

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of Earliest Event Reported): January 25, 2023

**NextPlay Technologies, Inc.**  
(Exact name of Registrant as specified in its charter)

<b>Nevada</b> (State or other jurisdiction of incorporation)	<b>001-38402</b> (Commission File Number)	<b>26-3509845</b> (IRS Employer Identification No.)
<b>1560 Sawgrass Corporate Parkway, 4<sup>th</sup> Floor, Sunrise, Florida</b> (Address of principal executive offices)		<b>33323</b> (Zip Code)

Registrant's telephone number, including area code: **(954) 888-9779**

Former name or former address, if changed since last report: **N/A**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.00001 per share	NXTP	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

### **Item 1.01 Entry into a Material Definitive Agreement**

As previously disclosed in that certain Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on June 29, 2022 (the “Prior 8-K”), on June 28, 2022, NextPlay Technologies, Inc., a Nevada corporation (the “Company”), entered into a series of agreements whereby it agreed to sell its travel (NextTrip) and media (Reinhart/Zappware) businesses to TGS Esports Inc. (“TGS”), a British Columbia corporation listed for trading on the Canadian TSX Venture Exchange (the “TSXV”), in exchange for securities of TGS (the “Transaction”). To effectuate the Transaction, the parties thereto entered into a series of agreements including (i) a Securities Exchange Agreement to effectuate the sale of NextTrip and Reinhart/Zappware and (ii) a Separation Agreement to further document the separation of NextTrip and Reinhart/Zappware from the Company.

On January 25, 2023, the Company, TGS and Messrs. William Kerby and Donald Monaco (as parties to the Securities Exchange Agreement) mutually agreed to terminate the Securities Exchange Agreement and the Transaction as a result thereof (the “Termination”). Due to the Termination, the Separation Agreement also terminated on its own terms.

Following the Termination, also on January 25, 2023, the Company and its travel business, NextTrip Group, LLC and its subsidiaries (“NextTrip”) agreed to formally complete the separation of NextTrip from the Company (the “Separation”) whereby NextTrip agreed to issue its nonvoting preferred LLC units (the “Preferred Units”) to the Company in exchange for the Company’s existing majority-owned Common Units in NextTrip thereby effectuating the separation of NextTrip from the Company.

Following the Separation, the Company will continue to operate its remaining business units, including its HotPlay, NextFintech and NextBank lines of business and has retained its Media (Reinhart/Zappware) business.

In order to effectuate the Separation, the Company and NextTrip entered into a series of agreements which are described below.

#### ***Amended and Restated Separation Agreement***

Concurrently with the execution of the Securities Exchange Agreement, the Company, NextTrip, Reinhart and TGS entered into a separation agreement to further document the separation of NextTrip and Reinhart from the Company and to assign, transfer and convey certain assets and liabilities held in NextTrip or the Company’s name, respectively, to NextTrip or the Company, respectively, to allow for the separation of the businesses in the Securities Exchange Agreement at closing of the Transaction.

As a result of the Termination, the Separation Agreement by and among the above parties was terminated. On January 25, 2023, however, the Company and NextTrip, mutually determined to complete the Separation contemplated in the Separation Agreement by entering into an amended and restated separation agreement (the “Amended and Restated Separation Agreement”).

The Amended and Restated Separation Agreement terminates certain intercompany agreements and accounts by and between NextTrip and the Company, sets rights related to confidentiality, non-disclosure and maintenance of attorney-client privilege matters by and between NextTrip and the Company and also provides for a mutual release by and among the Company and NextTrip for all pre-closing claims between themselves and related officers, directors, affiliates, successors and assigns.

In addition, the Amended and Restated Separation Agreement provides for the contribution by the Company of (i) \$1.5 million to NextTrip and (ii) an additional \$1.5 million in ten (10) equal monthly installments beginning July 1, 2022, in exchange for NextTrip, as of May 1, agreeing to assume the ongoing operating expenses of NextTrip and, with respect to Reinhart/Zappware, until February 1, 2023.

### ***Amended and Restated Operating Agreement***

In connection with the Separation, NextTrip amended and restated its operating agreement (the “Amended and Restated Operating Agreement”) to, among other things, designate and establish the rights, obligations and privileges of the Preferred Units, as more particularly described below, which Preferred Units were issued to the Company.

#### **Voting**

The Preferred Units are non-voting and no holder of Preferred Units, unless otherwise provided by law, is entitled to receive notice of and to attend meetings of members of NextTrip.

#### **Dividends**

No dividend or other distribution will be paid, declared or set apart for payment in respect of any NextTrip common units or units of any other class ranking junior to the Preferred Units in respect of dividends unless a dividend is paid or declared and set apart for payment in respect of each outstanding Preferred Unit in an amount at least equal to the product of (i) the amount of dividends paid, declared or set apart for each share of such other class (calculated on an as-converted to common units basis) and (ii) the number of shares into which each Preferred Unit is then convertible, prior to any such dividend being paid to common holders.

#### **Liquidation**

Upon the occurrence of a NextTrip liquidation event (dissolution, merger/acquisition or sale or related transactions), the holders of Preferred Units are entitled, in preference to the rights of holders of the common shares, for Preferred Unit, an amount equal to the initial price of \$10.00 per Unit based on based on a Fair Market Value of the Preferred Units outstanding of four million dollars (\$4,000,000), provided, however, that, in the event that the conversion price in such newly publicly traded company is not \$10.00 per Unit, then the Initial Price shall adjust to such applicable conversion price (the “Initial Price”), plus any declared but unpaid dividends or distributions on such Preferred Units.

#### **Redemption**

The Preferred Units: (i) may be redeemed by NextTrip upon the mutual consent of NextTrip and the Company, (ii) up to 50% of the Preferred Units may be redeemed at any time after the date of NextTrip becoming listed on a U.S. senior exchange (a “Qualified Listing”) but prior to a Distribution (as defined below) upon NextTrip’s election (with a redemption of more than 50% of the Preferred Units subject to the Company’s consent), or (iii) at the end of four (4) years from the closing date at the election of the Company. The redemption price per share is equal to the Initial Price.

#### **Conversion and Mandatory Distribution**

The Preferred Units are only convertible into NextTrip common shares by the Company if immediately distributed as a stock dividend to the Company’s stockholders.

The Preferred Units are convertible at a rate of one NextTrip common share for each Preferred Unit: (i) upon the mutual consent of the Preferred Units holder (initially, the Company) and NextTrip or (ii) if, after 12 months from the initial issuance of the Preferred Units, the Company is required to convert any Preferred Units in order to be compliant under the US Investment Company Act of 1940.

The Preferred Units are automatically convertible and distributable (i) upon the completion of a Qualified Listing or (ii) forty-eight (48) months from the closing date; provided, however, that the Company has the option to first require redemption of such Preferred Units as described above.

The mandatory distribution by a holder of Preferred Units (initially, the Company) shall be governed by Section 2.2 of that certain Right of First Refusal and Distribution Agreement which is effective concurrently herewith, the form of which is attached as an exhibit hereto and incorporated by reference herein.

### Restrictions on Transfer

The Company may sell the Preferred Units at any time, provided (i) NextTrip has a right of first refusal and (ii) NextTrip must consent to the sale, provided, however, that, in the event that holding the Preferred Units presents U.S. Investment Company Act of 1940 issues for the Company at any time after the 1-year anniversary of the closing of the Separation, the Company can (i) sell the Preferred Units subject to NextTrip's right of first refusal, or (ii) if the buyer and/or affiliates of said buyer is greater than a 10% owner of NextTrip, then NextTrip must also consent to the sale. An additional description of the right of first refusal is set forth in "*Right of First Refusal and Distribution Agreement*" described below.

### ***Right of First Refusal and Distribution Agreement***

In connection with the Separation, the Company entered into a right of first refusal and distribution agreement (the "Right of First Refusal Agreement"), a copy of which is attached hereto and incorporated by reference herein, that governs certain rights between the Company and NextTrip with respect to the subsequent disposition of the Preferred Units. Specifically, as provided in the Amended and Restated Operating Agreement of NextTrip, (i) NextTrip has a right of first refusal to purchase the Preferred Units prior to a proposed sale of the Preferred Units by the Company in the situations described in "*Amended and Restated Operating Agreement - Restrictions on Transfer*" set forth above and (ii) in the event of a conversion of Preferred Units by the Company into common stock of NextTrip (following a going public transaction, the Company is obligated to distributed such NextTrip common stock in a stock dividend to its stockholders as described in "*Amended and Restated Operating Agreement – Conversion and Distribution*". Both the right of first refusal and distribution rights and obligations are set forth in this Right of First Refusal Agreement.

### ***Exchange Agreement***

As further described above, in consideration for the Preferred Units, the Company exchanged its majority-ownership in NextTrip in the form of 100% of its Common Units in NextTrip. The Company and NextTrip entered into that certain Exchange Agreement, dated as of January 25, 2023, documenting such exchange.

The preceding summaries do not purport to be complete and are qualified in their entirety by reference to the Amended and Restated Separation Agreement, the Amended and Restated Operating Agreement, the Right of First Refusal Agreement and Exchange Agreement are subject to, and qualified in their entirety by, the terms of said documents attached as Exhibits 10.1, 10.2, 10.3 and 10.4 hereto, respectively, which are incorporated by reference herein.

### **Item 1.02 Termination of a Material Definitive Agreement**

The information set forth in Item 1.01 of this Current Report on Form 8-K (this "Current Report") regarding the termination of the Share Exchange Agreement and Separation Agreement is incorporated by reference into this Item 1.02. The Forms of Amendment of Articles, Right of First Refusal and Distribution Agreement and Stock Escrow Agreement were to be entered at closing of the Transaction and thus are also effectively terminated in connection with the Termination.

### **Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

In connection with the Separation, effective January 25, 2023, William Kerby, Donald P. Monaco and Carmen Diges resigned as members of the Board of Directors (the "Board") of the Company and Mr. Kerby also resigned from any and all positions with the Company including as Co-Chief Executive Officer. As a result of Mr. Kerby's resignation from the Co-Chief Executive Officer role, Nithinan Boonyawattapisut will serve as the sole Chief Executive Officer of the Company. The Company believes the Board and committee compositions will continue to comply with Nasdaq corporate governance and director independence rules following the resignations.

None of the resignations are the result of any disagreement with the Company on any matter relating to the Company's operations, policies or practices.

## Item 7.01 Regulation FD Disclosure

On January 31, 2023, the Company issued a press release announcing the Separation. The press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

Exhibit 99.1 contains forward-looking statements. These forward-looking statements are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict. Forward-looking statements are based upon assumptions as to future events that may not prove to be accurate. Actual outcomes and results may differ materially from what is expressed in these forward-looking statements.

The information set forth under Item 7.01 of this Current Report on Form 8-K (“Current Report”), including Exhibit 99.1 attached hereto, is being furnished and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of such section. The information in Item 7.01 of this Current Report, including Exhibit 99.1, shall not be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, regardless of any incorporation by reference language in any such filing, except as expressly set forth by specific reference in such a filing. This Current Report will not be deemed an admission as to the materiality of any information in this Current Report that is required to be disclosed solely by Regulation FD.

## Item 9.01 Financial Statements and Exhibits

### (d) Exhibits

10.1	<a href="#"><u>Amended and Restated Separation Agreement, dated as of January 25, 2023, by and between the Company and NextTrip Group, LLC</u></a>
10.2	<a href="#"><u>Amended and Restated Operating Agreement of NextTrip Group, LLC, dated as of January 25, 2023</u></a>
10.3	<a href="#"><u>Right of First Refusal and Distribution Agreement, dated as of January 25, 2023</u></a>
10.4	<a href="#"><u>Exchange Agreement, dated as of January 25, 2023</u></a>
99.1	<a href="#"><u>Press Release, dated January 31, 2023</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

### NEXTPLAY TECHNOLOGIES, INC.

Date: January 31, 2023

By: /s/ Nithinan Boonyawattapisut

Name: Nithinan Boonyawattapisut

Title: Chief Executive Officer

**AMENDED AND RESTATED**

**SEPARATION AGREEMENT**

dated as of

January 25, 2023

between

**NEXTPLAY TECHNOLOGIES, INC.**

and

**NEXTTRIP GROUP, LLC**

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## AMENDED AND RESTATED

### SEPARATION AGREEMENT

This AMENDED AND RESTATED SEPARATION AGREEMENT (this “**Agreement**”), dated as of January 25, 2023, is entered into by and between NextPlay Technologies, Inc., a Nevada corporation publicly traded on the Nasdaq Capital Market (Nasdaq: NXTP) (the “**Company**”) and NextTrip Group, LLC (“**NextTrip**”), a Florida limited liability company and direct subsidiary of the Company.

#### WITNESSETH:

**WHEREAS**, the Company, NextTrip, Reinhart Interactive TV AG, a Switzerland Aktiengesellschaft (“**Reinhart**”), a partially-owned subsidiary of the Company, TGS Esports Inc., a British Columbia corporation publicly traded on the TSX Venture Exchange (TSXV:TGS) (“**TGS**”), William Kerby and Donald Monaco were parties of that certain Securities Exchange Agreement, dated as of June 27, 2022 (the “**Purchase Agreement**”), by and among the TGS and the Company, TGS agreed to (i) acquire all of the outstanding equity interests the Company, William Kerby and Donald Monaco hold in NextTrip, pursuant to which NextTrip would become a wholly-owned subsidiary of TGS (the “**NextTrip Sale**”) and (ii) also acquire from the Company all of the equity interests the Company holds in Reinhart, pursuant to which Reinhart would become a partially-owned subsidiary of TGS (the “**Reinhart Sale**” and, together with the NextTrip Sale, the “**Sale**”). The Purchase Agreement was terminated on January [ ], 2023 (the “**Termination**”).

**WHEREAS**, in connection with the Sale, the Board of Directors of the Company (together with any duly authorized committee thereof, the “**Board**”) determined that it was appropriate, desirable and in the best interests of the Company and its stockholders to separate (the “**Separation**”) the NextTrip Business and Zappware Business from the remaining businesses of the Company and its Subsidiaries;

**WHEREAS**, in connection with the Separation and Sale, the Company desired to assign, transfer, convey and deliver (“**Transfer**”), to the extent not so currently held, or cause the other members of the Company Group to Transfer to NextTrip all NextTrip Assets, and to assign, or cause the other members of the Company Group to assign, to NextTrip all NextTrip Liabilities, and NextTrip desires to receive such NextTrip Assets and assume such NextTrip Liabilities;

**WHEREAS**, in order to effectuate the Separation, on June 27, 2022, the Company, NextTrip, Reinhart and TGS entered into a Separation Agreement (the “**Original Agreement**”).

**WHEREAS**, despite the Termination, the Company and NextTrip desire to consummate the Separation of the NextTrip Business by amending and restating the Original Agreement by and between the Company and NextTrip only.

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**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements, provisions and covenants contained in this Agreement, the parties hereby agree as follows:

## **ARTICLE I DEFINITIONS AND INTERPRETATION**

### **Section 1.01 General.**

(a) As used in this Agreement, the following terms shall have the following meanings:

**“Action”** means, with respect to any Person, any litigation, legal action, lawsuit, claim, audit or other proceeding (whether civil, administrative, quasi-criminal or criminal) before any Governmental Entity against or involving such Person or its business or affecting its assets..

**“Affiliate”** of any Person means another Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, such first Person.

**“Assets”** means all assets, properties, rights, licenses, Permits, Contracts, Intellectual Property Rights, Software, Data, Technology and causes of action of every kind and description, wherever located, real, personal or mixed, tangible or intangible, whether accrued, contingent or otherwise.

**“Available Insurance Policies”** means the Insurance Policies listed on Schedule 2.08.

**“Business Day”** means each day that is not a Saturday, Sunday or other day on which banking institutions located in New York, New York are authorized or obligated by law or executive order to close .

**“Closing”** means the execution of this Agreement.

**“Closing Date”** means the date on which this Agreement is executed.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Company Business”** means (i) those businesses, operations and activities (whether or not such businesses, operations or activities are or have been terminated, divested or discontinued) as conducted at any time prior to the Closing Date by the Company or any of its Subsidiaries, other than the NextTrip Business and (ii) those entities or businesses acquired or established by or for any member of the Company Group after the Closing Date.

**“Company Data/Technology”** means all Technology and Data that is owned, licensed or used by any member of the Company Group or NextTrip Group or any of their respective Affiliates (other than the NextTrip Data/Technology and Technology rights under the Contracts constituting a NextTrip Asset), including those internet protocol addresses allocated to or used by any member of the Company Group or NextTrip Group or any of their respective Affiliates as of the Closing Date.

**“Company Designees”** shall mean any and all Persons that are designated by the Company and that will be members of the Company Group as of immediately following the Closing Date.

**“Company Group”** means (i) prior to the Closing Date, the Company and each Person that will be a Subsidiary of the Company immediately following the Closing Date and (ii) from and after the Closing Date, the Company and each Person that is then a Subsidiary of the Company.

**“Company Intellectual Property”** means all Intellectual Property Rights that are owned, licensed or used by any member of the Company Group or NextTrip Group or any of their respective Affiliates (other than the NextTrip Intellectual Property and Intellectual Property Rights under the Contracts constituting NextTrip Assets).

**“Company Names and Marks”** means the names or marks owned, licensed or used by the Company, any member of the Company Group or any of their respective Affiliates, either alone or in combination with other words and all marks, trade dress, logos, monograms, domain names and other source identifiers confusingly similar to or embodying any of the foregoing either alone or in combination with other words. For the avoidance of doubt, Company Names and Marks excludes all Trademarks included on Annex A.

**“Company Software”** means all Software that is owned, licensed or used by any member of the Company Group or NextTrip Group or any of their respective Affiliates (other than the NextTrip Software and Software rights under the Contracts constituting a NextTrip Asset).

**“Consents”** means any consents, waivers, notices, reports or other filings to be obtained from or made, including with respect to any Contract, or any registrations, licenses, permits, authorizations to be obtained from, or approvals from, or notification requirements to, any Third Parties, including any Governmental Entity.

**“Contract”** means any contract, subcontract, agreement, option, lease, license, cross license, binding sale or purchase order, commitment or other legally binding instrument, arrangement or understanding of any kind.

**“Conveyance and Assumption Instruments”** means, collectively, such instruments of Transfer or other Contracts, including related local asset transfer agreements or intellectual property assignment agreements, and other documents entered into prior to the Closing Date and as may be necessary to effect the Transfer of Assets and the assumption of Liabilities in the manner contemplated by this Agreement, or otherwise relating to, arising out of or resulting from the transactions contemplated by this Agreement.

**“Data”** means all data and collections of data, whether machine readable or otherwise, including to the extent applicable the following: financial and business information, including rates and pricing data and information, earnings reports and forecasts, macro-economic reports and forecasts, marketing plans, business and strategic plans, general market evaluations and surveys, budgets, accounting, financing and credit-related information, quality assurance policies, procedures and specifications, customer information and lists, and business and other processes, procedures and policies (including, for example, handbooks and manuals, control procedures, and process descriptions), including any blueprints, diagrams, flow charts, or other charts, user manuals, training manuals, training materials, command media, and documentation, and other financial or business information. For the avoidance of doubt, Data excludes Software and Technology.

**“Evaluation Material”** means all information, data, documents, agreements, files and other materials, whether disclosed orally or disclosed or stored in written, electronic or other form or media, which is obtained from or disclosed by the disclosing party or its Representatives before or after the date hereof regarding the Company, including, without limitation, all analyses, compilations, reports, forecasts, studies, samples and other documents prepared by or for the Recipient which contain or otherwise reflect or are generated from such information, data, documents, agreements, files or other materials. The term “Evaluation Material” as used herein does not include information that: (i) at the time of disclosure or thereafter is generally available to and known by the public (other than as a result of its disclosure directly or indirectly by the recipient or its Representatives in violation of this Agreement); (ii) was available to the recipient from a source other than the disclosing party or its Representatives, provided that such source, to recipient’s knowledge after reasonable inquiry, is not and was not bound by a confidentiality agreement regarding the Company; or (iii) has been independently acquired or developed by the recipient without violating any of its obligations under this Agreement.

**“Excluded Assets”** means any and all of the following Assets that are owned, used or held, at or prior to the Closing Date, by the Company or any of its Subsidiaries:

(i) subject to Section 2.07, Company cash and cash equivalents;

(ii) all rights to the Company Names and Marks, together with any Contracts granting rights to use the same;

(iii) except as set forth on Annex C, all of the Company Group’s or NextTrip Group’s right, title and interest in owned and leased real property and other interests in real property including all such right, title and interest under each real property lease pursuant to which any of them leases, subleases (as sub-landlord or sub-tenant) or otherwise occupies any such leased real property, including all buildings, structures, improvements, fixtures and appurtenances thereto and rights in respect thereof;

(iv) other than any loans or advances between or among the Company and its Subsidiaries on behalf of the NextTrip Business (and not any Company Business), all loans or advances among the Company and any of its Subsidiaries;

(v) any work papers of the Company’s auditors and any other Tax records (including accounting records) of any member of the Company Group (subject to Section 5.01), *provided, however*, that NextTrip shall in all events be entitled to copies of, and shall be entitled to use, any such books and records to the extent solely related to the NextTrip Business or NextTrip;

(vi) without limiting NextTrip’s rights expressly provided under Section 2.08, all Insurance Policies of the Company or any of its Subsidiaries, and all rights of any nature with respect to any Insurance Policy, including any recoveries thereunder and any rights to assert claims seeking any such recoveries;

(vii) for the avoidance of doubt, any Assets held on the date hereof, or acquired after the date hereof, and sold or otherwise disposed of prior to the Closing Date;

(viii) all rights, claims, causes of action (including counterclaims and rights of set-off) and defenses against Third Parties to the extent relating to any of the Excluded Assets or the Excluded Liabilities as well as any books, records and Privileged Information relating thereto;

(ix) except as expressly contemplated herein, all Company Intellectual Property, Company Software and Company Data/Technology;

(x) any Permits held by any member of the Company Group that are not Related to the Business;

(xi) all interests of any member of the Company Group under the Transaction Agreements;

(xii) all personnel and employment records for employees and former employees of any member of the Company Group or the NextTrip Group who are not continuing employees of NextTrip, except to the extent necessary for the NextTrip Group to meet its obligations pursuant to this Agreement;

(xiii) any other Assets of any member of the Company Group or the NextTrip Group to the extent not Related to the Business, except (x) NextTrip Intellectual Property, NextTrip Software and NextTrip Data/Technology and (y) Assets otherwise expressly to be retained by or Transferred to the NextTrip Group;

(xiv) other than (A) any accounts receivable exclusively between or among the Company and its Subsidiaries on behalf of the NextTrip Business (and not any Company Business) and (B) any Surviving Intercompany Accounts, any intercompany accounts receivable owing from the Company or any of its Affiliates;

(xv) (A) all corporate minute books (and other similar corporate records) and stock records of any member of the Company Group, (B) any books and records relating to the Excluded Assets, (C) any books and records or other materials of or in the possession of any member of the Company Group or the NextTrip Group that (x) any of the members of the Company Group are required by Law to retain, (y) any of the members of the Company Group reasonably believes are necessary to enable the Company Group to prepare and/or file Tax Returns, or (z) any member of the Company Group is prohibited by Law from delivering to the NextTrip Group (including by Transfer of equity of any member of the NextTrip Group), including any books and records, reports, information or other materials that disclose in any manner the contents of any other books and records, reports, information or other materials that any member of the Company Group is prohibited by Law from delivering to the NextTrip Group (including by Transfer of equity of any member of the NextTrip Group) or (D) any copies of any books and records that any member of the Company Group retains pursuant to Section 5.05;

(xvi) (A) all records and reports prepared or received by the Company or any of its Subsidiaries in connection with the disposition of the NextTrip Business or the transactions contemplated hereby, including all analyses relating to the NextTrip Business so prepared or received, (B) all confidentiality agreements with prospective purchasers of the NextTrip Business or any portion thereof (other than to the extent set forth in clause (xv) of the definition of “**NextTrip Assets**”), and all bids and expressions of interest received from Third Parties with respect to the NextTrip Business, and (C) all Privileged materials, documents and records that are not Related to the Business; and

(xvii) the Assets listed on Annex B.

