Northstar for the benefit of the State or the New Jersey Division of Lottery, that alone, or in combination with other information: (a) is considered Personal Information or "sensitive personal data" defined under any applicable Regulatory Requirements; and/or (b) uniquely identifies (i) a current, former or prospective customer, agent, vendor or contractor of the State or the Division of Lottery, or their respective spouses or families, and includes customer names, addresses, telephone numbers and/or any other personally identifiable information, including copies of such information, and materials derived from such information.

(iv) "Personal Information" means, in accordance with the New Jersey Identity Theft Protection Act, N.J.S.A. 56:8-161, an individual's first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number; (2) driver's license number or State identification card number; or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account. Dissociated data that, if linked, would constitute Personal Information is Personal Information if the means to link the dissociated data were accessed in connection with access to the dissociated data.

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 ensure 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 Transaction or as otherwise naturally occurs in such director's, officer's or employee's scope of responsibility. 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 Transaction 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 pursuant to the Transaction, without the prior

written permission of Northstar. Company hereby assumes full responsibility for the acts or omissions of 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 or as authorized by Northstar; (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 or commercially exploit such Confidential Information; or (iv) refuse for any reason to promptly provide the Confidential Information (including copies thereof) to Northstar, the State or the New Jersey Division of Lottery if requested by Northstar, the State or the New Jersey 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 New Jersey 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).

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 New Jersey 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 New Jersey 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 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 New Jersey 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 contained in this Agreement and may not be modified except by a written instrument signed by an authorized representative of each Party and the State and the New Jersey Division of Lottery. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement by electronic exchange bearing the copy of a party's signature shall constitute a valid and binding execution of this Agreement, and such electronic copies shall constitute enforceable original documents.

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: _____