**“Excluded Liabilities”** means all Liabilities of the Company and its Subsidiaries to the extent arising from or related to the Excluded Assets or the Company Business. Without limiting the generality of the foregoing, the Excluded Liabilities shall include the following Liabilities:

(i) any Liability to the extent relating to any Excluded Asset;

(ii) other than (A) intercompany accounts payable exclusively between or among the Company and its Subsidiaries on behalf of the NextTrip Business (and not any Company Business) and (B) Surviving Intercompany Accounts, any Liability for any intercompany accounts payable to the Company or any of its Affiliates, which intercompany accounts payable shall (subject to the foregoing exceptions) be extinguished at Closing;

(iii) all Liabilities to the extent relating to:

(A) the conduct and operation of the Company Business (including, to the extent relating to the Company Business, any Liability relating to, arising out of or resulting from any act or failure to act by any directors, officers, partners, managers, employees or agents of any member of the Company Group (whether or not such act or failure to act is or was within such Person’s authority)); or

(B) any warranty, product liability obligation or claim or similar obligation entered into, created or incurred in the course of the Company Business with respect to its products or services, whether prior to, at or after the Closing Date;

(iv) all Liabilities to the extent arising under the allocated portion of any Shared Contract that is assigned to a member of the Company Group in accordance with Section 2.05(c);

(v) all Liabilities of any member of the Company Group under the Transaction Agreements; and

(vi) all fines or penalties imposed by any Governmental Entity to the extent relating to filings made by the Company prior to the Closing Date;

(vii) to the extent the Company fails to perform under Section 2.07(b), the IDS Obligation; and

(viii) all Liabilities listed on Annex D.

**“GAAP”** means United States generally accepted accounting principles, consistently applied.

**“Governmental Entity”** means any court, administrative agency, entity or commission or other federal, state, county, local, regional or other foreign governmental authority, instrumentality, agency, entity or commission .

**“Group”** means (i) with respect to the Company, the Company Group and (ii) with respect to NextTrip, the NextTrip Group, as the context requires.

**“Identified Shared Contracts”** means the Shared Contracts (i) that are material to the NextTrip Business and identified on a Schedule to be delivered by NextTrip to the Company within 60 days of the date hereof or (ii) with respect to which the parties mutually agree in good faith prior to the Closing Date to seek separation pursuant to Section 2.05(c).

**“IDS Obligation”** means that certain payment obligation of the Company pursuant to that certain Amendment to Intellectual Property Purchase Agreement effective May 18, 2021 by and between the Company, IDS Inc., TD Assets Holding LLC, and Ari Daniels in the approximate amount of \$2,500,000.

**“Indebtedness”** means, without duplication, all principal, all accrued and unpaid interest thereon, premiums, penalties, costs incurred in connection with payment or prepayment (such as breakage costs, prepayment or early termination penalties, foreign currency charges or conversion expenses), fees or other amounts owing in respect of: (i) indebtedness for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money, (ii) obligations evidenced by mortgages, bonds, notes, debentures or other similar instruments or by letters of credit, solely to the extent drawn as of the relevant date of determination, (iii) obligations as lessee under leases that have been, or should have been, recorded as capital leases in accordance with GAAP (as in effect on the date hereof) and with respect to which the asset being leased is not available to the NextTrip Business as of the Closing Date, and (iv) guarantees or other similar obligations with respect to any indebtedness, obligation, claim or liability of any member of the Company Group of a type described in clauses (i) through (iii) above unless the Company agrees to indemnify the guarantor in respect thereof.

**“Insurance Policies”** means all policies and programs of or agreements for insurance and interests in insurance pools and programs, in each case including self-insurance and insurance from Affiliates.

**“Intellectual Property Rights”** means all of the following intellectual property and similar rights, title or interest in or arising under the laws of the U.S. or any other jurisdiction: (i) patents, patent applications, utility models, design rights, and all related patent rights, including any reissue, reexamination, division, extension, provisional, continuation or continuation-in-part, (ii) copyrights, moral rights, mask works rights, database rights and design rights, in each case, other than such rights to Software and Data, whether or not registered, and registrations and applications thereof, and all rights therein provided by international treaties or conventions, (iii) Trademarks and (iv) Trade Secrets. For the avoidance of doubt, for the purposes of this Agreement, Intellectual Property Rights excludes Software and Data.

**“Intercompany Account”** means any receivable, payable or loan between the Company or any of its Subsidiaries on behalf of the Company Business, on the one hand, and the Company or any of its Subsidiaries on behalf of the NextTrip Business, on the other hand.

**“Intercompany Agreement”** means any Contract between the Company or any of its Subsidiaries on behalf of the Company Business, on the one hand, and the Company or any of its Subsidiaries on behalf of the NextTrip Business, on the other hand, excluding, for the avoidance of doubt, any Contract to which any Third Party is a party.

**“Law”** means, with respect to any Person, any and all applicable law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, award, Order, injunction, judgment, decree, ruling or other similar requirement, whether domestic or foreign, enacted, adopted, promulgated, rendered, issued, ordered or applied by a Governmental Entity that is binding upon or otherwise applicable to such Person or its business, undertaking, property or securities, and to the extent that they have the force of law, policies, guidelines, notices and protocols of any Governmental Entity, as amended unless expressly specified otherwise .

**“Liabilities”** means any liability, debt, guarantee, damage, penalty, fine, assessment, charge, cost, loss, claim, demand, expense, commitment or obligation (whether direct or indirect, known or unknown, absolute or contingent, asserted or unasserted, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or to become due and whether or not the same would be required by GAAP to be reflected in the financial statements or disclosed in the notes thereto) of every kind and description, including all costs and expenses related thereto.

**“NextTrip Assets”** means, in each case to the extent existing and owned or held immediately prior to the Sale by the Company or any of its Subsidiaries, the following Assets, but in each case excluding any Excluded Assets:

(i) all NextTrip Owned Real Property, together with all buildings, structures, improvements, fixtures and appurtenances thereto and rights in respect thereof Related to the Business;

(ii) all NextTrip Leased Real Property;

(iii) all rights of the Company or its applicable Subsidiary under (A) other than with respect to Intellectual Property Rights, Software and Technology, Contracts Related to the Business (including (x) the real property leases in respect of the NextTrip Leased Real Property and (y) any Contract entered into in the name of, or expressly on behalf of, the NextTrip Business), except as required by Law in the case of Contracts relating to labor and employment, and (B) those Intellectual Property Rights, Software and Technology licenses from Third Parties listed on Annex A;

(iv) all accounts and other receivables to the extent related to the NextTrip Business;

(v) all expenses to the extent related to the NextTrip Business that have been prepaid by the Company or any of its Subsidiaries, including lease and rental payments to the extent related to the NextTrip Business;

(vi) all rights, claims, credits, causes of action (including counter-claims and rights of set-off) against Third Parties to the extent related to the NextTrip Business, including unliquidated rights under manufacturing and vendors' warranties to the extent related to the NextTrip Business;

(vii) all NextTrip Intellectual Property, NextTrip Software and NextTrip Data/Technology;

(viii) all Permits that are Related to the Business;

(ix) the NextTrip Books and Records;

(x) all personal property and interests therein, including furniture, furnishings, office equipment, communications equipment, vehicles, and other tangible personal property, in each case Related to the Business (including, in each case, rights, if any, in any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person);

(xi) all Assets listed on Annex A;

(xii) the shares of common stock or other equity interests in the Subsidiaries of the Company set forth on Annex A;

(xiii) the right to enforce the confidentiality or assignment provisions of any confidentiality, non-disclosure or other similar Contracts (including any Contracts with prospective purchasers of the NextTrip Business or any portion thereof) to the extent related to confidential information of the NextTrip Business;

(xiv) all rights of the NextTrip Group under this Agreement or any other Transaction Agreements and the certificates and instruments delivered in connection therewith; and

(xv) all other Assets of a type not expressly covered in this definition that are owned by the Company or any of its Subsidiaries and Related to the Business.

**“NextTrip Books and Records”** means (i) all corporate or limited liability company minute books and related stock records of the members of the NextTrip Group and (ii) all other books, records, files and papers, whether in hard copy or computer format, including invoices, ledgers, correspondence, plats, drawings, photographs, product literature, sales and promotional literature, equipment test records, studies, reports, manufacturing and quality control records and procedures, research and development files, manuals and data, sales and purchase correspondence, distribution lists, customer lists, lists of suppliers, personnel and employment records and accounting and business books, records, files, documentation and materials, in each case that are Related to the Businesses, other than any Tax Returns and other Tax records.

“**NextTrip Business**” means (i) the Company’s Travel business (also known as the historical Monaker Group business which was the Company’s core business prior to that certain HotPlay Exchange Agreement transaction which closed on June 30, 2021) as described in the disclosures in the Company’s annual report on Form 10-K filed with the SEC for the fiscal year ended February 28, 2021 and (ii) more specifically, the business of offering booking solutions for both business and leisure travel, corporate travel management solutions for small- and medium- sized businesses which allows companies to manage travel expenses, travel booking, expense reports, and provides access to concierge-like travel support services, and an online travel agency portal where parties book and manage vacation packages with concierge like services, as conducted by the Company and its Subsidiaries.

“**NextTrip Data/Technology**” means all of the following to the extent owned by the Company or any of its Subsidiaries: (i) all Technology that is Used exclusively by the Company and its Subsidiaries in the NextTrip Business and (ii) all Data that is Used exclusively by the Company and its Subsidiaries in the NextTrip Business.

“**NextTrip Designees**” means any and all Persons that are designated by NextTrip and that will be members of the NextTrip Group as of immediately following the Closing Date.

“**NextTrip Group**” means (i) prior to the Closing Date, NextTrip, each Person that will be a Subsidiary of NextTrip immediately following the Closing Date and (ii) from and after the Closing Date, NextTrip and each Person that is a Subsidiary of NextTrip.

“**NextTrip Indebtedness**” means, without duplication, Indebtedness of NextTrip or any member of the NextTrip Group; *provided* that NextTrip Indebtedness shall not include any Liabilities solely among the members of the NextTrip Group.

“**NextTrip Intellectual Property**” means all of the following to the extent owned by the Company or any of its Subsidiaries: (i) any Registrable IP, (ii) all other Intellectual Property Rights (excluding, for the avoidance of doubt, the Company Names and Marks and Registrable IP) that are Used exclusively in the NextTrip Business by any member of the Company Group or NextTrip Group and (iii) the right to sue and collect damages for past, present and future infringement, misappropriation, violation or dilution of any of the foregoing.

“**NextTrip Leased Real Property**” means the leasehold interests of the Company or any of its Subsidiaries under the real property leases governing the leased real property set forth on Annex C.

“**NextTrip Liabilities**” means all Liabilities of any member of the Company Group or the NextTrip Group to the extent arising from or related to the NextTrip Assets or the NextTrip Business, as the same shall exist at or after the Closing Date and irrespective of whether the same shall arise prior to, at or after the Closing Date. Without limiting the generality of the foregoing, the NextTrip Liabilities shall include the following Liabilities:

(i) all Liabilities under the Surviving Intercompany Accounts;

(ii) all Liabilities arising under Contracts referred to in clause (iii) of the definition of NextTrip Assets;

(iii) all Liabilities to the extent Related to the Business (including all Liabilities with respect to the NextTrip Assets), whether accruing before, on or after the Closing Date (whether direct or indirect, known or unknown, absolute or contingent, asserted or unasserted, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or to become due as of the Closing Date);

(iv) all Liabilities described on Annex C;

(v) any warranty, product liability obligation or claim or similar obligation entered into, created or incurred in the course of the NextTrip Business with respect to its products or services, whether prior to, at or after the Closing Date;

(vi) all Liabilities allocated to any member of the NextTrip Group under the Transaction Agreements;

(vii) all Liabilities to the extent arising under the allocated portion of any Shared Contract that is assigned to a member of the NextTrip Group in accordance with Section 2.05(c); and

(viii) all Liabilities to the extent related to NextTrip Indebtedness; and

(ix) the IDS Obligation, subject to the condition of the Company's failure of performance under Section 2.07(b).

**"NextTrip Owned Real Property"** means any real property owned by the Company or any of its Subsidiaries, together with all fixtures and improvements thereon and all appurtenant rights, privileges and easements relating thereto.

**"NextTrip Software"** means, to the extent owned by the Company or any of its Subsidiaries, the Software set forth on Annex A.

**"Permit"** means all permits, authorizations, licenses, Consents, registrations, concessions, grants, franchises, certificates, identification numbers exemptions, waivers and filings issued or required by any Governmental Entity under Law.

**"Person"** means an individual, entity, or Governmental Entity (or any department, agency, or political subdivision thereof) .

**"Registrable IP"** means, to the extent owned by any member of the Company Group or NextTrip Group, patents, patent applications, statutory invention registrations, registered Trademarks, registered service marks, copyright registrations and invention disclosures.

**"Related to the Business"** means (i) other than with respect to Intellectual Property Rights, Software, Technology and Data, used more than 80% in or arising, directly or indirectly, more than 80% out of or related more than 80% to the operation or conduct of the NextTrip Business (as conducted by the Company Group and the NextTrip Group as of the Closing Date) and (ii) with respect to Intellectual Property Rights, Software, Technology and Data, limited to NextTrip Intellectual Property, NextTrip Software and NextTrip Data/Technology.

**“Representatives”** means, with respect to any Person, any, and all, directors, officers, employees, consultants, financial advisors, lawyers, accountants and other advisors or agents of such Person.

**“SEC”** means the United States Securities and Exchange Commission.

**“Shared Contract”** means any Contract entered into prior to the Closing Date to which the Company or any of its Subsidiaries is a party that relates to both (i) the NextTrip Business and (ii) the Company Business.

**“Software”** means all (i) computer programs, including all software implementation of algorithms, models and methodologies, whether in source code, object code, human readable form or other form and (ii) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons, in each case (i)-(ii), excluding Data.

**“Subsidiary”** means any corporation, limited liability company, partnership, association, joint venture or other business entity of which an Acquired Entity owns, directly or indirectly, at least fifty percent (50%) of the stock or other equity interest entitled to vote on the election of the members of the board of directors or similar governing body.

**“Surviving Intercompany Account”** means any Intercompany Account that (i) expressly arises pursuant to any Transaction Agreement, (ii) is a receivable or payable arising from purchases or sales of products or services in the ordinary course between the Company or any of its Subsidiaries on behalf of the Company Business, on the one hand, and the Company or any of its Subsidiaries on behalf of the NextTrip Business, on the other hand, or (iii) is set forth on Annex A.

**“Surviving Intercompany Agreement”** means any Intercompany Agreement that (i) is a Transaction Agreement or (ii) is set forth on Annex E.

**“Tax”** (and, with correlative meaning, **“Taxes”** and **“taxable”**) means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental, whether computed on a separate, consolidated, unitary, combined or other basis, including, without limitation, those levied on, or measured by, or described with respect to or referred to as, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, Indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers’ compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any Liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any Liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to either Party.

**“Technology”** means, collectively, all technology, designs, procedures, models, discoveries, processes, techniques, ideas, know-how, research and development, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice) apparatus, creations, improvements, works of authorship in any media, confidential, proprietary or non-public information, and other similar materials, and all recordings, graphs, drawings, reports, analyses and other writings, and other tangible embodiments of the foregoing in any form whether or not listed herein, and all related technology, other than Software and Data.

**“Third Party”** means any Person other than the parties hereto or any of their respective Subsidiaries.

**“Trade Secrets”** means confidential and proprietary information, including rights relating to know-how or trade secrets, including ideas, concepts, methods, techniques, inventions (whether patentable or unpatentable), and other works, whether or not developed or reduced to practice, rights in industrial property, customer, vendor and prospect lists, and all associated information or databases, and other confidential or proprietary information, in each case, other than Software.

**“Trademarks”** means trademarks, service marks, trade names, service names, domain names, trade dress, logos and other identifiers of same, including all goodwill associated therewith, and all common law rights, and registrations and applications for registration thereof, all rights therein provided by international treaties or conventions, and all reissues, extensions and renewals of any of the foregoing.

**“Transaction Agreement”** means each of this Agreement, the Right of First Refusal and Distribution Agreement, the Exchange Agreement and all Conveyance and Assumption Instruments.

**“Used”** means used, practiced, licensed, sublicensed, reproduced, distributed, performed, displayed and otherwise exploited, made, had made, sold, had sold, imported and otherwise provided, and prepared modifications, derivative works or improvements or commercialized or legally disposed of products and services thereunder.

**“Zappware Business”** means Reinhart Interactive TV AG, the Company’s Zappware media business, (i) as described in that certain Form S-3/A filed with the SEC on October 27, 2021, (ii) of which a controlling interest was obtained by the Company on March 31, 2021 pursuant to that certain Founding Investment and Subscription Agreement dated January 15, 2021 and (iii) as more specifically described, an entertainment service provider platform which is currently deployed on devices across Europe and Latin America which provides end users with a multi-screen TV experience across set-top boxes, connected TVs, smartphones, tablets, and PCs and also provides a service management system that enables operators to manage user experience and monetization of their services.

(a) Each of the following terms is defined in the Section set forth opposite such term:

<b>Term</b>	<b>Section</b>
Agreement	Preamble
Board	Recitals
Company	Preamble
Company Released Persons	4.01(a)(ii)
Funding Payments	2.07(b)
Purchase Agreement	Recitals
Privilege	5.07(a)
Privileged Information	5.07(a)
Reinhart Sale	Preamble Recitals
Separation	Recitals
Separating Officers and Directors	2.10(a)
NextTrip	Preamble
NextTrip Released Persons	4.01(a)(i)
TGS	Preamble
Transfer	Recitals

Section 1.02 Other Definitional and Interpretative Provisions. The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Annexes and Schedules are to Articles, Sections, Annexes and Schedules of this Agreement unless otherwise specified. All Annexes and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Annex or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute, law or regulation shall be deemed to refer to such statute, law or regulation as amended from time to time and to any rules or regulations promulgated thereunder. References to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other theory extends and such phrase shall not mean “if”. The parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. The terms “or”, “any” and “either” are not exclusive, except to the extent expressly provided otherwise.

## ARTICLE II SEPARATION

Section 2.01 Separation. At or prior to the Closing Date, to the extent not already completed, each of the Company and NextTrip shall, and shall cause their respective Subsidiaries to, take such steps as may be required to effect the Separation in accordance with the terms of this Agreement.

### Section 2.02 Transfer of Assets; Assumption of Liabilities.

(a) Transfer of Assets and Assumption of Liabilities. Except as otherwise expressly provided in this Agreement or in any Transaction Agreement, and except to the extent previously held or transferred by NextTrip or the Company, respectively, upon the terms and subject to the conditions set forth in this Agreement, effective as of immediately prior to the Closing Date:

(i) Transfer of NextTrip Assets. The Company shall, and shall cause the applicable members of the Company Group to, Transfer to NextTrip or the applicable NextTrip Designees, and NextTrip or such NextTrip Designees shall accept from the Company and the applicable members of the Company Group, all of the Company's and each such Company Group member's respective right, title and interest in and to all NextTrip Assets held by the Company or a member of the Company Group.

(ii) Transfer of Excluded Assets. NextTrip shall, and shall cause the applicable members of the NextTrip Group to, Transfer to the Company or the applicable Company Designees, and the Company or such Company Designees shall accept from NextTrip and the applicable members of the NextTrip Group, all of NextTrip's and such NextTrip Group member's respective right, title and interest in and to all Excluded Assets held by NextTrip or a member of the NextTrip Group.

(iii) Assumption of Liabilities. (A) The Company shall, or shall cause another member of the Company Group to, Transfer to NextTrip or the applicable NextTrip Designees, and NextTrip shall, or shall cause another member of the NextTrip Group to, accept, assume (or, as applicable, retain) and perform, discharge and fulfill, in accordance with their respective terms, all of the NextTrip Liabilities and (B) NextTrip shall, or shall cause another member of the NextTrip Group to, Transfer to the Company or the applicable Company Designees, and the Company shall, or shall cause another member of the Company Group to, assume all of the Excluded Liabilities, in each case regardless of (1) when or where such Liabilities arose or arise, (2) where or against whom such Liabilities are asserted or determined, (3) whether such Liabilities arise from or are alleged to arise from negligence, gross negligence, recklessness, violation of Law, willful misconduct, bad faith, fraud or misrepresentation by any member of the Company Group or the NextTrip Group, as the case may be, or any of their past or present respective directors, officers, employees, or agents, (4) which Person is named in any Action associated with any Liability and (5) whether the facts on which such Liabilities are based occurred prior to, on or after the date hereof.

(iv) Conditional Assumption of IDS Obligation. Notwithstanding Section 2.02(a)(iii), NextTrip's assumption of the IDS Obligation is conditioned on the Company's full performance under Section 2.07(b). In the event that the Company fails to make any payment under Section 2.07(b) to the NextTrip Group within five (5) Business Days of the required date of such payment then the Company shall accept, assume (or, as applicable, retain) and perform, discharge and fulfill, in accordance with its respective terms, the IDS Obligation.

(b) In the event of any inconsistency or conflict that may arise in the application or interpretation of the definitions of "NextTrip Assets", "Excluded Assets", "NextTrip Liabilities" and "Excluded Liabilities", (i) the explicit inclusion of an item on any Annex referred to in any such definition shall take priority over any textual provision of either definition that would otherwise operate to include or exclude such Asset or Liability, as the case may be, from the applicable definition and (ii) any specific reference in a given definition will be given priority over a general reference in another definition.

(c) In the event that at any time or from time to time at or after the Closing Date, any member of the Company Group or the NextTrip Group is the owner of, receives or otherwise comes to possess any Asset (including the receipt of payments made pursuant to Contracts and proceeds from accounts receivable) or Liability that is allocated to any Person that is a member of the other Group pursuant to this Agreement or any Transaction Agreement (except in the case of any acquisition of Assets from the other party for value subsequent to the Closing Date), such member of the Company Group or the NextTrip Group, as applicable, shall promptly Transfer, or cause to be Transferred, such Asset or Liability to the Person so entitled thereto; *provided, however*, that the provisions of this Section 2.02(c) are not intended to, and shall not, be deemed to constitute an authorization by any party to permit the other to accept service of process on its behalf, and no party is or shall be deemed to be the agent of any other party for service of process purposes. Prior to any such Transfer, such Asset or Liability shall be held in accordance with Section 2.05(b).

(d) In furtherance of the Separation, subject to the provisions of Section 2.05, the Company shall, and shall cause their respective applicable Subsidiaries to, execute and deliver prior to the Closing Date all Conveyance and Assumption Instruments as may be necessary to effect the Separation and the Transfers of the NextTrip Assets, the NextTrip Liabilities, the Excluded Assets and the Excluded Liabilities, as applicable, in accordance with the terms of this Agreement. The parties agree that each Conveyance and Assumption Instrument shall be in a form consistent with the terms and conditions of this Agreement or the applicable Transaction Agreement(s) with such provisions as are required by Law in the jurisdiction in which the relevant Assets or Liabilities are located.

(e) The Company hereby waives, to the extent permitted under Law, compliance by itself and each and every member of the Company Group with the requirements and provisions of any "bulk-sale" or "bulk transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the Transfer or sale of any or all of the Excluded Assets to the Company or any member of the Company Group.

(f) NextTrip hereby waives, to the extent permitted under Law, compliance by itself and each and every member of the NextTrip Group with the requirements and provisions of any "bulk-sale" or "bulk transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the Transfer or sale of any or all of the NextTrip Assets to NextTrip or any member of the NextTrip Group.

Section 2.03 Intercompany Accounts, Intercompany Agreements and Certain Other Liabilities.

(a) Each Intercompany Account, other than any Surviving Intercompany Account, shall be satisfied, settled or otherwise terminated by the relevant members of the Company Group and the NextTrip Group no later than the Closing Date with no further Liability of any member of either the NextTrip Group or the Company Group with respect thereto by (i) forgiveness by the relevant obligor, (ii) one or a related series of distributions of capital, (iii) non-cash intercompany transfer and settlement through the Company's corporate procedures, or (iv) cash payment, in each case as determined by the Company.

(b) Each Intercompany Agreement, other than any Surviving Intercompany Agreements, and all rights and obligations of the members of the NextTrip Group and the Company Group with respect thereto shall be terminated at or prior to the Closing Date, with no further Liability of any member of the NextTrip Group or any member of the Company Group with respect thereto.

Section 2.04 Limitation of Liability. Except as provided in Article 4, neither the Company nor NextTrip nor any member of their respective Groups shall have any Liability to the other or any member of its Group based upon, arising out of or resulting from any agreement, arrangement, course of dealing or understanding existing on or prior to the Closing Date, other than pursuant to any Surviving Intercompany Agreement or Surviving Intercompany Account, and any such Liability, whether or not in writing, is hereby irrevocably cancelled, released and waived effective as of the Closing Date. No such terminated agreement, arrangement, course of dealing or understanding (including any provision thereof that purports to survive termination) shall be of any further force or effect after the Closing Date. For the avoidance of doubt, this Section 2.04 will not alter or limit the parties' respective rights or obligations under other Transaction Agreements.

Section 2.05 Consents.

(a) If and to the extent that any Consent with respect to any NextTrip Asset, NextTrip Liability, Excluded Asset or Excluded Liability has not been obtained prior to the Closing Date, then notwithstanding any other provision hereof, the Transfer to the NextTrip Group of any such NextTrip Asset or NextTrip Liability, or to the Company Group of any such Excluded Asset or Excluded Liability, shall, unless the parties shall mutually otherwise determine, be automatically deemed deferred, and any such purported Transfer or assumption shall be null and void until such time as all legal impediments are removed or such Consent has been obtained or made. Notwithstanding the foregoing, any such Asset or Liability shall continue to constitute a NextTrip Asset, a NextTrip Liability, an Excluded Asset or an Excluded Liability, as applicable (including for purposes of Article 4), and be subject to Section 2.05(b). From and after the Closing Date until the date that is 12 months following the Closing Date, the parties shall use their respective reasonable best efforts (including by seeking novations and taking the actions set forth on Schedule 3.05, but, for the avoidance of doubt, subject to the second sentence of Section 3.05) to continue to seek to remove any legal or contractual impediments or to secure any contractual Consents required from Third Parties or Governmental Authorities necessary to Transfer such Assets (or written confirmation that no Consent is required) to the extent that any such Consent has not been obtained as of the Closing Date. If and when the legal or contractual impediments the presence of which caused the deferral of Transfer of any Asset or Liability pursuant to this Section 2.05 are removed or any Consents the absence of which caused the deferral of Transfer of any Asset or Liability pursuant to this Section 2.05 are obtained, the Transfer of the applicable Asset or Liability shall be effected promptly without further consideration in accordance with the terms of this Agreement or the applicable Transaction Agreement(s) and shall, to the extent possible without the imposition of any undue cost on any party and to the fullest extent permitted by Law, be deemed to have become effective as of the time such Transfer would have otherwise been made pursuant to Section 2.01 or Section 2.02, as applicable. Notwithstanding anything to the contrary, this Section 2.05(a) does not apply to Intellectual Property Rights, which are the subject of Section 3.03.

(b) If the Transfer of any Asset or Liability intended to be Transferred is not consummated prior to or at the Closing Date as a result of the provisions of Section 2.05(a) or for any other reason (including any misallocated Transfers subject to Section 2.02(c)), then, insofar as reasonably and to the extent permitted by Law, the Person retaining such Asset or Liability, as the case may be, (i) shall thereafter hold such Asset or Liability, as the case may be, in trust for the use and benefit and burden of the Person entitled thereto (and at such Person's sole expense) until the consummation of the Transfer thereof (or as otherwise determined by the parties) and (ii) with respect to any deferred Assets or Liabilities, use reasonable best efforts to develop and implement mutually acceptable arrangements to place the Person entitled to receive such Asset or Liability, insofar as reasonably possible, in substantially the same position as if such Asset or Liability had been Transferred as contemplated hereby and so that all the benefits and burdens relating to such Asset or Liability, including possession, use, risk of loss, potential for gain, dominion, ability to enforce the rights under or with respect to and control and command over such Asset or Liability, are to inure from and after the time such Transfer would have otherwise been made pursuant to Section 2.01 or Section 2.02, as the case may be, to the applicable member or members of the Company Group or the NextTrip Group entitled to the receipt of such Asset or required to assume such Liability. In furtherance of the foregoing, the parties agree that to the fullest extent permitted by Law, (x) as of the time such Transfer would have otherwise been made pursuant to Section 2.01 or Section 2.02, as the case may be, each applicable member of the Company Group and the NextTrip Group shall be deemed to have acquired complete and sole beneficial ownership over all of the Assets, together with all rights, powers and privileges incident thereto, and shall be deemed to have assumed in accordance with the terms of this Agreement all of the Liabilities, and all duties, obligations and responsibilities incident thereto, which such Person is entitled to acquire or required to assume pursuant to the terms of this Agreement and (y) each of the Company and NextTrip shall, and shall cause the members of its Group to, (A) treat for all Tax purposes the deferred Assets as Assets having been Transferred to and owned by the Person entitled to such Assets not later than the time such Transfer would have otherwise been made pursuant to Section 2.01 or Section 2.02, as the case may be, (B) treat for all Tax purposes the deferred Liabilities as having been assumed by the Person intended to be subject to such Liabilities not later than the time such Transfer would have otherwise been made pursuant to Section 2.01 or Section 2.02, as the case may be, and (C) neither report nor take any Tax position (on a Tax Return or otherwise) inconsistent with such treatment (unless, in case of clause (A), (B) or (C), otherwise required by applicable Tax law or the resolution of a proceeding with respect to Taxes). Any Person retaining an Asset or a Liability due to the deferral of the Transfer of such Asset or Liability, as the case may be, shall not be required, in connection with the foregoing, to make any payments, incur any Liability or offer or grant any accommodation (financial or otherwise, regardless of any provision to the contrary in any underlying Contract, including any requirements for the securing or posting of any bonds, letters of credit or similar instruments, or the furnishing of any guarantees) to any Third Party, except to the extent that the Person entitled to the Asset or responsible for the Liability, as applicable, agrees to reimburse and make whole the Person retaining an Asset or a Liability, to such Person's reasonable satisfaction, for any payment or other accommodation made by the Person retaining an Asset or a Liability at the request of the Person entitled to the Asset or responsible for the Liability.

(c) The parties shall use commercially reasonable efforts to separate the Identified Shared Contracts into separate Contracts effective as of the Closing Date or as promptly as practicable thereafter so that the NextTrip Group shall be entitled to rights and benefits and shall assume the related portion of Liabilities with respect to each Identified Shared Contract to the extent related to the NextTrip Business and the Company Group shall have the rights and benefits and shall assume the related portion of Liabilities with respect to such Shared Contract to the extent related to the Company Business (*provided* that, notwithstanding anything in this Agreement to the contrary, neither Group shall be required to pay any amount to any Third Party, commence or participate in any Action or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to remain secondarily liable or contingently liable for any Liability of the other Group) to any Third Party to obtain any such separation). Upon such separation of such Shared Contract, the separated Contract will be a NextTrip Asset or an Excluded Asset, as applicable. If the counterparty to any Identified Shared Contract that is entitled under the terms of such Shared Contract to Consent to the separation of such Shared Contract has not provided such Consent, the terms of Section 2.05(b) shall apply to such Contract, *mutatis mutandis*. The obligations to seek separation set forth in this Section 2.05(c) shall terminate on the first anniversary of the Closing Date or, if earlier with respect to any Identified Shared Contract, upon the expiration of the term of such Shared Contract (without any obligation to renew or extend).

Section 2.06 Disclaimer of Representations and Warranties. (a) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY OF THE OTHER TRANSACTION AGREEMENTS, EACH PARTY ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES UNDERSTANDS AND AGREES THAT NO OTHER PARTY NOR ANY OF THEIR RESPECTIVE AFFILIATES IS MAKING ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, TO THE OTHER PARTIES OR ANY OF THEIR RESPECTIVE AFFILIATES OR TO ANY OTHER PERSON IN RESPECT OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY INFORMATION THAT MAY HAVE BEEN EXCHANGED OR PROVIDED PURSUANT TO THIS AGREEMENT OR ANY OTHER TRANSACTION AGREEMENT, AND THAT ALL NEXTTRIP ASSETS ARE BEING ASSIGNED AND TRANSFERRED, AND ALL NEXTTRIP LIABILITIES ARE BEING ASSUMED, ON AN “AS IS,” “WHERE IS” BASIS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN ANY OF THE OTHER TRANSACTION AGREEMENTS, (I) NEITHER THE COMPANY NOR ANY OF ITS AFFILIATES HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES IN ANY PRESENTATION OR WRITTEN INFORMATION RELATING TO THE NEXTTRIP BUSINESS GIVEN OR TO BE GIVEN IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY OR IN ANY FILING MADE OR TO BE MADE BY OR ON BEHALF OF THE COMPANY OR ANY OF ITS AFFILIATES WITH ANY GOVERNMENTAL ENTITY, AND NO STATEMENT MADE IN ANY SUCH PRESENTATION OR WRITTEN MATERIALS, MADE IN ANY SUCH FILING OR CONTAINED IN ANY SUCH OTHER INFORMATION SHALL BE DEEMED A REPRESENTATION OR WARRANTY HEREUNDER OR OTHERWISE, AND (II) THE COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF THE OTHER MEMBERS OF THE COMPANY GROUP, EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES OF MERCHANTABILITY. EACH OF NEXTTRIP ACKNOWLEDGES THAT THE COMPANY HAS INFORMED IT THAT NO PERSON HAS BEEN AUTHORIZED BY THE COMPANY OR ANY OF ITS AFFILIATES TO MAKE ANY REPRESENTATION OR WARRANTY IN RESPECT OF THE NEXTTRIP BUSINESS OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY (AND HEREBY ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY SUCH REPRESENTATION OR WARRANTY).

(a) Each of the Company (on behalf of itself and each member of the Company Group), NextTrip (on behalf of itself and each member of the NextTrip Group) further understands and agrees that if the disclaimer of express or implied representations and warranties contained in Section 2.06(a) is held unenforceable or is unavailable for any reason under the Laws of any jurisdiction outside the United States or if, under the Laws of a jurisdiction outside the United States, both the Company or any member of the Company Group, on the one hand, and NextTrip or any member of the NextTrip Group, on the other hand, are jointly or severally liable for any Excluded Liability or any NextTrip Liability, then, in each case, the parties intend that, notwithstanding any provision to the contrary under the Laws of such non-U.S. jurisdictions, the provisions of the Transaction Agreements (including the disclaimer of all representations and warranties, allocation of Liabilities among the parties and their respective Subsidiaries, releases, indemnification and contribution of Liabilities) shall to the fullest extent permitted by Law prevail for any and all purposes between the parties and their respective Subsidiaries and Affiliates.

Section 2.07 Working Capital; Cash Management.

(a) From May 1, 2022 until the Closing Date, NextTrip shall be entitled to use, retain or otherwise dispose of all cash generated by the NextTrip Business and the NextTrip Assets or otherwise held by any member of the NextTrip Group. All cash and cash equivalents held by any member of the NextTrip Group as of the Closing Date shall be a NextTrip Asset and all cash and cash equivalents held by any member of the Company Group as of the Closing Date shall be an Excluded Asset. In addition, such NextTrip cash will be exclusively managed by executives of NextTrip from May 1, 2022 and shall be a NextTrip Asset. In the event that, as of the Closing Date, NextTrip cash and cash equivalents are still held by the Company and not yet transferred to NextTrip, NextTrip and the Company shall execute a simple promissory note with 5 % interest per annum payable within sixty (60) days of the Closing Date for the Company to pay the balance of owed NextTrip cash to NextTrip.

(b) As of the date of this Agreement, the Company has transferred \$1,500,000 to the NextTrip Group as additional working capital. The Company shall transfer an additional \$1,500,000 to the NextTrip Group payable in ten (10) equal monthly payments commencing on July 1, 2022 and continuing on the first of each month thereafter (the “**Funding Payments**”).

Section 2.08 Insurance.

(a) From and after the Closing Date, the members of the NextTrip Group shall cease to be in any manner insured by, entitled to any benefits or coverage under or entitled to seek benefits or coverage from or under any Insurance Policies of the Company Group other than (i) any Insurance Policy issued exclusively in the name and for the benefit of any member of the NextTrip Group, (ii) with respect to any matters covered by an Insurance Policy that have been properly reported to the relevant insurer(s) prior to the Closing Date, or (iii) for claims brought solely under the Available Insurance Policies, for any claim, occurrence, injury, damage or loss that occurred or existed prior to the Closing Date, in each case under clauses (i) through (iii) above subject to the terms and conditions of the relevant Insurance Policies and this Agreement, except to the extent otherwise mandated by Law. The members of the NextTrip Group shall procure all contractual and statutorily obligated insurance at the Closing Date.

(b) Notwithstanding anything contained in this Agreement, (i) nothing in this Agreement shall limit, waive or abrogate in any manner any rights of the Company to insurance coverage for any matter, whether relating to the members of the NextTrip Group or otherwise, and (ii) the Company shall retain the exclusive right to control the Available Insurance Policies and all of its other Insurance Policies, including the right to exhaust, settle, release, commute, buy-back or otherwise resolve disputes with respect to any of its Insurance Policies and to amend, modify or waive any rights under any such Insurance Policies, notwithstanding whether any such Insurance Policies apply to any liabilities or losses as to which any member of the NextTrip Group has made, or could in the future make, a claim for coverage; *provided*, that the members of the NextTrip Group shall cooperate with the Company with respect to coverage claims and requests for benefits and sharing such information as is reasonably necessary in order to permit the Company to manage and conduct its insurance matters as the Company deems appropriate.

(c) Whenever this Section 2.08 requires any member(s) of the NextTrip Group to take any action after the Closing, such requirement shall be deemed to constitute an undertaking on the part of NextTrip to take such action or to cause such member(s) of the NextTrip Group to take such action.

Section 2.09 Transaction Agreements. On or prior to the Closing, each of the Company and NextTrip shall (and shall cause each of their applicable Subsidiaries to) execute and deliver each of the Transaction Agreements to which it is a party that have not previously been executed.

Section 2.10 Resignations; Separating Officer and Director Matters.

(a) On the Closing Date, existing officers and directors of the Company that will take roles with the NextTrip Group (the “**Separating Officers and Directors**”) shall resign from all such roles with the Company.

(b) Notwithstanding Section 2.10(a), as of the Closing Date (or, in any event, no later than five (5) Business Days after the Closing Date) the Company shall:

(i) pay all compensation due and payable through the Closing Date to the Separating Officers and Directors for their service to the Company and its Subsidiaries, including all director fees owed for board roles at the Company and its Subsidiaries; and

(ii) cooperate in good faith and take all commercially reasonable efforts to process any Separating Officers and Directors' restrictive legend requests for such shares of Company common stock held by such parties.

(c) Upon written request by a Separating Officer or Director delivered to the Company for restrictive legend removal under Section 2.10(b) (ii), the Company agrees, within two (2) weeks of receipt of such written request, to issue an opinion letter in accordance with Rule 144 of the Regulations of the United States Securities and Exchange Commission (17 CFR § 230.144) for such shares of Company common stock held by such requesting parties. If the Company fails to provide the Rule 144 opinion letter required by this section, such Separating Officer or Director shall have the right, though not the obligation, to engage another attorney to provide those services at the expense of the Company.

(d) If any action at law or in equity is necessary to enforce the terms of this Section 2.10, then the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief which said prevailing party may be entitled.

### **ARTICLE III CERTAIN COVENANTS**

Section 3.01 Further Assurances. Subject to the terms and conditions of this Agreement, each party will use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, and to assist and cooperate with the other party in doing or causing to be done, all things necessary, proper or advisable under Laws to consummate the transactions contemplated hereby as soon as practicable after the date hereof and as may be otherwise required to consummate and make effective the transactions contemplated by this Agreement.

#### **Section 3.02 Company Names and Marks.**

(a) Except as otherwise provided in this Section 3.02, NextTrip and its Affiliates shall cease and discontinue all uses of the Company Names and Marks immediately upon the Closing Date. NextTrip, for itself and its Affiliates, agrees that the rights of the members of the NextTrip Group and their respective Affiliates to the Company Names and Marks pursuant to the terms of any trademark agreements or otherwise between the Company or any of its Affiliates, on the one hand, and the members of the NextTrip Group or their respective Affiliates, on the other, shall terminate on the Closing Date and be replaced by such rights as are provided under this Section 3.02.

(b) NextTrip and its Affiliates shall (i) except as permitted under this Section 3.02, (A) immediately upon the Closing Date cease all use of any of the Company Names and Marks on or in connection with all stationery, business cards, purchase orders, lease agreements, warranties, indemnifications, invoices and other similar correspondence and other documents of a contractual nature and (B) complete the removal of the Company Names and Marks from all product, services and technical information promotional brochures and (ii) with respect to Assets or NextTrip Assets bearing any Company Names and Marks, use their commercially reasonable efforts to relabel such Assets or NextTrip Assets or remove such Company Names and Marks from such Assets or NextTrip Assets as promptly as practicable.

(c) NextTrip, for itself and its Affiliates, agrees that, after the Closing Date, NextTrip and its Affiliates (i) will not expressly, or by implication, do business as or represent themselves as the Company or any of its Affiliates, (ii) with respect to Assets or other assets managed, operated or leased after the Closing Date, will represent in writing to the owners or lessors of such Assets or other assets that such Assets or other assets are those of NextTrip and its Affiliates and not those of the Company and its Affiliates and (iii) will cooperate with the Company and its Affiliates in terminating any Contracts pursuant to which the members of the Company Group or the members of the NextTrip Group license any Company Names and Marks to customers in connection with the NextTrip Business. NextTrip and its Affiliates shall take all necessary action to ensure that other users of any Company Names and Marks, whose rights terminate upon the Closing Date pursuant to this Section 3.02, shall cease use of the Company Names and Marks, except as expressly authorized thereafter by the Company.

(d) NextTrip, for itself and its Affiliates, acknowledges and agrees that, except to the extent expressly provided in this Section 3.02, neither NextTrip nor any of its Affiliates shall have any rights in any of the Company Names and Marks and neither NextTrip nor any of its Affiliates shall contest the ownership or validity of any rights of the Company or any of its Affiliates in or to any of the Company Names and Marks.

Section 3.03 Further Action Regarding Intellectual Property Rights. (a) If, after the Closing Date, the Company or NextTrip identifies any item of (i) NextTrip Intellectual Property, (ii) NextTrip Software, (iii) NextTrip Data/Technology, (iv) Registrable IP owned by the Company or any of its Subsidiaries, or (v) Intellectual Property Rights (other than Registrable IP and the Company Names and Marks), Data or Technology owned by the Company or any of its Subsidiaries that is not Used exclusively in the NextTrip Business, in each case, that inadvertently was not previously transferred or set forth on the applicable Annex, as applicable, by any member of the Company Group or any of its Affiliates to NextTrip, then, to the extent that the Company has the right to do so and without paying additional consideration (other than a nominal fee (*e.g.*, \$1)) to a Third Party, the Company shall (or shall cause a member of the Company Group or its Affiliates to) Transfer such NextTrip Intellectual Property, NextTrip Software, or NextTrip Data/Technology to NextTrip pursuant to the terms hereof for no additional consideration; *provided* that if such Transfer requires payment of additional consideration, then NextTrip may elect to have such license so Transferred at its own expense. Until such time that a member of the Company Group or any of its Affiliates Transfers such NextTrip Intellectual Property, NextTrip Software, or NextTrip Data/Technology to NextTrip, such member of the Company Group, on behalf of itself and its Affiliates, hereby grants to NextTrip and its Subsidiaries (i) a non-exclusive, royalty-free, fully paid-up, worldwide, irrevocable, sublicensable and transferable right and license (or sublicense, as the case may be) to fully use, practice and otherwise exploit such NextTrip Intellectual Property, NextTrip Software, or NextTrip Data/Technology by the applicable member of the Company Group and its Affiliates and (ii) a covenant not to sue with respect to the foregoing activities, in each case under (i) and (ii), effective as of the Closing Date.

(a) If, after the Closing Date, the Company or NextTrip identifies any item of Company Intellectual Property, Company Software or Company Data/Technology that was (i) Transferred by a member of the Company Group or any of its Affiliates or (ii) owned by any member of the NextTrip Group prior to the Closing Date and that was not Transferred to the Company or an Affiliate of the Company prior to the Closing Date, NextTrip shall, or shall cause the applicable member of the NextTrip Group to, promptly Transfer such Company Intellectual Property, Company Software or Company Data/Technology to the Company or its designated Affiliate pursuant to the terms hereof for no additional consideration. Until such time that NextTrip or any of its Affiliates Transfers such Company Intellectual Property, Company Software or Company Data/Technology to the Company or its designated Affiliate, NextTrip, on behalf of itself and its Affiliates, hereby grants to the Company and its Affiliates (i) a non-exclusive, royalty-free, fully paid-up, worldwide, irrevocable, sublicensable and transferable right and license (or sublicense, as the case may be) to fully use, practice and otherwise exploit such Company Intellectual Property, Company Software or Company Data/Technology by the applicable member of the NextTrip Group and its Affiliates and (ii) a covenant not to sue with respect to the foregoing activities, in each case under (i) and (ii), effective as of the Closing Date.

Section 3.04 Third Party Licenses. To the extent that any Intellectual Property Rights, Software, Technology or Data included in NextTrip Assets is licensed or sublicensed from a Third Party under a Contract (other than a Contract set forth in clause (iii) of the definition of NextTrip Assets), such Intellectual Property Rights, Software, Technology or Data is subject to all of the terms and conditions of the Contract between the member of the Company Group and such Third Party pursuant to which such Intellectual Property Rights, Software, Technology or Data has been licensed or sublicensed to such member of the Company Group, including limitations to the field or scope of use.

Section 3.05 Third Party Consents. Prior to the Closing Date, each party agrees to cooperate to obtain any Consents (together with novations) from any Third Party (other than a Governmental Entity) that may be required in connection with the transactions contemplated hereby, including taking the actions set forth on Schedule 3.05. Notwithstanding anything in this Agreement to the contrary, except as otherwise set forth on Schedule 3.05, neither the Company nor NextTrip nor any of their respective Affiliates shall be required to compensate any Third Party, commence or participate in any Action or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to remain secondarily liable or contingently liable for any NextTrip Liability) to any Third Party to obtain any such Consent.

**ARTICLE IV**  
**RELEASES; NON-DISCLOSURE**

Section 4.01 Release of Pre-Closing Claims.

(a) Except as provided in Section 4.01(b), effective as of the Closing Date:

(i) The Company, for itself and each member of the Company Group and, to the extent permitted by Law, all Persons who at any time prior to the Closing Date were directors, officers, partners, managers, agents or employees of any member of the Company Group (in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns, does hereby remise, release and forever discharge NextTrip, and the other members of the NextTrip Group, their respective Affiliates, successors and assigns, and all Persons who at any time prior to the Closing Date have been stockholders, members, partners, directors (including directors of the Company resigning in connection with the Separation), managers, officers, attorneys, agents or employees of any member of the NextTrip Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns (collectively, the “**NextTrip Released Persons**”) from any and all Liabilities, whether at law or in equity (including any right of contribution), whether arising under any Contract, by operation of law or otherwise, in each case, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Closing Date, including in connection with the Separation and any of the other transactions contemplated hereunder and under the Transaction Agreements. Without limitation, the foregoing release includes a release of any rights and benefits with respect to such Liabilities that the Company and each member of the Company Group, and their respective successors and assigns, now has or in the future may have conferred upon them by virtue of any statute or common law principle which provides that a general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release, if knowledge of such claims would have materially affected such party’s settlement with the obligor. In this regard, the Company hereby acknowledges that it is aware that factual matters now unknown to it may have given or may hereafter give rise to Liabilities that are presently unknown, unanticipated and unsuspected, and it further agrees that this release has been negotiated and agreed upon in light of that awareness and it nevertheless hereby intends to release the NextTrip Released Persons from the Liabilities described in the first sentence of this Section 4.01(a)(i).

(ii) NextTrip, for itself and each member of the NextTrip Group (including directors of the Company resigning in connection with the Separation), and, to the extent permitted by Law, all Persons who at any time prior to the Closing Date were directors, officers, partners, managers, agents or employees of Company or any member of the NextTrip Group (in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns, does hereby remise, release and forever discharge the Company and the other members of the Company Group, their respective Affiliates, successors and assigns, and all Persons who at any time prior to the Closing Date have been stockholders, members, partners, directors, managers, officers, attorneys, agents or employees of any member of the Company Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns (collectively, the “**Company Released Persons**”) from any and all Liabilities, whether at law or in equity (including any right of contribution), whether arising under any Contract, by operation of law or otherwise, in each case, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Closing Date, including in connection with the Separation and any of the other transactions contemplated hereunder and under the Transaction Agreements. Without limitation, the foregoing release includes a release of any rights and benefits with respect to such Liabilities that NextTrip and each member of the NextTrip Group and their respective successors and assigns, now has or in the future may have conferred upon them by virtue of any statute or common law principle which provides that a general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release, if knowledge of such claims would have materially affected such party’s settlement with the obligor. In this regard, NextTrip hereby acknowledges that it is aware that factual matters now unknown to it may have given or may hereafter give rise to Liabilities that are presently unknown, unanticipated and unsuspected, and it further agrees that this release has been negotiated and agreed upon in light of that awareness and NextTrip nevertheless hereby intends to release the Company Released Persons from the Liabilities described in the first sentence of this Section 4.01(a)(ii).

(b) Nothing contained in Section 4.01(a) shall limit or otherwise affect any Person's rights or obligations pursuant to or contemplated by, or ability to enforce, any Surviving Intercompany Agreement or Surviving Intercompany Account, in each case in accordance with its terms.

(c) Following the Closing Date, the Company shall not, and shall cause each other member of the Company Group not to, make any claim or demand, or commence any Action asserting any claim or demand against NextTrip or any of their respective Affiliates, or any other Person released with respect to any Liabilities released pursuant to Section 4.01(a)(i). Following the Closing Date, NextTrip shall not, and shall cause its Affiliates, and each other member of the NextTrip Group not to, make any claim or demand, or commence any Action asserting any claim or demand against the Company or any of its Affiliates, or any other Person released with respect to any Liabilities released pursuant to Section 4.01(a)(ii).

**ARTICLE V**  
**PRESERVATION OF RECORDS; ACCESS TO INFORMATION; CONFIDENTIALITY; PRIVILEGE**

Section 5.01 Access Generally.

(a) Other than for matters related to provision of Tax records, and subject to appropriate restrictions for Privileged Information or Evaluation Material, from and after the Closing Date and until the later of (i) the sixth anniversary of the Closing Date and (ii) the expiration of the relevant statute of limitations period, if applicable, and subject to compliance with the terms of the Transaction Agreements, upon the prior written reasonable request by the Company or NextTrip, the applicable party shall use commercially reasonable efforts to provide, as soon as reasonably practicable following the receipt of such request, reasonable access or, to the extent such information is reasonably practicable to identify and extract, copies of such information in the possession or control of such applicable party (or its Affiliates), but only to the extent such requested information is not already in the possession or control of the requesting party or any of its Affiliates and is necessary for a reasonable business purpose. Each of the Company and NextTrip shall make their respective personnel available during regular business hours to discuss the information exchanged pursuant to this Article 5.

(b) Each of the Company and NextTrip shall inform their respective Representatives who have or have access to the other party's Evaluation Material or other information provided pursuant to this Article 5 of their obligation to hold such information confidential in accordance with the provisions of this Agreement.

(c) Nothing in this Article 5 shall require any party to violate any agreement with any Third Party regarding the confidentiality of confidential and proprietary information relating to that Third Party or its business; *provided, however*, that in the event that a party would be required under this Section 5.01 to disclose any such information, such party shall use commercially reasonable efforts to seek to obtain such Third Party's written consent to the disclosure of such information and to otherwise disclose any such information in a manner that would not reasonably be expected to violate such agreement.

**Section 5.02 Financial Statements and Accounting.** Without limitation of Section 5.01, from the date hereof through the Closing Date, each of the Company and NextTrip agrees to provide reasonable assistance and, subject to Section 5.06, reasonable access to its properties, books and records, other information and personnel, and to use its commercially reasonable efforts to cooperate with the other party's requests, in each case to enable (a) such other party to meet its timetable for dissemination of its earnings releases, financial statements and management's assessment of the effectiveness of its disclosure controls and procedures and its internal control over financial reporting in accordance with Items 307 and 308, respectively, of Regulation S-K, (b) such other party's accountants to timely complete their review of the quarterly financial statements and audit of the annual financial statements of such other party, including, to the extent applicable to such party, its auditor's audit of its internal control over financial reporting and management's assessment thereof in accordance with Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's and Public Company Accounting Oversight Board's rules and auditing standards thereunder, and (c) such other party to respond to any written request or official comment from a Governmental Entity, including in connection with responding to a comment letter from, or investigation by, the SEC; *provided*, that in connection with this clause (c), each party shall provide reasonable access on the terms set forth in this Section 5.02 until the matter relating to such comment letter or investigation is resolved.

**Section 5.03 Reimbursement.** The party requesting information or services pursuant to this Article 5 agrees to reimburse the other party for the reasonable out-of-pocket costs, if any, actually incurred in connection with delivering such information or services, to the extent that such costs are incurred for the benefit of the requesting party.

**Section 5.04 Cooperation in Litigation.** Each of the Company Group, NextTrip, and their officers, directors, employees and agents agree to cooperate fully with the Company Group and NextTrip in any matters that have or may result in a legal claim against Company Group, NextTrip, and their officers, directors, employees and agents, and of which Company Group, NextTrip, and their officers, directors, employees and agents may have knowledge as a result of their relationship with the other such parties that were previously part of the Company Group. This requires such Company Group, NextTrip officers, directors, employees or agents, without limitation, to (1) make themselves available upon reasonable request to provide information and assistance to Company Group, NextTrip on such matters without additional compensation, except for such Company Group, NextTrip officers', directors', employees' and agents' out-of-pocket costs, (2) immediately notify such Party (whether Company Group or NextTrip) within five (5) Business Days of any requests to Company Group, NextTrip and such officers, directors, employees and agents for information related to any pending or potential legal claim or litigation involving Company Group, or NextTrip, reviewing any such request with a designated representative of such Party prior to disclosing any such information, and permitting the representative of such Party to be present during any communication of such information and (3) not voluntarily disclose to any third party without such Party's written consent any information or documents, except pursuant to lawful subpoena or court order.

#### Section 5.05 Retention of Books and Records.

(a) The Company and its Affiliates shall have the right to retain copies of all books and records of the NextTrip Business relating to periods ending on or before the Closing Date; *provided*, that such copies shall be deemed Evaluation Material and shall be subject to the provisions of Section 5.07. NextTrip agrees that it shall preserve and keep all original books and records in respect of the NextTrip Business in the possession or control of NextTrip or its Affiliates for the longer of (i) any applicable statute of limitations and (ii) a period of six years from the Closing Date.

(b) During such six-year or statute of limitations period, as applicable, (i) Representatives of the Company and its Affiliates shall, upon reasonable written notice and for any reasonable business purpose, have reasonable access during normal business hours to examine, inspect and copy such books and records and (ii) NextTrip shall provide to the Company and its Affiliates reasonable access to such original books and records of the members of the NextTrip Group and the NextTrip Business as the Company or its Affiliates shall reasonably request in connection with any Action to which the Company or any of its Affiliates are parties or in connection with the requirements of any Law. The Company or its Affiliates, as applicable, shall return such original books and records to NextTrip or its Affiliate as soon as such books and records are no longer needed in connection with the circumstances described in the immediately preceding sentence.

(c) After such six-year or statute of limitations period, as applicable, before NextTrip or any of its Affiliates shall dispose of any of such books and records, NextTrip shall give at least 90 days' prior written notice of such intention to dispose of any such books and records to the Company, and the Company and its Affiliates shall be given an opportunity, at their cost and expense, to remove and retain all or any part of such books and records as it may elect upon reasonable written notice to NextTrip.

#### Section 5.06 Confidentiality; Non-Disclosure

(a) From and after the Closing Date, the Company shall not, and shall cause each member of the Company Group and its and their respective Representatives not to, directly or indirectly, without the prior written consent of NextTrip, disclose to any Third Party (other than to each other and their respective Representatives who need to know the information and who are advised of the confidential nature of such information) any Evaluation Material related to the NextTrip Business; *provided*, that the foregoing restrictions shall not (i) apply to any information available to the public (other than as a result of disclosure in violation of this Section 5.06(a)) or (ii) prohibit disclosure required by Law so long as, to the extent legally permissible, the Company or such member of the Company Group provides NextTrip with reasonable prior written notice of such disclosure and a reasonable opportunity to contest such disclosure at NextTrip's sole expense. From and after the Closing Date, the Company shall, and shall cause each member of the Company Group and its and their respective Representatives to, use such Evaluation Material related to the NextTrip Business only in connection with the purpose for which such Evaluation Material was retained by the Company or such member of the Company Group in accordance with this Agreement, and for no other reason (and only for so long as such purpose continues to be applicable to the Company or such member of the Company Group).

(b) From and after the Closing Date, NextTrip shall not, and NextTrip shall cause its Affiliates, including each other member of the NextTrip Group, and its and their respective Representatives not to, directly or indirectly, without the prior written consent of the Company, disclose to any Third Party (other than to each other and their respective Representatives who need to know the information and who are advised of the confidential nature of such information) any Evaluation Material related to the Company Business; *provided*, that the foregoing restrictions shall not (i) apply to any information available to the public (other than as a result of disclosure in violation of this Section 5.06(b)) or (ii) prohibit disclosure required by Law so long as, to the extent legally permissible, NextTrip or such member of the NextTrip Group provides the Company with reasonable prior written notice of such disclosure and a reasonable opportunity to contest such disclosure at the Company's sole expense. From and after the Closing Date, NextTrip shall, and NextTrip shall cause its Subsidiaries, including NextTrip and each other member of the NextTrip Group, and its and their respective Representatives to, use such Evaluation Material related to the Company Business only in connection with the purpose for which such Evaluation Material was retained by NextTrip or such member of the NextTrip Group in accordance with this Agreement, and for no other reason (and only for so long as such purpose continues to be applicable to NextTrip or such member of the NextTrip Group).

(c) For the avoidance of doubt and notwithstanding any other provision of this Section 5.06, (i) the sharing of Privileged Information shall be governed solely by Section 5.06, and (ii) information that is subject to any confidentiality provision or other disclosure restriction in any Transaction Agreement shall be governed by the terms of such Transaction Agreement.

#### Section 5.07 Privilege Matters.

(a) Pre-Closing Services. The parties recognize in certain instances legal and other professional services that have been and will be provided prior to the Closing Date have been and will be rendered for the collective benefit of each of the members of the Company Group and the NextTrip Group, and, to the fullest extent permitted by Law, that each of the members of the Company Group and the NextTrip Group should be deemed to be the client with respect to such pre-Closing services for the purposes of asserting all privileges, immunities or other protections from disclosure which may be asserted under Law, including attorney-client privilege, business strategy privilege, joint defense privilege, common interest privilege and protection under the work-product doctrine ("**Privilege**"). To the fullest extent permitted by Law, the Company and NextTrip shall have a shared Privilege with respect to all information subject to Privilege ("**Privileged Information**") which relates to such pre-Closing services. For the avoidance of doubt, Privileged Information within the scope of this Section 5.07(a) includes, but is not limited to, services rendered by legal counsel retained or employed by any of the Company or NextTrip (or any member of such party's respective Group), including outside counsel and in-house counsel.

(b) Post-Closing Services. The parties recognize that legal and other professional services will be provided following the Closing Date to each of the Company and NextTrip. The parties further recognize that certain of such post-Closing services will be rendered solely for the benefit of the Company or NextTrip, as the case may be, while other such post-Closing services may be rendered with respect to Actions or other matters which involve both the Company and NextTrip. To the fullest extent permitted by Law, with respect to such post-Closing services and related Privileged Information, the parties agree as follows:

(i) All Privileged Information relating to any claims, proceedings, litigation, disputes or other matters which involve both the Company Group and the NextTrip Group shall be subject to a shared Privilege among the parties involved in the claims, proceedings, litigation, disputes or other matters at issue; and

(ii) Except as otherwise provided in Section 5.07(b)(i), Privileged Information relating to post-Closing services provided solely to one of the Company Group or the NextTrip Group shall not be deemed shared between the parties; *provided*, that the foregoing shall not be construed or interpreted to restrict the right or authority of the parties (x) to enter into any further agreement, not otherwise inconsistent with the terms of this Agreement, concerning the sharing of Privileged Information or (y) otherwise to share Privileged Information without waiving any Privilege which could be asserted under Law.

(c) The parties agree as follows regarding all Privileged Information with respect to which the parties shall have a shared Privilege under Section 5.07(a) or (b):

(i) subject to Section 5.07(c)(iii), no member of the Company Group or NextTrip Group may waive, or allege or purport to waive, any Privilege which could be asserted under any Law, and in which the other (or a member of its Group) has a shared Privilege, without the written consent of the other party;

(ii) if a dispute arises between or among the parties or their respective Subsidiaries regarding whether a Privilege should be waived to protect or advance the interest of any party, each party agrees that it shall negotiate in good faith, shall endeavor to minimize any prejudice to the rights of the other party and each of the Company and NextTrip, on behalf of themselves and their respective Group, specifically agrees that it shall not withhold consent to waive for any purpose except to protect its own legitimate interests; and

(iii) in the event of any litigation or dispute between the parties, or any members of their respective Groups, either the Company or NextTrip, on behalf of themselves and their respective Group, may waive a Privilege in which the other party or member of such Group has a shared Privilege, without obtaining the consent of the other party; *provided*, that such waiver of a shared Privilege shall to the fullest extent permitted by Law be effective only as to the use of Privileged Information with respect to the litigation or dispute between the parties and/or the applicable members of their respective Groups, and shall not operate as a waiver of the shared Privilege with respect to Third Parties.

(d) The transfer of all information pursuant to this Agreement is made in reliance on the agreement of the Company or NextTrip as set forth in Section 5.07 and this Section 5.07(d), to maintain the confidentiality of Privileged Information and to assert and maintain any applicable Privilege. The access to information being granted pursuant to Section 5.01 and Section 5.02, the furnishing of notices and documents and other cooperative efforts contemplated by Section 5.06 and the transfer of Privileged Information between the parties and their respective Subsidiaries pursuant to this Agreement shall not be deemed a waiver of any Privilege that has been or may be asserted under this Agreement or otherwise.

Section 5.08 Ownership of Information. Any information owned by one party or any of its Subsidiaries that is provided to a requesting party pursuant to this Article 5 shall be deemed to remain the property of the providing party. Unless expressly set forth herein, nothing contained in this Agreement shall be construed as granting a license or other rights to any party with respect to any such information, whether by implication, estoppel or otherwise.

Section 5.09 Other Agreements. The rights and obligations granted under this Article 5 are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange or confidential treatment of information set forth in any Transaction Agreement.

## **ARTICLE VI MISCELLANEOUS**

Section 6.01 Complete Agreement. This Agreement, the other Transaction Agreements and the Conveyance and Assumption Instruments constitute the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, among the parties with respect to the subject matter hereof and thereof.

Section 6.02 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party shall have received a counterpart hereof signed by the other parties. Until and unless each party has received a counterpart hereof signed by the other parties, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 6.03 Survival of Covenants. Except as otherwise contemplated by this Agreement or any other Transaction Agreement, all covenants of the parties contained in this Agreement and each Transaction Agreement shall survive the Closing Date and remain in full force and effect in accordance with their applicable terms.

Section 6.04 Expenses. Except as otherwise provided in this Agreement or any other Transaction Agreement, each party shall be responsible for its own fees and expenses.

Section 6.05 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and e-mail transmission, so long as a receipt of such e-mail is requested and received) and shall be given:

If to the Company:

NextPlay Technologies, Inc.  
1560 Sawgrass Corporate Parkway, Suite 130  
Sunrise, Florida 33323  
Attention: Nithinan Boonyawattapisut, Co-CEO  
Email: nithinan.boonyawattapisut@nextplaytechnologies.com

If to NextTrip:

NextTrip Group, LLC.  
1560 Sawgrass Corporate Parkway, Suite 130  
Sunrise, Florida 33323  
Attention: Bill Kerby, CEO  
Email: bill.kerby@nexttrip.com

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day.

Section 6.06 Amendment and Waivers.

(a) Except as otherwise provided in Schedule 2.01, any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by NextTrip and the Company or, in the case of a waiver, by each party against which the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 6.07 Termination. This Agreement shall terminate without further action at any time before the Closing Date. If terminated, no party shall have any Liability of any kind to any other party or any other Person on account of this Agreement, except as provided herein.

Section 6.08 Assignment. This Agreement and the rights and obligations hereunder may not be assigned or delegated in whole or in part by any party by operation of law or otherwise without the express written consent of NextTrip, in the case of an attempted assignment or delegation by the Company, or the Company, in the case of an attempted assignment or delegation by NextTrip. Any attempted assignment that is not in accordance with this Section 6.08 shall be null and void.

Section 6.09 Successors and Assigns. The provisions of this Agreement and the obligations and rights hereunder shall be binding upon, inure to the benefit of and be enforceable by (and against) the parties and their respective successors and permitted assigns.

Section 6.10 Subsidiaries. Each of the parties shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Subsidiary of such party or by any Person that becomes a Subsidiary of such party as a result of the consummation of the transactions contemplated hereby, in each case to the extent such Subsidiary remains a Subsidiary of the applicable party.

Section 6.11 Third-Party Beneficiaries. Except (a) for the releases under Section 4.01 of any Person as provided therein and (b) as specifically provided in any Transaction Agreement, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 6.12 Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state. The parties hereto agree that any litigation, suit, proceeding or action seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (whether brought by any party or any of its Affiliates or against any party or any of its Affiliates) shall be brought in the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such litigation, suit, proceeding or action and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such litigation, suit, proceeding or action in any such court or that any such litigation, suit, proceeding or action brought in any such court has been brought in an inconvenient forum. Process in any such litigation, suit, proceeding or action may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 6.05 shall be deemed effective service of process on such party.

Section 6.13 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 6.14 Specific Performance. The parties agree that irreparable damage would occur, and that the parties would not have any adequate remedy at law, in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specifically enforce the terms and provisions of this Agreement, without proof of actual damages or otherwise, in addition to any other remedy to which any party is entitled at law or in equity. Each party agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. The parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to law or inequitable for any reason, nor to assert that a remedy of monetary damages would provide an adequate remedy.

Section 6.15 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Entity to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 6.16 No Admission of Liability. The allocation of Assets and Liabilities herein (including on the Schedules hereto) is solely for the purpose of allocating such Assets and Liabilities between the Company and NextTrip and is not intended as an admission of liability or responsibility for any alleged Liabilities vis-à-vis any Third Party, including with respect to the Liabilities of any non-wholly owned Subsidiary of the Company or NextTrip.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed as of the day and year first above written.

**NEXTPLAY TECHNOLOGIES, INC.**

By: /s/

Name:

Title:

**NEXTTRIP GROUP, LLC**

By: /s/

Name:

Title:

*[Signature Page to Separation Agreement]*

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THE UNITS EVIDENCED BY THIS DOCUMENT ARE SUBJECT TO RESTRICTIONS ON ASSIGNMENT AND TRANSFER SET FORTH HEREIN. IN ADDITION, THE UNITS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR ANY STATE SECURITIES LAW.

AMENDED AND RESTATED  
OPERATING AGREEMENT

OF

NEXTTRIP GROUP, LLC

DATED AS OF JANUARY 25, 2023 AND

EFFECTIVE AS OF JANUARY 25, 2023

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**AMENDED AND RESTATED  
OPERATING AGREEMENT OF  
NEXTTRIP GROUP, LLC**

This **Amended and Restated Operating Agreement of NextTrip Group, LLC** (the “**Company**”), entered into on January 25, 2023, and effective January 25, 2023 (the “**Effective Date**”), is (a) adopted by the Managers (as defined in Section 7.1), and (b) executed and agreed to, for good and valuable consideration, by the Initial Member (as defined in Section 2.1.14) and Members.

**RECITALS**

A. On January 7, 2021, Articles of Organization for NextTrip Group, LLC were filed with the Secretary of State of Florida for the formation of the Company.

B. Effective on January 11, 2021, the Initial Member and Managers of the Company adopted and approved an Operating Agreement for the Company (the “**Original Agreement**”).

C. The Managers and Members of the Company desire to authorize and approve this amended and restated operating agreement (the “**Amended and Restated Operating Agreement**”, the “**Operating Agreement**” or the “**Agreement**”) which shall supersede the Original Agreement in all respects.

**ARTICLE I  
ORGANIZATION**

**1.1 Formation.** The Company has been or will be organized as a Florida limited liability company by the filing of Articles of Organization (the “**Articles**”) under and pursuant to the Florida Act with the Secretary of State of Florida.

**1.2 Name.** The name of the Company is “**NextTrip Group, LLC**” and all Company business must be conducted in that name, or such other names that may be selected by the Managers and that comply with Applicable Law.

**1.3 Registered Office; Registered Agent; Offices.** The registered office and registered agent of the Company in the State of Florida shall be as specified in the Articles or as designated by the Managers in the manner provided by applicable law. The offices of the Company shall be at such places as the Managers may designate, which need not be in the State of Florida.

**1.4 Purposes.** The purpose of the Company is to conduct any lawful business activities permitted by Florida law.

**1.5 Foreign Qualification.** Prior to the Company conducting business in any jurisdiction other than Florida, the Managers shall cause the Company to comply with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction.

**1.6 Term.** The Company commenced/will commence on the date the Secretary of State of Florida filed the Articles. Unless otherwise stated in the Articles or this Operating Agreement, the Company shall have a perpetual existence.

**1.7 No State-Law Partnership.** The Members intend that the Company not be a partnership (including a limited partnership) and that no Member or Manager shall be a partner of any other Member or Manager, for any purposes other than applicable tax laws, and this Operating Agreement may not be construed to suggest otherwise.

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## ARTICLE II DEFINITIONS

**2.1 Definitions.** Unless otherwise required by the context in which a defined term appears, or is otherwise set forth, the following terms shall have the meanings specified in this ARTICLE II. Terms that are defined in other Articles or the introductory paragraphs of this Agreement shall have the meanings given to them in those Articles and/or paragraphs.

**2.1.1 “Affiliate”** means (x) any Person directly or indirectly controlling, controlled by or under common control with another Person, or (y) any manager, director, officer, partner or employee of a Person; a Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through ownership of voting securities, by contract, or otherwise. The term “control,” as used in the immediately preceding sentence, means with respect to a corporation, limited liability company, limited life company or limited duration company (collectively, “limited liability company”), the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company and, with respect to any individual, partnership, trust, estate, association or other entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

**2.1.2 “Applicable Law”** means any applicable statute, law, regulation, ordinance, rule, judgment, rule of law, decree, permit, requirement, or other governmental restriction or any similar form of decision of, or any provision or condition issued under any of the foregoing by, or any determination by any governmental authority having or asserting jurisdiction over the matter or matters in question, as interpreted and enforced at the time in question.

**2.1.3 “Bankrupt” or “Bankruptcy”** means, with respect to any Person, that (i) such Person (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition; (C) becomes the subject of an order for relief (i.e., an actual court order determining that a debtor is subject to the control of the bankruptcy court) or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (D) files a petition or answer seeking for such Person a reorganization, arrangement, composition, readjustment, liquidation, winding up and termination, or similar relief under any applicable law; (E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in a proceeding of the type described in subclauses (A) through (D) of this clause; or (F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of such Person’s or of all or any substantial part of such Person’s properties; or against such Person, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, winding up and termination, or similar relief under any applicable law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without such Person’s consent or acquiescence, a trustee, receiver, or liquidator of such Person or of all or any substantial part of such Person’s properties has been appointed and 90 days have expired without the appointments having been vacated or stayed.

**2.1.4 “Business”** means travel and technology operations.

**2.1.5 “Business Day”** means a day other than (i) a Saturday, (ii) a Sunday or (iii) a day on which commercial banks in the State of Florida are authorized or required to be closed for business; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in Florida generally are open for use by customers on such day.

**2.1.6 “Cause”** means the occurrence of any one or more of these events which are not rectifiable by the applicable Manager: (i) non-appealable conviction of a felony or crime of moral turpitude; (ii) any intentional or grossly negligent acts that are reasonably likely to cause harm or damage to the reputation and goodwill of the Company; or (iii) any violation or breach of any material provisions or covenants in this Agreement which is not reasonably cured within 30 days of the date notice thereof has been provided to the applicable Manager.

**2.1.7 “Code”** means the Internal Revenue Code of 1986 (as amended from time to time) and the regulations promulgated thereunder.

**2.1.8 “Competitor”** means any other Person engaged in the Business.

**2.1.9 “Covered Person”** means (i) each Member, (ii) each officer, director, shareholder, partner, member, controlling Affiliate, employee, agent or representative of each Member, and each of their controlling Affiliates, and (iii) each Manager, Officer, employee, agent or representative of the Company.

**2.1.10 “Dispose”** or a **“Disposition”** means a sale, assignment, transfer, conveyance, bequest, gift, exchange, or other disposition (voluntarily, involuntarily, or by operation of law).

**2.1.11 “Excluded Units”** means for the purposes of, and any calculation required by Section 4.2, any Units held by a Non-Purchasing Member.

**2.1.12 “Florida Act”** means the Florida Revised Limited Liability Company Act relating to limited liability companies, as from time to time in effect in the State of Florida, or any corresponding provision or provisions of any succeeding or successor law of such State; provided, however, that in the event that any amendment to the Florida Act, or any succeeding or successor law, is applicable to the Company only if the Company has elected to be governed by the Florida Act as so amended or by such succeeding or successor law, as the case may be, the term **“Florida Act”** shall refer to the Florida Act as so amended or to such succeeding or successor law only after the appropriate election by the Company, if made, has become effective.

**2.1.13 “GAAP”** means generally accepted accounting principles in the United States, consistently applied.

**2.1.14 “Immediate Family”** means any Spouse, parents, children, including those adopted, siblings and direct descendants and Spouses of any of the foregoing, of an individual.

**2.1.15 “Income Tax Regulations”** means, unless the context clearly indicates otherwise, the regulations in force as final or temporary that have been issued by the U.S. Department of the Treasury pursuant to its authority under the Code, and any successor regulations.

**2.1.16 “Initial Member”** means NextPlay.

**2.1.17 “Majority Interest”** means Members holding among them more than 50% of the outstanding Common Units of the Company. Common Units held by Assignees shall not be counted for the purposes of the determination of a Majority Interest. Preferred Units are non-voting and shall not be counted for purposes of determination of a Majority Interest.

**2.1.18 “Managers”** means the managers of the Company, provided that if the Company only has one (1) Manager, the term Managers used throughout this Operating Agreement shall refer to such Manager.

**2.1.19 “Membership Interests”** means the Membership Interests of the Company represented by Units.

**2.1.20 “Net Cash Flow”** means, with respect to any fiscal period, the excess of operating revenues, investment income, income from Affiliates, and other receipts over operating expenses and other expenditures for such fiscal period, including but not limited to principal and interest payments on indebtedness of the Company, other sums paid to lenders, and cash expenditures incurred incident to the normal operation of the Company’s business, decreased by (i) any amounts added to Reserves during such fiscal period, and increased by (ii) the amount (if any) of all allowances for cost recovery, amortization or depreciation with respect to property of the Company for such fiscal period, (iii) any amounts withdrawn from Reserves during such fiscal period, and (iv) any amounts paid in compensation to the Managers as authorized hereunder.

**2.1.21 “NextPlay”** means NextPlay Technologies, Inc., a Nevada corporation and its successors.

**2.1.22 “Person”** means an individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or other entity or group.

**2.1.23 “Pro Rata Portion”** means for each Member, the quotient (in percentage terms) obtained by dividing (i) the number of Units held of record by such Member at the time of determination, by (ii) the aggregate number of Units issued and outstanding at the time of such determination, but not including, as applicable, the Excluded Units.

**2.1.24 “Proceeding”** means any threatened, pending, or completed legal action, suit, or proceeding.

**2.1.25 “Projections”** means revenue and profit forecasts of the Company, which shall be prepared in good faith by the Company and which shall be the sole responsibility of the Company to prepare.

**2.1.26 “Reserves”** means the reasonable reserves established and maintained from time to time by the Managers, in amounts reasonably considered adequate and sufficient from time to time by the Managers to pay operating expenses, salaries, distributions, taxes, fees, insurance and other costs and expenses incident to the Company’s business.

**2.1.27 “Securities Act”** means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

**2.1.28 “Sharing Ratio”** means the ratio in which each Member shares in Distributions of the Company, which shall be equal to (i) the number of Units held of record by such Member at the time of determination, divided by (ii) the aggregate number of Units issued and outstanding at the time of such determination. Notwithstanding the foregoing, the Preferred Units have a Liquidation Preference which must be satisfied as provided in ARTICLE V prior to Common Units receipt of Distributions.

**2.1.29 “Sole Discretion”** or “**sole discretion**” means that each Member’s consent may be given or withheld in the Member’s sole and absolute discretion, with or without cause, and subject to such conditions as such Member shall deem appropriate.

**2.1.30 “Spouse”** means, an individual: (1) of the opposite gender to whom a Member who is an individual is legally married under the laws of a U.S. state or foreign nation (including common law marriages if recognized by the laws of the U.S. state in which the Member resides); or (2) of the same gender to whom a Member is married, if the marriage was recognized as valid by the laws of the U.S. state or foreign nation where the marriage was entered into, at the time of the marriage, and if such laws entitle a same-gender couple in a marriage to all of the same rights, benefits, protections and responsibilities as are granted to a legally married opposite-gender couple; or (3) of the same or opposite gender with whom a Member is in a civil union, if the civil union was recognized as valid by the laws of the U.S. state or foreign nation where the civil union was entered into, at the time the civil union was entered into, and if such laws entitle a couple in a civil union to all of the same rights, benefits, protections and responsibilities as are granted to a legally married opposite-gender couple.

**2.1.31 “Subsidiary”** means with respect to any Person, (i) any corporation at least a majority of the outstanding voting stock of which is owned, directly or indirectly, by such Person or by one or more of its subsidiaries, or by such Person and one or more of its subsidiaries, (ii) any general partnership, joint venture, limited liability company, statutory trust, or other entity, at least a majority of the outstanding partnership, membership, or other similar equity interests of which shall at the time be owned by such Person, or by one or more of its subsidiaries, or by such Person and one or more of its subsidiaries, and (iii) any limited partnership of which such Person or any of its subsidiaries is a general partner. For the purposes of this definition, “**voting stock**” means shares, interests, participations, or other equivalents in the equity interest (however designated) in such Person having ordinary voting power for the election of a majority of the directors (or the equivalent) of such Person, other than shares, interests, participations, or other equivalents having such power only by reason of the occurrence of a contingency.

**2.1.32 “Super-Majority Interest”** means Members holding among them more than 75% of the aggregate of all of the outstanding Common Units. Units held by Assignees or Preferred Units shall not be counted for the purposes of the determination of a Super-Majority Interest.

**2.1.33 “Unanimous Consent”** means Members holding 100% of the aggregate of all of the outstanding Common Units. Common Units held by Assignees or Preferred Units shall not be counted for the purposes of the determination of a Unanimous Consent.

**2.1.34 “Units”** means the Membership Interests of the Company.

**2.1.35 “Valuation Firm”** means an independent third-party accounting or valuation firm selected in the sole and reasonable determination of the Managers.

**2.1.36 “Written Consent”** means a consent or consents (1) in writing, or (2) sent via electronic transmission (i.e., via email or facsimile or similar reproduction, either in the body of an email or as an attachment to an email or otherwise).

### **ARTICLE III UNITS; DISPOSITIONS OF INTERESTS; CONFIDENTIALITY**

**3.1 Units.** The Company shall have two classes of Membership Interests consisting of (i) 1,000,000 Voting Common Units (the “**Common Units**”), and (ii) 400,000 Nonvoting Preferred Units (the “**Preferred Units**,” and together with the Common Units, the “**Units**”) and the number of Units shall total not more than such One Million Four Hundred Thousand (1,400,000) Units (the “**Issuance Limit**”), subject to adjustment as discussed in ARTICLE XIII hereof. Each Preferred Unit shall have the rights, preferences, powers, privileges and restrictions, qualifications and limitations as set forth in ARTICLE V. The Managers are hereby authorized to issue Units of the Company, up to the Issuance Limit, from time to time, on such terms and conditions as the Managers may reasonably determine, upon the execution by a Person of a Subscription Agreement in reasonable form to the Managers (a “**Subscription**”); the acceptance by an authorized Officer of such Subscription; the payment by such subscribing Person of the purchase price payable for the Units to be acquired by the subscribing Person pursuant to the terms of the Subscription; and the execution by or on behalf of such subscribing Person of a Joinder to this Agreement in the form of Exhibit C hereto (a “**Joinder**”). At the option of, and with the consent of, the Managers, the Company may issue fractional Units. The Issuance Limit may only be increased with a Unanimous Consent and the consent of the Managers.

**3.2 Members; Member Classification.** The members of the Company are the Initial Member which is executing this Operating Agreement and each Person that is hereafter admitted to the Company as a member in accordance with this Operating Agreement (collectively, “**Members**”). If a Member shall have made a Disposition of all or any portion of its Membership Interest, to the extent allowed hereunder, but shall have retained any rights therein, then solely with respect to the Membership Interest (or portion thereof) so disposed, all references to “**Member**” that appear in ARTICLE VI and Section 14.2.1 shall be deemed to refer to the assignee of such Membership Interest (an “**Assignee**”), provided that no Assignee shall become a Member of the Company except pursuant to a New Member Approval.

**3.3 Outstanding Units.** Each Member’s Units shall be set forth on Exhibit A hereto (which shall be amended from time to time by the Managers (which amendment shall not require the consent of any Member) as additional Members are added to the Company, if any, or the Units of the Members are adjusted, in each case subject in all cases to the terms and conditions of this Agreement).

**3.4 Dispositions of Units.** A Member may not Dispose of all or any portion of its rights or interest in the Company (each a “**Unit**”), except with the consent of the Managers, or, in the case of the Preferred Units, as provided in ARTICLE V. Any attempted Disposition of all or any portion of a Membership Interest, other than in strict accordance with this Section 3.4, shall be null and void ab initio. A Person to whom a Membership Interest is Disposed in accordance with this Section 3.4 (including, but not limited to an Assignee), may be admitted to the Company as a Member only with the consent of the Managers (a “**New Member Approval**”). In connection with any Disposition of a Membership Interest or any portion thereof, and any admission of an Assignee as a Member, the Member making such Disposition and the Assignee shall furnish the Managers with such documents regarding the Disposition as the Managers may request (in form and substance satisfactory to the Managers), including a copy of the Disposition instrument, a copy of a Joinder confirming such Assignee’s consent to be bound by the terms of this Operating Agreement (if the assignee is to be admitted as a Member), a legal opinion that the Disposition complies with applicable federal and state securities laws, and a legal opinion that the Disposition will not result in the Company’s termination under Section 708 of the Code. Any judgment creditor of a Member or any other owner of a Membership Interest shall only have the rights of an assignee under the Florida Act, and such judgment creditor shall not have any right to participate in the management or affairs of the Company or become or exercise any rights of a Member without the consent of the Managers. The Members agree that breach of the provisions of this Section 3.4 may cause irreparable injury to the Company for which monetary damages (or another remedy at law) are inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Member to comply with such provisions, and (ii) the uniqueness of the Company business and the relationship among the Members. Accordingly, the Members agree that the provisions of this Section 3.4 may be enforced by specific performance. Units transferred between Members pursuant to the terms of this Agreement shall not require a New Member Approval.

**3.5 Encumbrances of Units.** A Member may not pledge, mortgage, subject to a security interest or lien, or otherwise encumber (voluntarily, involuntarily, or by operation of law) all or any portion of its Membership Interest without the consent of the Managers and a Majority Interest, calculated without reference to the Member desiring to make such encumbrance.

**3.6 Withdrawal.** A Member does not have the right to withdraw from the Company; provided, however, a Member shall have the power to withdraw at any time in violation of this Section 3.6. If a Member exercises such power in violation of this Section 3.6, (a) such withdrawing Member shall be liable to the Company and the other Members for all monetary damages suffered by them as a result of such withdrawal; and (b) such withdrawing Member shall not have any right to receive the fair value of the withdrawing Member's interest in the Company as set forth in Section 605.1066 of the Florida Act, and instead the Company shall have the right to acquire such withdrawing Member's Membership Interest at any time by providing the withdrawing Member notice of its intent to exercise such acquisition right (the "**Withdrawing Purchase Rights**") along with a check for a total of \$10 times each 1% (or portion thereof) of the Company's outstanding Units owned by such withdrawing Member, which the Members agree is a reasonable good faith estimate of the fair value of the Company's Units held by a withdrawing Member. In no event shall the Company or any Member have the right, through specific performance or otherwise, to prevent a Member from withdrawing in violation of this Section 3.6. The exercise of the Withdrawing Purchase Rights by the Company shall not extinguish or otherwise effect the withdrawing Member's obligation to pay the damages set forth in this Section 3.6.

**3.7 Information.** In addition to the other rights specifically set forth in this Operating Agreement, each Member and each Assignee is entitled to all information to which that Member or Assignee is entitled to have access pursuant to Section 605.0410 of the Florida Act under the circumstances and subject to the conditions therein stated.

**3.8 Expulsion.** A Member may not be expelled from the Company.

**3.9 Spouses of Members.** Spouses of the Members who are individuals do not become Members as a result of such marital relationship, unless the Membership Interest of such Persons is held jointly as expressly set forth in the records of the Company. Each Spouse of a Member who is an individual (who is not himself or herself a Member) has executed a Spouse's Agreement in the form of **Exhibit D**.

**3.10 Representations and Warranties.** Each Member represents and warrants to the Company, the other Members and the Managers as follows:

**3.10.1** Such Member has requested and received, or has had an opportunity to request and receive and has waived such opportunity, any information concerning the Company and the operations and proposed operations of the Company which such Member deems necessary to evaluate the merits and risks of an investment in the Company;

**3.10.2** The Company and the Managers have given such Member a reasonable time prior to the execution of this Agreement, the opportunity to ask questions of and receive answers from the Managers concerning the Company;

**3.10.3** Such Member is aware of the risks associated with an investment in the Company, including, but not limited to, the following: (i) An investment in the Company involves a high degree of risk, including, but not limited to, the risk of economic losses from Company operations; (ii) The Company's securities have not been passed upon or reviewed by any federal or state regulatory agency and no federal or state regulatory agency has made any recommendations or endorsements regarding any investment in the Company; (iii) The Units have not been registered under the Securities Act, or under state securities acts and are offered in reliance on exemptions provided by such acts; (iv) The Units are being acquired for investment only and may not be sold or transferred in the absence of an effective registration statement under such acts or an opinion of counsel to the Company (the cost of which shall be borne by the Member) that such registration is not required. Neither the Company nor the Managers are under any obligation to register the Units on behalf of an investor or to assist in complying with any exemption from registration. There is no market for the Units and none is expected to develop, therefore, the risks of an illiquid investment must be assumed by the investor; (v) If a certificate or other document evidencing the Units is distributed to the Members, it will be imprinted with a restrictive legend as follows or in similar form as the following: **"THE UNITS EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE TRANSFERRED OR SOLD UNLESS: (A) A REGISTRATION STATEMENT UNDER SUCH ACT AND STATE SECURITIES LAWS IS THEN IN EFFECT WITH RESPECT THERETO; OR (B) A WRITTEN OPINION OF COUNSEL TO THE COMPANY (THE COST OF WHICH SHALL BE BORNE BY THE MEMBER) HAS BEEN OBTAINED TO THE EFFECT THAT NO SUCH REGISTRATION IS REQUIRED. THE MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE AND THE TRANSFER THEREOF ARE SUBJECT TO THE TERMS, CONDITIONS AND RESTRICTIONS OF THAT CERTAIN OPERATING AGREEMENT BETWEEN THE COMPANY AND THE HOLDER HEREOF, AS SUCH MAY BE AMENDED FROM TIME TO TIME. A COPY OF THE OPERATING AGREEMENT MAY BE INSPECTED AT THE PRINCIPAL OFFICE OF THE COMPANY BY A MEMBER OF THE COMPANY";**

**3.10.4** The Units in the Company are being acquired for the account of such Member, for investment, and not for distribution, transfer or resale to others;

**3.10.5** Such Member will, or has, paid his, her or its capital contribution with such Member's own funds and has not borrowed or financed the capital contribution made by such Member. Any consideration or capital contribution provided to the Company as such Member's capital contribution or otherwise, is or was held and beneficially owned solely by such Member prior to transfer to the Company, and such investment does not provide any third parties nor any other person, other than the Member, any right to the Membership Interest, right to be a Member of the Company, an ownership interest in the Company and/or rights to any Distribution;

**3.10.6** Such Member's tax and legal counsel have been consulted in evaluating the merits, risks and suitability of an investment in the Company, or such Member represents that the advice of such counsel for purposes of evaluating the risks, merits and suitability of an investment in the Company is unnecessary. Neither the Company nor any Manager is making any representations concerning the possible tax consequences of an investment in the Company. NEITHER AN OPINION OF TAX COUNSEL NOR A RULING FROM THE INTERNAL REVENUE SERVICE IS BEING REQUESTED OR PROVIDED TO THE COMPANY OR MEMBERS;

**3.10.7** Such Member has adequate means of providing for its current needs and contingencies, has no need for liquidity in this investment and has no reason to anticipate any change in circumstances, financial or otherwise, which might cause or require a sale of the interests in the Company;

**3.10.8** Such Member is able to bear the economic risks of ownership of the Company investment and can afford a complete loss of such Units;

**3.10.9** It is understood and agreed that all the representations and warranties contained in this Agreement will be relied upon by the Company, the Managers, and their attorneys. All information provided and furnished in this Agreement is correct and complete as of the date hereof;

**3.10.10** The address listed for such Member on **Exhibit A** of this Agreement or in its applicable Subscription or other document pursuant to which Units were acquired, is correct and is its, his or her principal residence address; and

**3.10.11** Such Member hereby agrees to indemnify and hold the Company, the other Members, the Managers and their officers, directors, agents, employees, promoters and attorneys harmless from and against any and all loss, damage and liability, including reasonable attorneys' fees and expenses, due to or arising out of any misrepresentation or any breach of any of the representations and warranties made in this Agreement. The representations and warranties contained herein are intended to and shall survive the delivery of this Agreement.

**3.11 Certificates.** Units in the Company may be certificated or uncertificated as determined by the Managers. Certificates, to the extent issued, shall be signed by any Manager of the Company, which signature may be a facsimile. If a certificate for registered Units is worn out or lost it may be renewed on production of the worn-out certificate or on satisfactory proof of its loss together with such indemnity as may be required by a resolution of the Managers.

**3.12 Confidentiality.** The Members and Managers agree that the Confidentiality provision set forth in this Section 3.12 is more than a mere recital and is a significant and important element of this Agreement and that the Members have elected to include this confidentiality provision in this Agreement for the purpose of providing protection to the Company and its ongoing operations, with each Member agreeing to the following terms and conditions:

**3.12.1** Each Member is entitled to all information under the circumstances and subject to the conditions stated in this Operating Agreement and the Florida Act. The Members agree, however, that the Managers may determine, in their discretion due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, property, and financial condition of the Company shall be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members or assignees or representatives to examine or copy that information.

**3.12.2** More specifically, each Member acknowledges that (1) the current and future intellectual property contributed to the Company by such Member, (2) the current and future other intellectual property of the Company, and (3) the information described in this Section 3.12.2 hereof and the business records, trade secrets, business plans, marketing materials, processes, financial statements, client lists or information, and other proprietary information of the Company, are all confidential in nature, may constitute a trade secret belonging to the Company, and shall constitute "**Confidential Information**". Each Member agrees to hold the Company's Confidential Information in confidence for the Company and not to use, sell, rent, license, distribute, transfer, or disclose to any third party the Company's Confidential Information or its contents, including methods or ideas used in any intellectual property constituting Confidential Information, except to employees or contractors of such Member and only then when disclosure to such employees or contractors is necessary to perform such Member's obligations or exercise such Member's rights under this Operating Agreement or any other agreement by and between the Company and such Member. Such Member shall require all contractors not otherwise subject to confidentiality requirements or restrictions to execute documents containing confidentiality terms at least as restrictive as those contained in this Section 3.12.2 prior to disclosing any Confidential Information to them. Without limiting the foregoing, the receiving party shall use at least the same degree of care it uses to prevent the disclosure of its own confidential information of like importance, which care shall be no less than reasonable care, to prevent the disclosure of Confidential Information. The receiving party shall promptly notify the Company of any actual or suspected misuse or unauthorized disclosure of the Confidential Information. The restrictions set forth in this Section 3.12.2 shall not apply to information which is (i) made publicly available through no fault of the receiving party; (ii) obtained by the receiving party from a third party (other than the Company, a predecessor entity or another Member) without restrictions on disclosure; (iii) independently developed by the receiving party without reference to or use of the Confidential Information (as demonstrated by records of the receiving party), provided that this provision shall not apply to Confidential Information contributed to the Company by a Member; or (iv) required to be disclosed by order of a court of competent jurisdiction or other governmental authority; provided, that the receiving party shall give written notice to the disclosing party prior to such disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

**3.12.3** All files, records, documents, information, data and similar items relating to the business of the Company, whether prepared by any Member or Manager or otherwise coming into its/his/her possession, shall remain the exclusive property of the Company. The Members and Managers further agree that in the event it/he/she no longer maintains an affiliation with the Company by ownership interest, as a representative of an owner, or by officer or manager position, that it/he/she will neither take nor retain, without prior written authorization from the Company, any papers, agreements, cost or pricing information, files, operating manuals, or any other Confidential Information of any kind belonging to the Company pertaining to its business, suppliers, customers, financial condition, personnel records, intellectual property, products, or services.

**3.12.4** Each Member understands that the restrictions set forth in this Section 3.12 restrict or prohibit the disclosure of Confidential Information, but acknowledges that such Member will receive sufficiently high remuneration and other benefits under this Agreement to justify such restriction. Each Member acknowledges that the covenants and restrictions set forth in this Section 3.12 are reasonable, are not vague or indefinite, and are designed to protect the legitimate business interests of the Company, and that in the event of a breach of such covenants and restrictions, the damage to the Company would be difficult to ascertain, and in addition to any other damages payable to the Company for the breach of any or all of said covenants and restrictions, the Company shall be entitled to seek injunctive and/or other equitable relief against the violation of any said covenants or restrictions, together with reasonable attorneys' fees and costs. The Members agree such covenants and restrictions shall be construed as independent of any other covenant or provision of this Operating Agreement. If any provisions of such covenants and restrictions are ever determined by a court of competent jurisdiction to be unreasonable or unenforceable under Applicable Law, such provisions shall be modified to the minimum extent required to make such provisions reasonable and/or enforceable, as the case may be. Any such provisions set forth in Section 3.12.2 hereof which purport to restrict a Member's activities shall be amended to provide that the restrictions shall apply for the maximum products, services, activities, time and geographic scope permitted by Applicable Law.

**3.12.5** THESE CONFIDENTIALITY PROVISIONS SHALL REMAIN IN FULL FORCE AND EFFECT SO LONG AS ANY OF THE MEMBERS RETAIN A MEMBERSHIP OR ECONOMIC INTEREST IN THE COMPANY AND THEREAFTER SO LONG AS THE CONFIDENTIAL INFORMATION IS NOT PUBLICLY KNOWN.

**3.13 Members May Participate in Other Activities.** Each Member of the Company, either individually or with others, shall have the right to participate in other business ventures of every kind, whether or not such other business ventures compete with the Company. No Member, acting in the capacity of a Member, shall be obligated to offer to the Company or to the other Members any opportunity to participate in any such other business venture. Neither the Company nor the other Members shall have any right to any income or profit derived from any such other business venture of a Member or affiliate entity.

**3.14 Members Are Not Agents.** As described herein, the management of the Company is vested in the Managers. The Members shall have no power to participate in the management of the Company except as expressly authorized by the Florida Act, this Agreement or the Articles. No Member, acting solely in the capacity of a Member, is an agent of the Company, nor does any Member, unless expressly and duly authorized in writing to do so by the Managers, have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, to execute any instrument on its behalf or to render it liable for any purpose.

**3.15 Transactions of Members with the Company.** Subject to any limitations set forth in this Agreement and with the prior approval of the Managers, a Member may lend money to and transact other business with the Company. Subject to other Applicable Law, such Member has the same rights and obligations with respect thereto as a Person who is not a Member.

## ARTICLE IV CAPITAL CONTRIBUTIONS; AND LOANS

### 4.1 Initial Contributions.

**4.1.1** Upon execution of this Operating Agreement by each Member, such Member shall have made, or shall contemporaneously make or commit, the contributions to the capital of the Company ("Capital Contributions") described for that Member in Exhibit B, and reflected in the books of account established for the Company.

## 4.2 Subsequent Contributions.

**4.2.1** If the Managers reasonably anticipate or contemplate the need for additional cash investment for any reason, or the need for additional cash for operating expenses, then, in any such event, the Managers (only with a unanimous determination by all Managers) may request in writing (a “**Notice**”) for the Members to purchase and the Company to sell to the Members additional Units in the Company in an aggregate Capital Contribution amount to be determined by the Managers (the “**Subsequent Offered Interests**”), provided, however, that the Managers (which shall not be required to be by unanimous consent of all Managers), without the consent of any of the Members of the Company, may instead seek out bank or third party financing instead of requiring an additional Capital Contribution in the Company or may sell additional Units up to the Issuance Limit. The Members shall have thirty (30) calendar days after the Notice, to acquire the percentage of Subsequent Offered Interests proportionate to such Member’s then existing Sharing Ratio (the “**Capital Contribution Deadline**”). The Issuance Limit shall be automatically increased by amount of Subsequent Offered Interests purchased by the Members pursuant to the terms of this Section 4.2.1 and the Managers shall be authorized, without the required consent or approval of the Members, to amend this Agreement to evidence such increased Issuance Limit as applicable.

**4.2.2** If any Member desires not to purchase the Subsequent Offered Interests it is required to purchase pursuant to Section 4.2.1 above (a “**Non-Purchasing Member**”), it shall notify the other Members (the “**Purchasing Members**”) and all Purchasing Members shall then have the option for ten (10) days to purchase (i) their Pro Rata Portion of the Subsequent Offered Interest and (ii) such additional portion of the Non-Purchasing Member’s Subsequent Offered Interest designated by the Purchasing Members. Any two or more Purchasing Members may agree among themselves to reallocate the portions of the Non-Purchasing Member’s Subsequent Offered Interest to be purchased by them from their respective Pro Rata Portions. In the event none of the Purchasing Members desire to purchase the Non-Purchasing Member’s Subsequent Offered Interest, or any portion thereof, the Non-Purchasing Member is required to purchase the Subsequent Offered Interest applicable to it (or such remaining portion not purchased by the Purchasing Members) pursuant to and as set forth in Section 4.2.1 above.

**4.2.3** A Member may not make a subsequent contribution of capital to the Company except upon the consent of the Managers. Any additional contribution to the Company made by a Member without obtaining the consent of the Managers constitutes a loan from such Member to the Company and shall not be considered a capital contribution. Such loan shall have such terms and conditions as set forth in Section 4.6 of this Agreement.

## 4.3 Failure to Contribute.

**4.3.1** If a Member does not timely contribute all or any portion of a Capital Contribution (including Subsequent Offered Interests, except in connection with a Subsequent Offered Interest purchased by Purchasing Members pursuant to Section 4.2.2, above, where such contribution is duly made by another Member) that such Member is required to make as provided in this Operating Agreement, the Managers may cause the Company to exercise, on notice to that Member (the “**Delinquent Member**”), one or more of the following remedies:

(i) taking such action (including court proceedings), at the cost and expense of the Delinquent Member, as the Managers may deem appropriate to obtain payment by the Delinquent Member of the portion of the Delinquent Member’s Capital Contribution that is in default, together with interest thereon from the date that the Capital Contribution was due until the date that it is made, at a rate per annum equal to the lesser of (A) the maximum rate permitted by applicable law and (B) 18% per annum;

(ii) equitably adjusting the Units and Sharing Ratio of the Delinquent Member to reflect such failure to contribute;

(iii) exercising the rights of a secured party under the Uniform Commercial Code of the State of Florida; or

(iv) exercising any other rights and remedies available at law or in equity.

**4.3.2** All distributions paid (or payable) by the Company to the Delinquent Member shall, until such time as the amount of any deficiency payable pursuant to Sections 4.2 above (including where applicable interest thereon), have been satisfied in full, be retained by the Company and offset amounts due.

**4.4 Return of Contributions.** A Member is not entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its capital account or its Capital Contributions. An un-repaid Capital Contribution is not a liability of the Company or of any Member. A Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any Member's Capital Contributions.

**4.5 Advances by Members.** If the Company does not have sufficient cash to pay its obligations, any Member(s) that may agree to do so with the consent of the Managers may advance all or part of the needed funds to or on behalf of the Company. An advance described in this Section 4.5 constitutes a loan from the Member to the Company (subject to Section 4.6) and is not a Capital Contribution. Notwithstanding the foregoing, any advance made pursuant to that certain Subsidiary Formation and Funding Agreement between NextPlay, the Company and the other parties thereto, as may be amended from time to time, shall be a 0% per annum interest loan, which shall be forgiven automatically upon the completion of a Spin-Off (defined below), unless otherwise approved by the Managers.

**4.6 Loans by Members.** If any Member shall loan or cause to be loaned to the Company any funds (for the purposes of this Section 4.6, the "**Lending Member**"), which loan(s) shall only be made with the approval of the Managers, such loans shall be evidenced by promissory notes of the Company which shall accrue interest and have such other terms as are determined and agreed to by the Managers at their reasonable discretion. Notwithstanding the foregoing, any advance made pursuant to that certain Subsidiary Formation and Funding Agreement between NextPlay, the Company and the other parties thereto, as may be amended from time to time, shall be a 0% per annum interest loan, which shall be forgiven automatically upon the completion of a Spin-Off (defined below), unless otherwise approved by the Managers.

## **ARTICLE V RIGHTS OF THE PREFERRED UNITS**

**5.1 Interpretation.** The following definitions apply to the Preferred Units:

**5.1.1 "Applicable Securities Laws"** means all applicable securities laws in the United States and all other jurisdictions relevant to the issuance or transfer of securities of the Company, including the rules and policies of the Nasdaq Stock Market and any other applicable stock exchange or trading platform on which any of shares of the Company are then listed.

**5.1.2 "Common Units"** means the Common Units of the Company.

**5.1.3 "Conversion Date"** means the date on which the documentation set out in Section 5.7.6(i) is received by the Company.

**5.1.4 "Conversion Rate"** means the amount determined in accordance with Section 5.7.3.

**5.1.5 "Fair Market Value"** means, in respect of assets other than securities, their fair market value as determined in good faith by the Managers, and in respect of securities:

(i) if such securities are not subject to any statutory hold periods or contractual restrictions on transfer:

(A) if traded on one or more securities exchanges or markets, the weighted average of the closing prices of such securities on the exchange or market on which the securities are primarily traded over the 30-day period ending three days prior to the relevant date;

(B) if actively traded over-the-counter, the weighted average of the closing bid or sale prices (whichever are applicable) over the 30-day period ending three days prior to the relevant date; or

(C) if there is no active public market, the fair market value of such securities as determined in good faith by the Managers, but no discount or premium is to be applied to their valuation on the basis of the securities constituting a minority block or a majority block of securities; or

(ii) if such securities are subject to statutory hold periods or contractual restrictions on transfer, or both, the fair market value of such securities as determined by applying an appropriate discount, as determined in good faith by the Managers,

but if the Preferred Majority Holders object to any determination by the Managers and notify the Managers of such objection within ten days of receiving notice of such determination, the Company and the Preferred Majority Holders will, within ten days following such ten-day period, jointly appoint a valuator that is a US-based nationally recognized independent investment banking firm or business valuation firm to determine the fair market value. If the Company and the Preferred Majority Holders cannot agree on the valuator within such time period, then the Company and the Preferred Majority Holders will, within the next ten days, jointly select an arbitrator to appoint such valuator, failing which an arbitrator may be appointed in accordance with the Arbitration rules of AAA, and such arbitrator will select the valuator who will determine the fair market value. The determination of the valuator of the fair market value is final and binding on the Preferred Holders and the Company, absent manifest error.

**5.1.6 “Initial Preferred Holder”** shall mean NextPlay Technologies, Inc. or its successors.

**5.1.7 “Initial Price”** means the price at which shares of the Company converts into a newly publicly traded company, which shall initial be set at \$10.00 per Unit based on based on a Fair Market Value of the Preferred Units outstanding of four million dollars (\$4,000,000), provided, however, that, in the event that the conversion price in such newly publicly traded company is not \$10.00 per Unit, then the Initial Price shall adjust to such applicable conversion price.

**5.1.8** and such price per share equal to the price at which such shares of the Company convert in

**5.1.9** a price per share equal to four million dollars (\$4,000,000) divided by the number of Preferred Units outstanding.

**5.1.10 “Liquidation Event”** means, in a single transaction or series of transactions:

(i) the liquidation or dissolution of the Company or other distribution of the assets of the Company among its shareholders for the purpose of winding up its affairs, whether voluntary or involuntary;

(ii) any arrangement, reorganization, consolidation, amalgamation, merger, sale of shares, business combination or similar transaction in which the Company is a constituent corporation or is a party if, as a result of such transaction, the voting securities of the Company that are outstanding immediately prior to completion of such transaction do not represent, or are not converted into, securities of the resulting or surviving corporation that together represent a majority of the voting power of the resulting or surviving corporation in such a transaction;

(iii) a sale, lease or transfer of all or substantially all of the assets of the Company; or

(iv) a grant of an exclusive, irrevocable license of all or substantially all of the Company's intellectual property to a third party; provided that:

(A) the treatment of any transaction or series of transactions as a Liquidation Event may be waived by the consent or vote of the Preferred Majority Holders.

**5.1.11 "Preferred Holders"** means the holders of the Preferred Units.

**5.1.12 "Preferred Majority Holders"** means, as of the relevant time of reference, one or more Preferred Holders of record who hold collectively a majority of the outstanding Preferred Units.

**5.1.13 "Qualified Listing"** means the listing for trading on a U.S. national securities exchange (such as the New York Stock Exchange or the Nasdaq Stock Market) or are listed or quoted on such other exchange or market approved by mutual consent of the Company and the Preferred Majority Holders.

**5.1.14 "Right of First Refusal and Distribution Agreement"** means the Right of First Refusal and Distribution Agreement between the Company and the Initial Preferred Holder dated January 25, 2023.

**5.1.15 "Unit Reorganization"** means:

- (i) the issuance of Common Units as a dividend or other distribution on outstanding Common Units;
- (ii) the subdivision of Common Units into a greater number of such Common Units; or
- (iii) the consolidation of Common Units into a smaller number of such Common Units.

Other terms defined elsewhere in this ARTICLE V shall have the meanings so ascribed thereto.

For purposes of these Preferred Unit provisions, where an action is to be taken by the Preferred Majority Holders, in addition to the requirements of applicable law, if any, such action may be taken if the Preferred Majority Holders, as applicable: (i) agree in writing; or (ii) pass a resolution to such effect at a duly constituted meeting of the Preferred Holders.

**5.2 Common Units.** The rights of the Common Units are not governed by the terms set forth in this ARTICLE V, except insofar as they are superseded by the rights of the Preferred Units described herein.

**5.3 Ranking.** The Preferred Units shall rank senior to the Common Units, with respect to dividends, distributions and return of capital in the event of a Liquidation Event.

**5.4 Voting Rights.** The Preferred Units are non-voting and no holder of Preferred Units, unless otherwise provided by law, is entitled to receive notice of and to attend meetings of Members of the Company.

**5.5 Dividends, Entitlement to, and Priority of, Dividends.** No dividend or other distribution will be paid, declared or set apart for payment in respect of any Common Units or Units of any other class ranking junior to the Preferred Units in respect of dividends unless a dividend or distribution is paid or declared and set apart for payment in respect of each outstanding Preferred Unit in an amount at least equal to the product of:

**5.5.1** the amount of dividends or distributions paid, declared or set apart for each Unit of such other class (calculated on an as-converted to Common Units basis); and

**5.5.2** the number of Common Units into which each Preferred Unit is then convertible.

## **5.6 Liquidation Preference.**

**5.6.1 Payment on Liquidation Event.** Upon the occurrence of a Liquidation Event, the holders of Preferred Units are entitled, in preference to the rights of holders of the Common Units or any Units of any other class ranking junior to the Preferred Units, but subject to the rights of holders of any class of Units ranking senior to the Preferred Units, to be paid out of the assets of the Company available for distribution to holders of the Units (which, in the case of a merger, amalgamation or arrangement, consists of the assets distributed to holders of the Units in exchange for their Units, or the assets into which such Units are converted), for Preferred Unit, an amount equal to the Initial Price, plus any declared but unpaid dividends on such Preferred Units.

**5.6.2 Insufficient Assets.** If all of the assets of the Company are insufficient to permit the payment in full to the Preferred Holders of all amounts to be distributed to them, then the assets of the Company available for such distribution are to be distributed rateably among the Preferred Holders, *pari passu*, in proportion to the full preferential amount each such Preferred Holder is otherwise entitled to receive in accordance with Section 5.6.1.

**5.6.3 Remaining Assets.** After the payments referred to in Section 5.6.1 have been made in full to the Preferred Holders, or funds necessary for such payment have been set aside by the Company in trust for the exclusive benefit of such Preferred Holders so as to be available for such payment, any assets remaining available for distribution are to be distributed, subject to the rights, if any, of holders of any other class of Units to receive a portion of such remaining assets, rateably among the holders of Common Units and the Preferred Holders do not Unit in the distribution of those remaining assets.

**5.6.4 No Preference Following Conversion.** After conversion of any Preferred Units into Common Units, the holder of such Units participates rateably in any distribution of the assets of the Company among the holders of Common Units.

**5.6.5 Distribution Other than Cash.** If a Liquidation Event occurs, and assets other than cash are available for satisfaction of the payments to which the Preferred Holders are entitled upon such Liquidation Event, the value of such assets for this purpose is their Fair Market Value.

**5.6.6 Notice.** At least 30 days before the proposed date of a Liquidation Event (or such shorter period as determined by the Preferred Holders), the Company will deliver to the Preferred Holders written notice of the proposed Liquidation Event stating an estimated payment date, an estimate of the amount to which the Preferred Holders are entitled and the place where such payments are payable.

**5.6.7 Escrowed Amounts on Liquidation Event.** Upon a Liquidation Event referred to in Sections 5.1.5(i)(A) or (B), if any portion of the consideration payable to the Unitholders of the Company is placed into escrow or is payable to the Unitholders of the Company subject to contingencies, the agreement effecting such Liquidation Event must provide that:

(i) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the “**Initial Consideration**”) is to be allocated among the holders of Units of the Company in accordance with Sections 5.6.1, 5.6.2 and 5.6.3 as if the Initial Consideration were the only consideration payable in connection with such Liquidation Event; and

(ii) any additional consideration that becomes payable to the Unitholders of the Company upon release from escrow or satisfaction of contingencies is to be allocated among the holders of Units of the Company in accordance with Sections 5.6.1, 5.6.2 and 5.6.3 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

## **5.7 Conversion Rights; Mandatory Distribution.**

**5.7.1 Optional Conversion.** The Preferred Units are convertible into Common Units, in whole or in part, at any time and from time to time, upon:

(i) the mutual consent of such Preferred Holder and the Company; or

(ii) if, after 12 months from the initial date of issuance of the Preferred Units, the Initial Preferred Holder is required to convert any Preferred Units in order to be compliant under the US Investment Company Act of 1940.

**5.7.2 Automatic Conversion.** The Preferred Units automatically convert into Common Units upon:

(i) the completion of a Qualified Listing; or

(ii) the date that is forty-eight (48) months from the last issuance date of the Preferred Units, provided, however, that the Preferred Holders shall have option to require the Company to redeem, in accordance with Section 5.8, any remaining Preferred Units immediately prior to such automatic conversion.

**5.7.3 Conversion Rate.** The number of Common Units into which each Preferred Unit is convertible is equal to one (1) Common Unit for each Preferred Unit so converted; provided, however, that the Conversion Rate shall be subject to adjustment as set forth in Sections 5.1.7 and 5.8.

**5.7.4 Time of Conversion.** Conversion is deemed to be effected:

(i) in the case of an optional conversion, immediately prior to the close of business on the Conversion Date;

(ii) in the case of automatic conversion pursuant to Section 5.7.2(i), immediately prior to the closing of the Qualified Listing; and

(iii) in the case of automatic conversion pursuant to Section 5.7.2(ii), immediately following the date that is forty-eight (48) months from the last issuance date of the Preferred Units.

**5.7.5 Effect of Conversion.** Upon the conversion of the Preferred Units:

(i) the rights of a Preferred Holder as a holder of the converted Preferred Units cease; and

(ii) each person in whose name any certificate for Common Units is issuable upon such conversion is deemed to have become the holder of record of such Common Units.

**5.7.6 Mechanics of Optional Conversion.**

(i) To exercise optional conversion rights under Section 5.7.1, a Preferred Holder must:

(A) obtain the consent of the Company should the Preferred Holder be converting any Preferred Units pursuant to Section 5.7.1(i);

(B) give written notice to the Company at its principal office or the office of any transfer agent for the Common Units:

(1) stating that the Preferred Holder elects to convert such Units; and

(2) providing the name or names (with address or addresses) in which the certificate or certificates for Common Units issuable upon such conversion are to be issued;

(C) surrender the certificate or certificates representing the Units being converted to the Company at its principal office or the office of any transfer agent for the Common Units; and

(D) where the Common Units are to be registered in the name of a person other than the Preferred Holder, provide evidence to the Company of proper assignment and transfer of the surrendered certificates to the Company, including evidence of compliance with Applicable Securities Laws.

(ii) Within ten days after the Conversion Date, the Company will issue and deliver to the Preferred Holder or where the Common Units are to be registered in the name of a person other than the Preferred Holder, to such person, a certificate or certificates in such denominations as the Preferred Holder requested for the number of full Common Units issuable upon the conversion of such Preferred Units, together with cash in respect of any fractional Common Units issuable upon such conversion.

(iii) If some but not all of the Preferred Units represented by a certificate or certificates surrendered by a Preferred Holder are converted, the Company will execute and deliver to or on the order of the Preferred Holder, at the expense of the Company, a new certificate representing the number of Preferred Units that were not converted.

#### **5.7.7 Mechanics of Automatic Conversion.**

(i) Upon the automatic conversion of any Preferred Units into Common Units, each Preferred Holder must surrender the certificate or certificates formerly representing that Preferred Holder's Preferred Units at the principal office of the Company or the office of any transfer agent for the Common Units.

(ii) Upon receipt by the Company of the certificate or certificates, the Company will issue and deliver to such Preferred Holder, promptly at the office and in the name shown on the surrendered certificate or certificates, a certificate or certificates for the number of Common Units into which such Preferred Units are converted, together with cash in respect of any fractional Common Units issuable upon such conversion.

(iii) The Company is not required to issue certificates evidencing the Common Units issuable upon conversion until certificates formerly evidencing the converted Preferred Units are either delivered to the Company or its transfer agent, or the Preferred Holder notifies the Company or such transfer agent that such certificates have been lost, stolen or destroyed, and executes and delivers an agreement to indemnify the Company from any loss incurred by the Company in connection with the loss, theft or destruction.

**5.7.8 Fractional Units.** No fractional Common Units will be issued upon conversion of Preferred Units. Instead of any fractional Common Units that would otherwise be issuable upon conversion of Preferred Units, the Company will pay to the Preferred Holder a cash adjustment in respect of such fraction in an amount equal to the same fraction of the market price per Common Unit (as determined in a manner reasonably prescribed by the Managers) at the time of conversion.

**5.7.9 Mandatory Distribution upon Conversion.** Subject to Section 5.10.2, upon either an optional or automatic conversion by the Preferred Holder, the Common Units issuable upon conversion of the Preferred Units shall be distributed to the stockholders of the Preferred Holder in accordance with Section 2.2 of the Right of First Refusal and Distribution Agreement within one hundred and eighty (180) days of such triggering event.

## **5.8 Adjustments.**

**5.8.1 Adjustments for Unit Reorganization.** The Conversion Rate shall be adjusted upon a Unit Reorganization, automatically and simultaneously with the Unit Reorganization, such that the Conversion Rate is equal to the product obtained by multiplying the Conversion Rate immediately before the Unit Reorganization by a fraction:

- (i) the numerator of which is the number of Common Units outstanding immediately before the Stock Split; and
- (ii) the denominator of which is the number of Common Units outstanding immediately after the Stock Split.

**5.8.2 Adjustments for Capital Reorganizations.** If, following the issuance of any Preferred Units, the Common Units are changed into the same or a different number of Units of any class of Units, whether by capital reorganization, reclassification or otherwise (other than in connection with a Liquidation Event), the Company will provide each Preferred Holder with the right to convert each Preferred Unit into the kind and amount of Units, other securities and property receivable upon such change that a holder of a number of Common Units equal to the number of Common Units into which such Preferred Unit was convertible immediately prior to the change is entitled to receive upon such change.

### **5.8.3 Adjustments for Dividends and Other Distributions.**

(i) If the Company at any time or from time to time after the issuance of any Preferred Units declares or pays, without consideration, any dividend on the Common Units payable in Common Units or in other securities of the Company for no consideration, then the Conversion Rate in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased. If the Company declares or pays, without consideration, any dividend on the Common Units payable in any securities of the Company that is convertible into Common Units for no consideration then the Company shall be deemed to have made a dividend payable in Common Units in an amount of Units equal to the maximum number of Units issuable upon exercise, conversion or exchange of such securities.

(ii) If the Company declares a distribution payable in securities of other persons, in evidence of indebtedness issued by the Company or other persons, or in assets (excluding cash dividends) or options or rights not referred to in Section 5.8.3(i), then, in each such case for the purpose of this Section 5.8.3(ii), the Preferred Holders shall be entitled to a proportionate Unit of any such distribution as though they were the holders of the number of Common Units into which their Preferred Units are convertible as of the record date fixed for the determination of Common Units entitled to receive such distribution.

**5.8.4 No Impairment.** The Company will not, by amendment of its Operating Agreement or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Section 5.8, but will at all times in good faith assist in the carrying out of all the provisions of Section 5.7 and this Section 5.8 and in the taking of any action necessary or appropriate in order to protect the conversion rights of the Preferred Holders against impairment.

**5.8.5 Certificate as to Adjustments.** In each case of an adjustment or readjustment of the Conversion Rate, the Company will promptly furnish each Preferred Holder in such class with a certificate showing such adjustment or re-adjustment, and stating in reasonable detail the facts upon which such adjustment or readjustment is based.

**5.8.6 Further Adjustment Provisions.** If, at any time as a result of an adjustment made pursuant to this ARTICLE V, a Preferred Holder becomes entitled to receive any Units or other securities of the Company other than Common Units upon surrendering Preferred Units for conversion, the Conversion Rate in respect of such other Units or securities will be adjusted after that time, and will be subject to further adjustment from time to time, in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Units contained in this ARTICLE V, and the remaining provisions of these Preferred Unit provisions apply on the same or similar terms to any such other Units or securities.

**5.8.7 Reservation of Common Units.** The Company shall at all times reserve and keep available out of its authorized but unissued Common Units, solely for the purpose of effecting the conversion of the Preferred Units, such number of its Common Units as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Units. If at any time the number of authorized but unissued Common Units is not sufficient to effect the conversion of all then outstanding Preferred Units, the Company shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued Common Units to such number of Units as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite Member approval of any necessary amendment to this Operating Agreement and seeking the consent of the Managers.

## **5.9 Redemption.**

**5.9.1** Upon the mutual consent of a Preferred Holder and the Company, the Company may redeem some or all of the outstanding Preferred Units in accordance with Section 5.9.3.

**5.9.2** At any time after the date of the Qualified Listing, the Company may redeem up to 50% of the Preferred Units held by a Preferred Holder in accordance with Section 5.9.3.

**5.9.3** The price per Unit at which the Preferred Units shall be redeemed (the “**Redemption Price**”) shall be the Initial Price. Promptly (and in any event no greater than 30 days) following the date a Preferred Holder and the Company determine to redeem a number of Preferred Units held by said Preferred Holder, the Company shall deliver to each holder of Preferred Units a written notice setting out: (a) that the Company has determined to redeem a certain number of Preferred Units held by said Preferred Holder; (b) the Redemption Price, (c) the date (the “**Payment Date**”) on which the redemption is scheduled to occur; and (d) the place at which payment may be obtained by surrendering to the Company, in the manner and at the place designated, such holder’s certificate or certificates representing the Preferred Units to be redeemed from such holder. From and after the Payment Date, unless there shall have been a default in payment of the Redemption Price (other than for failure by a Preferred Holder to transfer the Unit certificate or certificates in respect of its Preferred Units free and clear of encumbrances), all rights of each Preferred Holder, except the right to receive the Redemption Price without interest upon surrender of such Preferred Holder’s certificate or certificates, shall cease with respect to such Preferred Units, and such Preferred Units shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever.

## **5.10 Restrictions on Transfer of Preferred Units by Initial Preferred Holder.**

**5.10.1** The Initial Preferred Holder shall not sell, assign, pledge, or in any manner transfer any of the Preferred Units or any right or interest therein, whether voluntarily or by operation of law, or by gift or otherwise, except by a transfer which meets the following requirements:

(i) In compliance with Applicable Securities Laws;

(ii) In compliance with the terms of Section 2.1 of the Right of First Refusal and Distribution Agreement; and

(iii) Upon the written consent of the Company (in the event Company does not exercise its right of first refusal); provided, however, that if, after 12 months from the initial date of issuance of the Preferred Units, the Initial Preferred Holder is required to transfer any Preferred Units in order to be compliant under the US Investment Company Act of 1940, then, (i) a transfer in which such transferee and affiliates shall beneficially own or control, directly or indirectly 10% or less of the outstanding Common Units of Company shall not require written consent of the Company, or (ii) a transfer in which such transferee and affiliates shall beneficially own or control, directly or indirectly more than 10% of the outstanding Common Units of Company shall still require written consent of the Company.

**5.10.2** The Initial Preferred Holder will not enter into a transaction in which a Person acquires control of the Initial Preferred Holder unless (a) the Person acquiring control has its equity securities listed or quoted on the New York Stock Exchange, NYSE Amex (formerly known as the American Stock Exchange), Nasdaq Global Select Market, Nasdaq Global Market, Nasdaq Capital Market, OTCQX, OTCQB, or listed or quoted on such other exchange or market approved by the Company (an “**Eligible Market**”) and the Person agrees to either (i) enter into an agreement with Initial Preferred Holder on terms substantially the same as the Right of First Refusal and Distribution Agreement in which it agrees to distribute the Common Units issued upon conversion of the Preferred Units to such Person’s equity-holders, or (ii) agrees to be bound as a successor to the Initial Preferred Holder’s obligations under the Right of First Refusal and Distribution Agreement, and (b) if the Person does not have its equity securities listed or quoted on an Eligible Market, then, as a condition precedent to the completion of the change of control transaction, either (i) the Initial Preferred Holder shall distribute the Common Units issued upon conversion to its stockholders as contemplated in the Right of First Refusal and Distribution Agreement, or (ii) the Person acquiring control cannot convert the Preferred Units without the written consent of the Company if the Person acquiring control or a stockholder thereof will beneficially own or control, directly or indirectly, more than 10% of the then outstanding Common Units at the time of conversion and distribution.

## **ARTICLE VI**

### **CAPITAL ACCOUNTS, ALLOCATIONS AND DISTRIBUTIONS**

**6.1 Capital Accounts.** The Company shall establish and maintain on its books and records for each Member a capital account (individually a “**Capital Account**” and collectively the “**Capital Accounts**”), which shall be credited with the cash or the fair market value of other property contributed to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), shall be credited or debited, as the case may be, with such Member’s share of the Company’s profit or loss under Section 6.2 hereof, the Code and the Income Tax Regulations, and shall be debited with the amount of cash and the fair market value of Company property distributed to such Member by the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code). Property which is to be distributed to any Member, in kind, shall be valued to determine the gain or loss which would have resulted if such property were sold, and the Capital Accounts of the Members shall be adjusted to reflect the gain or loss which would have been allocated if such property had been sold at the assigned values. In addition, the Capital Accounts shall be adjusted as necessary to comply with the maintenance of capital account provisions set forth in Income Tax Regulation § 1.704-1(b)(2)(iv). In the event any interest in the Company is transferred, the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the transferred interest. Allocations to the Members’ Capital Accounts shall be made on an annual basis, at the end of each calendar year, unless otherwise required by law or deemed advisable by the Managers, to the extent the Managers determine that cash is available for Distributions and subject to Section 6.3 hereof (and a period for which such allocations are made is referred to herein as an “**accounting period**”).

#### **6.2 Allocations.**

**6.2.1 Allocation of Profits and Losses.** Subject to Section 6.2.2, after all capital contributions and distributions for each accounting period have been reflected in the Members’ Capital Accounts, the net profit or net loss, if any, for each accounting period shall be credited to such Member’s Capital Account in such manner that as of the end of such accounting period, each Member’s Capital Account shall be equal to the respective net amounts, positive or negative, which would be distributed to them or for which they would be liable based on each Member’s Sharing Ratio. For purposes of calculating a Member’s Capital Account under this Section 6.2.1, any amounts such Member is obligated to restore (or deemed obligated to restore pursuant to the Income Tax Regulations under Section 704(b) of the Code) shall be deemed to increase such Member’s Capital Account balance.

**6.2.2 Regulatory and Special Allocations.** Notwithstanding the allocations set forth in Section 6.2.1, the Company's net profit, net loss and items thereof shall be allocated to the Members in the manner and to the extent required by the Income Tax Regulations, including, but not limited to under Section 704 of the Code, the provisions thereof dealing with minimum gain chargebacks, partner minimum gain chargebacks, qualified income offsets, partnership nonrecourse deductions, partner nonrecourse deductions, and the provisions dealing with deficit Capital Accounts in accordance with Sections 1.704-2(g)(1), 1.704-2(i)(4), 1.704-2(i)(5), 1.704-2(j)(2)(ii) and 1.704-1(b)(2)(ii)(d).

**6.2.3 Tax Allocations.** The income, gains, losses, deductions and expenses of the Company shall be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses, deductions and expenses among the Members for computing their Capital Accounts, except that if any such allocation is not permitted by the Code or other Applicable Law, the Company's subsequent income, gains, losses, deductions and expenses shall be allocated among the Members for tax purposes to the extent permitted by the Code and other applicable law, so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts. Notwithstanding the previous sentence, such tax items shall be allocated among the Members in a different manner to the extent required by Code Section 704(c) and the Income Tax Regulations thereunder (dealing with contributed property), Income Tax Regulations Sections 1.704-1(b)(2)(1) (dealing with property having a book value different than its tax basis), and 1.704-1(b)(4)(ii) (dealing with tax credit items). Allocations pursuant to this Section 6.2 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of profits, losses, other items or distributions pursuant to any provisions of this Agreement.

### **6.3 Distributions.**

**6.3.1** Subject to the Liquidation Preference of the Preferred Units set forth in ARTICLE V, the Company will distribute Net Cash Flow to the Common Units Members as set forth in this Section 6.3 ("**Distributions**"). The amount distributed, as set forth in this Section 6.3, shall be distributed to each of the Members based on their respective Pro Rata Portions (the "**Distribution Schedule**"). Distributions shall be made at such times as the Managers shall determine; unless restricted by the terms of any loan agreement, indenture, or other agreement to which the Company is or becomes a party, or the terms of this Agreement, and/or unless the Managers determine that such Net Cash Flow should instead be used for Reserves, expansion activities, business expenses or other purposes. The Company shall not be required to distribute Net Cash Flow unless approved by the Managers. The Managers will evaluate Distributions on a quarterly (calendar quarter) basis.

**6.3.2** The Managers shall have the right to set aside from Net Cash Flow such Reserves as they in their reasonable discretion determine to be prudent for the operation of the Company's business. No Distribution shall be made to a Member to the extent it would cause such Member to have a deficit Capital Account.

**6.3.3** Without limiting the generality of Section 6.3.1, if and to the extent that the Company is earning income which will result in the Members being subject to income tax on their distributive share of the Company's income, and the Managers determine that cash is available for Distributions, minimum distributions shall be made to the Members in such amounts and at such times (but in no event later than March 31st each year) as shall be sufficient to enable the Members to meet United States income tax liability arising or incurred as a result of their participation in the Company. For the purposes of such distributions, it shall be assumed that the Members are taxable at combined U.S. federal individual, state and local rates of thirty-five percent (35%). Any such distribution shall be made on a nondiscriminatory basis to all Members pro rata in accordance with their respective Sharing Ratios. It is specifically recognized that in making a thirty-five percent (35%) assumption regarding tax distributions, some Members may receive a distribution that is in excess of their actual tax liabilities, and some Members may receive a distribution that is less.

**6.3.4 Distributions on Dissolution and Termination.** Upon dissolution of the Company, the assets of the Company will be distributed as described below:

- (i) First, to pay the creditors of the Company, including the Managers, a Member, or a third party who has loaned or advanced money to the Company or has deferred any reimbursements or fees;
- (ii) Second, to establish Reserves against anticipated or unanticipated Company liabilities;
- (iii) Third, to the Preferred Units Members in compliance with ARTICLE V; and
- (iv) Fourth, to the Common Units Members pursuant to the Distribution Schedule.

**6.4 Financial Adjustments.** Except as otherwise provided in this Agreement, no Member admitted after the date of this Agreement shall be entitled to any retroactive allocation of Net Cash Flow of the Company. Managers may, at the discretion of the Managers, at the time an additional Member is admitted, close the books and records of the Company (as though the fiscal year had ended) or make pro-rata allocations of Net Cash Flow to such additional Member for that portion of the fiscal year in which such Member was admitted, in accordance with the Code.

**6.5 Withholding.** Notwithstanding anything to the contrary contained in this Agreement, the Managers, in their sole discretion, may withhold from any Distribution to any Member contemplated by this Agreement any amounts due from such Member to the Company, or any other Member in connection with the business of the Company to the extent not otherwise paid. If any provision of the Code, the IRS Regulations, or state or local law or regulations requires the Company to withhold any tax with respect to a Member's distributive share of Company income, gain, loss, deduction, or credit, the Company will withhold the required amount and pay the same over to the taxing authorities as required by such provision. The amount withheld will be deducted from the amount that would otherwise be distributed to that Member, but will be treated as though it had been distributed to the Member with respect to which the Company is required to withhold. If at any time the amount required to be withheld by the Company exceeds the amount of money that would otherwise be distributed to the Member with respect to which the withholding requirement applies, then that Member will make a Capital Contribution to the Company equal to the excess of the amount required to be withheld over the amount, if any, of money that would otherwise be distributed to that Member and that is available to be applied against the withholding requirement. Each of the Members represents that each such Member is not aware of any provision of the Code, the IRS Regulations, or state or local law or regulations that currently require withholding of any tax by the Company with respect to such Member.

#### **6.6 Other Items.**

**6.6.1 General.** Except as otherwise provided in the Distribution Schedule or in ARTICLE V with respect to the Preferred Units' Liquidation Preference, all items of Company income, gain, loss, deduction, and other allocations not otherwise provided for will be divided among the Members in proportion to their Sharing Ratios for the period during which such items were allocated.

**6.6.2 Depreciation Recapture.** Subject to the provisions of Section 704(c) of the Code and this Agreement, gain recognized (or deemed recognized under the provisions hereof) upon the sale or other disposition of Company property, which is subject to depreciation recapture, shall be allocated to the Member who was entitled to deduct such depreciation.

**6.6.3 Loans.** If and to the extent any Member is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, any corresponding resulting deduction of the Company shall be allocated to the Member who is charged with the income. Subject to the provisions of Section 704(c) of the Code and this Agreement, if and to the extent the Company is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, such income shall be allocated to the Member who is entitled to any corresponding resulting deduction.

**6.6.4 Tax Credits.** Tax credits shall generally be allocated according to Section 1.704-1(b)(4)(ii) of the Income Tax Regulations or as otherwise provided by law. Investment tax credits with respect to any property shall be allocated to the Members pursuant to their Pro Rata Portion in accordance with the manner in which Company profits are allocated to the Members pursuant to the Distribution Schedule, as of the time such property is placed in service. Recapture of any investment tax credit required by Section 47 of the Code shall be allocated to the Members in the same proportion in which such investment tax credit was allocated.

**6.6.5 Change of Pro Rata Interests.** Except as provided herein or as otherwise required by law, if the proportionate interests of the Members in the Company are changed during any taxable year, all items to be allocated to the Members for such entire taxable year shall be prorated on the basis of the portion of such taxable year which precedes each such change and the portion of such taxable year on and after each such change according to the number of days in each such portion, and the items so allocated for each such portion shall be allocated to the Members in the manner in which such items are allocated as provided in the Distribution Schedule during each such portion of the taxable year in question.

**6.7 Curative Allocations.** In the event that the Tax Matters Member determines, after consultation with counsel experienced in income tax matters, that the allocation of any item of Company income, gain, loss or deduction is not specified in this ARTICLE VI (an “Unallocated Item”), or that the allocation of any item of Company income, gain, loss or deduction hereunder is clearly inconsistent with the Members’ economic interests in the Company (determined by reference to the general principles of Income Tax Regulations Section 1.704-1(b) and the factors set forth in Income Tax Regulations Section 1.704-1(b)(3) (ii)) (a “Misallocated Item”), then the Managers may allocate such Unallocated Items, or reallocate such Misallocated Items, to reflect such economic interests; provided, that no such allocation will be made without the prior consent of each Member that would be adversely and disproportionately affected thereby; and provided, further, that no such allocation shall have any material effect on the amounts distributable to any Member, including the amounts to be distributed upon the complete liquidation of the Company.

**6.8 Accounting Method.** The Managers shall have authority in their sole discretion to choose the method of the Company’s accounting, whether cash or accrual.

**6.9 Restriction on Distributions.**

**6.9.1** No distribution shall be made if such distribution is not allowed under the Florida Act or, if after giving effect to the distribution:

(i) The Company would not be able to pay its debts as they become due in the usual course of business; or

(ii) The Company’s total assets would be less than the sum of its total liabilities plus, unless this Agreement provides otherwise, the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members, if any, upon dissolution that are superior to the rights of the Member receiving the distribution.

**6.9.2** The Managers may base a determination that a distribution is not prohibited on any of the following:

(i) financial statements prepared on the basis of generally accepted accounting principles;

(ii) A fair valuation; or

(iii) Any other method that is reasonable in the circumstances.

**6.9.3** The effect of a distribution is to be measured as of the date the distribution is authorized if the payment is to occur within one hundred twenty (120) days after the date of authorization, or the date payment is made if it is to occur more than one hundred twenty (120) days after the date of authorization.

**6.10 Return of Distributions.** Members and Assignees who receive distributions made in violation of the Florida Act or this Agreement shall return such distributions to the Company. Except for those distributions made in violation of the Florida Act or this Agreement, no Member or Assignee shall be obligated to return any distribution to the Company or pay the amount of any distribution for the account of the Company or to any creditor of the Company. The amount of any distribution returned to the Company by a Member or Assignee or paid by a Member or Assignee for the account of the Company or to a creditor of the Company shall be added to the account or accounts from which it was subtracted when it was distributed to the Member or Assignee.

## **ARTICLE VII MANAGEMENT**

### **7.1 Management by Managers.**

**7.1.1** Subject to the provisions of Section 7.2 and the rights of the Preferred Units in ARTICLE V, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Managers. No Member in his, her or its capacity as a Member has the right, power, or authority to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditures on behalf of the Company.

**7.1.2** In managing the business and affairs of the Company and exercising its powers, the Managers shall act (i) collectively through resolutions adopted at meetings and in written consents pursuant to Section 8.3.4; and (ii) through committees and individual Managers to which authorities and duties have been delegated pursuant to Section 7.6. No Manager has the right, power, or authority to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditures on behalf of the Company, except in accordance with the immediately preceding sentence. Decisions or actions taken by the Managers in accordance with this Operating Agreement (including this Section 7.1, Section 7.2, Section 7.7 and Section 7.8) shall constitute decisions or actions by the Company and shall be binding on each Manager, Member, Officer (as defined in Section 7.12), and employee of the Company.

**7.2 Decisions Requiring Member Consent.** Notwithstanding any power or authority granted the Managers under the Florida Act, the Articles or this Operating Agreement, the Managers may not make any decision or take any action for which the consent of a Majority Interest or other consent of the Common Units Members is expressly required by the Articles or this Operating Agreement, without first obtaining such consent.

Each Common Units Member may, with respect to any vote, consent, or approval that it is entitled to grant pursuant to this Operating Agreement, grant or withhold such vote, consent, or approval in its Sole Discretion.

**7.3 Selection of Managers.** The Managers of the Company shall be selected by a vote of the Majority Interest of the Common Units Members. The Initial Managers shall be William Kerby and Don Monaco.

**7.4 Approved Budget.** The Managers shall from time to time, but at least annually, adopt a budget for expenditures relating to medical tourism and development/deployment, and such other matters as the Managers may determine necessary, including cost allocations for revenues and expenses, and timing of capital projects (the “Approved Budget”).

**7.5 Deadlock.** In the event the Managers are divided over a material matter affecting the operations of the Company (a “Deadlock”), the Members, by majority approval, shall be provided the right to resolve the Deadlock.

**7.6 Committees of Managers; Delegation of Authority to Individual Managers.** The Managers may designate one or more committees, each of which shall be comprised of one or more of the Managers, and may designate one or more of the Managers as alternate members of any committee. Any such committee, to the extent provided in the resolution establishing it, shall have and may exercise all of the authority that may be exercised by the Managers. Regular and special meetings of such committee shall be held in the manner designated by the Managers or, if not so designated, by such committee. The Managers may dissolve any committee at any time. In addition, the Managers may delegate to one or more Managers such authority and duties, and assign to them such titles, as the Managers may deem advisable. Any such delegation may be revoked at any time by the Managers.

**7.7 Manager's Authority.** The Managers have full, complete, and exclusive authority to manage and control the business, affairs, and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business, and to do all things necessary or desirable or expedient to manage, conduct, and supervise, and delegate the same to another Member or officer, the day-to-day business affairs of the Company and, subject to this Section 7.7 and as otherwise set forth in this Agreement, without limiting the generality of the foregoing, and MAY cause the Company to do the following:

**7.7.1** To enter into, become bound by, and perform obligations under contracts, agreements and instruments and to make all decisions and waivers as needed;

**7.7.2** To open, maintain, and close bank accounts, make withdrawals, designate and change signatories on such accounts;

**7.7.3** To borrow money and incur indebtedness for the purposes of the Company and to cause to be executed and delivered therefor, in the Company's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor;

**7.7.4** To commission any act in the operation of the business provided that any such act would not make it impossible for the Company to carry on its business, subject to the limitation set forth herein;

**7.7.5** To acquire, purchase, own, hold, maintain, develop, operate, sell, exchange, lease, sublet, assign, transfer, or otherwise dispose of tangible and intangible assets and properties of any kind and character;

**7.7.6** To procure and maintain responsible insurance coverage, including general liability, bodily injury, and property damage insurance, in amounts that are available and that are generally carried by similar entities that engage in similar activities;

**7.7.7** To incur all legal, accounting, investment banking, independent financial consulting, litigation, brokerage, registration, and other fees and expenses as it may deem necessary or appropriate for carrying on and performing the powers and authorities herein conferred;

**7.7.8** To possess Company property or assign rights held by the Company regarding its property;

**7.7.9** To employ officers, employees, agents, consultants and advisors on behalf of the Company and enter into employment agreements with, and set the compensation of, such persons;

**7.7.10** To make all other arrangements and do all things which are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the Company;

**7.7.11** To make expenditures and take further actions pursuant to the Approved Budget; and

**7.7.12** To undertake any other decision or act that is expressly provided to be undertaken by the Managers in this Agreement.

**7.8 Actions Requiring Member Consent.** Notwithstanding the generality of the Managers' authority above in Section 7.7, the Managers are not empowered, without the consent of a Majority Interest (or such other consent of the Members as is expressly provided elsewhere in this Agreement to undertake any of the following) of Common Units, to:

**7.8.1** Amend this Agreement or the Articles of Organization (subject to the requirements of the Florida Act);

**7.8.2** Change the character of the business of the Company;

**7.8.3** Sell all or substantially all of the assets of the Company;

**7.8.4** Mortgage or encumber all or substantially all assets of the Company;

**7.8.5** Commission any act in the operation of the business that would make it impossible for the Company to carry on its business, except in connection with one of the events or transactions described elsewhere in this Agreement;

**7.8.6** Do any act in contravention of this Agreement;

**7.8.7** Approve any transaction with a Member or any Affiliate of a Member other than in the ordinary course of business on terms no less favorable to the Company than those which would otherwise be available from an unaffiliated third party;

**7.8.8** Make any individual expenditure greater than \$250,000 or aggregate expenditures greater than \$500,000 in any calendar year, which is not authorized by the Approved Budget;

**7.8.9** Confess a judgment against the Company; or

**7.8.10** Undertake any other act that is expressly provided to be approved by a Unanimous Consent, Super-Majority Interest, a Majority Interest, or other required consent of the Members hereunder.

**7.9 Reliance on Authority.** In dealings with the Company, a third party may rely on the authority of any Manager to bind the Company without the need to review any provisions of this Agreement or confirming compliance with such Manager or Company representative. Every contract, deed, mortgage, lease and other instrument executed by a Manager is conclusive evidence in favor of the third party, who relied on the fact that at the time the instrument was executed and delivered that (i) the Company was in existence, (ii) neither this Agreement nor the Articles had been amended in any manner to restrict the delegation of authority granted to the Managers, and, (iii) the execution and delivery of the instrument was duly authorized by the Managers. In addition, any third party may rely on any document addressed to him or her and signed by a Manager regarding the following:

**7.9.1** The identity of the Manager who has the authority to act on behalf of the Company;

**7.9.2** The authenticity of any copy of the Articles, this Agreement, and any other document relating to the conduct of the affairs of the Company; and

**7.9.3** The existence or non-existence of any fact that constitutes a condition precedent to acts by any Manager or in any other manner germane to the affairs of the Company.

**7.10 Compensation; No Employment.**

**7.10.1** Managers shall receive such compensation as may be approved by the Managers. Nothing contained in this Section 7.10 shall be construed to preclude any Manager from serving the Company in any other capacity and receiving reasonable compensation for such services.

**7.10.2** This Agreement does not, and is not intended to, confer upon any Manager any rights with respect to continued employment by the Company, and nothing herein should be construed to have created any employment agreement with any Manager.

**7.10.3** The Managers shall be entitled to be reimbursed for reasonable out-of-pocket costs and expenses incurred in the course of their service hereunder.

**7.11 Reimbursement.** The Managers shall be entitled to reimbursement from the Company of all expenses that are reasonably incurred and paid by the Managers on behalf of the Company.

**7.12 Officers.** The Managers may appoint individuals as officers of the Company (the “**Officers**”) as they deem necessary or desirable to carry on the business of the Company and the Managers may delegate to such Officers such power and authority as the Managers deem advisable. No Officer need be a Member or Manager. Any individual may hold two or more offices of the Company. Each Officer shall hold office until his successor is designated by the Managers or until his earlier death, resignation or removal. Any Officer may resign at any time upon written notice to the Managers. Any Officer may be removed by the Managers with or without cause at any time. A vacancy in any office occurring because of death, resignation, removal or otherwise, may, but need not, be filled by the Managers. In the absence of a Compensation Committee, the Managers shall determine and approve the Officers’ compensation by a vote of the Majority Interest of the Common Units. As of the date of this Agreement William Kerby shall be appointed as the Chief Executive Officer of the Company (the “**Chief Executive Officer**”). The Chief Executive Officer shall be authorized to appoint employees of the Company, and set forth their positions and salaries with the Company, and to further provide for the bonuses payable to such persons, provided that such compensation and bonuses do not exceed more than \$500,000 in aggregate (the “**Compensation Limit**”). Any yearly employee compensation which exceeds the Compensation Limit shall be subject to the approval of the Managers.

**7.13 Managers May Engage in Other Activities.** The Managers shall have the right to participate in other business ventures of every kind, whether or not such other business ventures compete with the Company. The Managers shall not be obligated to offer to the Company or to Members any opportunity to participate in any such other business venture. Neither the Company nor the Members shall have any right to any income or profit derived from any such other business venture of Managers.

**7.14 Transactions of Managers with the Company.** Subject to any limitations set forth in this Agreement, Managers may lend money to and transact other business with the Company. Subject to other applicable law, such Managers have the same rights and obligations with respect thereto as a Person who is not a Member or Manager.

## **ARTICLE VIII MEETINGS OF MEMBERS AND MANAGERS**

**8.1 Meetings of Members.** Special meetings of the Members may be called by the Managers or by Members having among them at least thirty percent (30%) of the Common Units of all Members. Any such meeting shall be held on such date and at such time as the Person calling such meeting shall specify in the notice of the meeting, not less than ten (10) nor more than sixty (60) days after receipt of the request, which notice shall be delivered to each Member at least ten (10) days prior to such meeting. Except in special cases where other express provision is made by statute, written notice of such meetings shall be given to each Member entitled to vote not less than ten (10) nor more than sixty (60) days before the meeting. Only business within the purpose or purposes described in the notice (or waiver thereof) for such special meeting may be conducted at such meeting. Unless otherwise expressly provided in this Operating Agreement, at any meeting of the Members, a Unanimous Consent, Super-Majority Interest and/or Majority Interest, as applicable and as required pursuant to the terms of this Agreement, represented either in person or by proxy, shall constitute a quorum for the transaction of business. Notwithstanding the above, approval of any matter not expressly set forth herein, including, but not limited to any matters provided for under the Florida Act, including, but not limited to fundamental transactions under the Florida Act, shall be approved by a Majority Interest. For the avoidance of doubt, Preferred Units do not have voting rights at meetings of the Members.

**8.2 Meetings of Managers.** Regular meetings of the Managers shall be held quarterly or at such times as the Managers may decide, on such dates and at such times as shall be determined by the Managers, with notice of the establishment of such regular meeting schedule being given to each Manager that was not present at the meeting at which it was adopted. Special meetings of the Managers may be called by any Manager by notice thereof (specifying the place and time of such meeting) that is delivered to each other Manager at least 24 hours prior to such meeting. Neither the business to be transacted at, nor the purpose of, such special meeting need be specified in the notice (or waiver of notice) thereof. Unless otherwise expressly provided in this Operating Agreement, at any meeting of the Managers, a majority of the Managers shall constitute a quorum for the transaction of business, and an act of a majority of the Managers who are present at or participate in such a meeting at which a quorum is present or participating shall be the act of the Managers. The provisions of this Section 8.2 shall be inapplicable at any time that there is only one Manager.

**8.3 Provisions Applicable to All Meetings.** In connection with any meeting of the Managers, Members, or any committee of the Managers, the following provisions shall apply:

**8.3.1 Place of Meeting.** Any such meeting shall be held at the principal place of business of the Company, unless the notice of such meeting (or resolution of the Managers or committee, as applicable) specifies a different place, which need not be in the State of Florida.

**8.3.2 Waiver of Notice Through Attendance.** Attendance of a Person at such meeting (including pursuant to Section 8.3.5) shall constitute a waiver of notice of such meeting, except where such Person attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**8.3.3 Proxies.** A Person may vote at such meeting by a written proxy executed by that Person and delivered to another Manager, Member, or member of the committee, as applicable. A proxy shall be revocable unless it is stated to be irrevocable.

**8.3.4 Action by Written Consent.** Any action required or permitted to be taken at such a meeting may be taken without a meeting, without prior notice, and without a vote if a Written Consent setting forth the action so taken, is signed by the Managers, Members, or members of the committee, as applicable, having not fewer than the minimum number of votes that would be necessary to take the action at a meeting at which all Members, Managers, or members of the committee, as applicable, entitled to vote on the action were present and voted. A telegram, telex, cablegram or similar transmission by a Member, or a photographic, photostatic, facsimile or similar reproduction of a Written Consent signed by a Member, or an email from a Member's email address of record stating or containing such Member's approval of the Written Consent (which shall not require an "electronic signature" of any Member as such term is defined in the "Electronic Signatures in Global and National Commerce Act," but instead shall only require evidence reasonably satisfactory to the Managers in their sole and absolute discretion of such Member's approval and/or consent to the Written Consent) or any other means reasonably evidencing consent, shall be regarded as signed by the Member for the purposes of this Section.

**8.3.5 Meetings by Electronic Means.** Managers, Members, or members of the committee, as applicable, may participate in and hold such meeting by means of telephone conference, videoconference, the internet, any other electronic communications equipment, or any combination thereof by means of which all Persons participating in the meeting can communicate with each other.

## ARTICLE IX LIMITED LIABILITY OF MEMBERS AND MANAGERS

**9.1 Limitations on Liability of Managers and Members.** The liability of the Managers to the Company and the Members shall be limited to the extent, if any, now or hereafter set forth in the Articles, this Operating Agreement and as provided under the Florida Act.

**9.2 No Personal Liability.** Except as otherwise provided in the Florida Act, by Applicable Law or expressly in this Agreement, no Members, Manager or Officer will be obligated personally for any debt, obligation or liability of the Company or of any Company Subsidiaries, whether arising in contract, tort or otherwise, solely by reason of being a Member, Manager and/or Officer.

**9.3 Duties of Managers.** The Managers will perform their duties with respect to the Company in good faith and will devote such time and effort to the Company's business and operations as the Managers believe are reasonably necessary to manage the affairs of the Company. The Managers shall not be liable to the Company or any Member for action or inaction taken in good faith for a purpose that was reasonably believed to be in the best interests of the Company; for losses due to such action or inaction; or for the negligence, dishonesty or bad faith of any employee, broker or other agent of the Company, provided that such employee, broker or agent was selected, engaged or retained with reasonable care. The Managers may consult with counsel and accountants on matters relating to the Company and shall be fully protected and justified in acting in accordance with the advice of counsel or accountants, provided that such counsel or accountants shall have been selected with reasonable care. Notwithstanding any of the foregoing to the contrary, the provisions of this Section 9.3 shall not be construed so as to relieve (or attempt to relieve) any person of any liability incurred (a) as a result of recklessness or intentional wrongdoing, or (b) to the extent that such liability may not be waived, modified or limited under applicable law.

## **ARTICLE X COMPETITIVE BUSINESS ACTIVITY; OTHER BUSINESS ACTIVITIES**

**10.1 Competitive Business Activity.** A Manager and Member and each of their respective Affiliates must present in writing to the Managers any business opportunity that may require the Manager, Member or their Affiliates to potentially act as a Competitor (each such notice, a "Competitive Business Activity Notice"), or be involved in actions which may be directly or indirectly competitive with the Business (herein a "Competitive Business Activity"). Once the Competitive Business Activity is presented to the Company, the Managers may elect for the Company to engage in the Competitive Business Activity and no Manager, Member or Affiliate may engage in such activity until a decision has been reached. If such a Competitive Business Activity is presented to the Managers and the Managers decide that the Company will not engage in the Competitive Business Activity within thirty (30) days of the Company's receipt of the Competitive Business Activity Notice, then the presenting Manager, Member or Affiliate, as applicable, shall be free to engage in that Competitive Business Activity fully outside the operations of the Company. If the Managers elect for the Company to engage in the Competitive Business Activity within thirty (30) days of the Company's receipt of the Competitive Business Activity Notice, then neither the presenting Manager, Member or Affiliate, as applicable, nor any other Manager, Member or Affiliate, may engage in that Competitive Business Activity, and instead the Company will have the sole authority to engage in such Competitive Business Activity, until the earlier of (i) the date the Managers have provided authority for such Manager, Member or Affiliate to engage in such activity; and (ii) the date that the Company has abandoned such Competitive Business Activity for at least 180 days.

**10.2 Other Business Activities.** Nothing contained herein shall limit, prohibit or restrict any Member or Manager from serving on the board of directors or other governing body or committee of any other business. Each Member shall execute and deliver a Nondisclosure Statement in the form of Exhibit E.

## **ARTICLE XI EXCULPATION AND INDEMNIFICATION**

### **11.1 Exculpation of Covered Persons.**

**11.1.1 Standard of Care.** No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage or claim incurred by reason of any action taken or omitted to be taken by such Covered Person in good faith and with the belief that such action or omission is in, or not opposed to, the best interest of the Company, so long as such action or omission does not constitute fraud, gross negligence or willful misconduct by such Covered Person.

**11.1.2 Good Faith Reliance.** A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements (including financial statements and information, opinions, reports or statements as to the value or amount of the assets, liabilities, net income or net losses of the Company or any facts pertinent to the existence and amount of assets from which Distributions might properly be paid) of the following Persons or groups: (i) another Manager; (ii) one or more Officers or employees of the Company; (iii) any attorney, independent accountant, appraiser or other expert or professional employed or engaged by or on behalf of the Company; or (iv) any other Person selected in good faith by or on behalf of the Company, in each case as to matters that such relying Person reasonably believes to be within such other Person's professional or expert competence. The preceding sentence shall in no way limit any Person's right to rely on information which he/she/it is authorized to rely on under Applicable Law.

## 11.2 Liabilities and Duties of Covered Persons.

**11.2.1 Limitation of Liability.** This Agreement is not intended to, and does not, create or impose any fiduciary duty on any Covered Person. Furthermore, each of the Members and the Company hereby waives any and all fiduciary duties that, absent such waiver, may be implied by Applicable Law, and in doing so, acknowledges and agrees that the duties and obligation of each Covered Person to each other and to the Company are only as expressly set forth in this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person. To the extent that, at law or in equity, any Covered Person has duties and liabilities related thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for such Covered Person's good faith reliance on the provisions of this Agreement.

**11.2.2 Duties.** Whenever in this Agreement a Covered Person is permitted or required to make a decision (including a decision that is in such Covered Person's "**discretion**" or under a grant of similar authority or latitude), the Covered Person shall be entitled to consider only such interests and factors as such Covered Person desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person. Whenever in this Agreement a Covered Person is permitted or required to make a decision in such Covered Person's "**good faith**" or under another express standard, the Covered Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or any other Applicable Law.

## 11.3 Indemnification.

**11.3.1 Indemnification.** To the fullest extent permitted by the Florida Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Florida Act permitted the Company to provide prior to such amendment, substitution or replacement), the Company shall indemnify, hold harmless, defend, pay and reimburse any Covered Person against any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims (collectively, "**Losses**") to which such Covered Person may become subject by reason of:

(i) Any act or omission or alleged act or omission performed or omitted to be performed on behalf of the Company, any Manager, any Member or any direct or indirect Subsidiary of the foregoing in connection with the business of the Company; or

(ii) The fact that such Covered Person is or was acting in connection with the business of the Company as a partner, member, stockholder, controlling Affiliate, manager, director, officer, employee or agent of the Company, any Manager, any Member, or any of their respective controlling Affiliates, or that such Covered Person is or was serving at the request of the Company as a partner, member, manager, director, officer, employee or agent of any Person including the Company or any Company Subsidiary; provided, that (x) such Covered Person acted in good faith and in a manner believed by such Covered Person to be in, or not opposed to, the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe his/her conduct was unlawful, and (y) such Covered Person's conduct did not constitute fraud, gross negligence or willful misconduct, in either case as determined by a final, nonappealable order of a court of competent jurisdiction. In connection with the foregoing, the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Covered Person did not act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that such Covered Person's conduct was unlawful, or that the Covered Person's conduct constituted fraud, gross negligence or willful misconduct.

Furthermore, no indemnification shall be provided to any person who has engaged in willful misconduct or a knowing violation of the criminal law or any other act or omission for which such person would not be entitled to indemnification under Section 605.408 of the Florida Act.

**11.3.2 Reimbursement.** The Company shall promptly reimburse (and/or advance to the extent reasonably required) each Covered Person for reasonable legal or other expenses (as incurred) of such Covered Person in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding relating to any Losses for which such Covered Person may be indemnified pursuant to this Section 11.3; provided, that if it is finally judicially determined that such Covered Person is not entitled to the indemnification provided by this Section 11.3, then such Covered Person shall promptly reimburse the Company for any reimbursed or advanced expenses.

**11.3.3 Entitlement to Indemnity.** The indemnification provided by this Section 11.3 shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement or otherwise. The provisions of this Section 11.3 shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 11.3 and shall inure to the benefit of the executors, administrators, legatees and distributees of such Covered Person.

**11.3.4 Insurance.** To the extent available on commercially reasonable terms, the Company may purchase, at its expense, insurance to cover Losses covered by the foregoing indemnification provisions and to otherwise cover Losses for any breach or alleged breach by any Covered Person of such Covered Person's duties on such terms, in such amount and with such deductibles as the Managers may determine; provided, that the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Losses hereunder. If any Covered Person recovers any amounts in respect of any Losses from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to such Covered Person by the Company in respect of such Losses.

**11.3.5 Funding of Indemnification Obligation.** Notwithstanding anything contained herein to the contrary, any indemnity by the Company relating to the matters covered in this Section 11.3 shall be provided out of and to the extent of Company assets only, and no Member (unless such Member otherwise agrees in writing) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity by the Company.

**11.3.6 Savings Clause.** If this Section 11.3 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Covered Person pursuant to this Section 11.3 to the fullest extent permitted by any applicable portion of this Section 11.3 that shall not have been invalidated and to the fullest extent permitted by Applicable Law.

**11.3.7 Amendment.** The provisions of this Section 11.3 shall be a contract between the Company, on the one hand, and each Covered Person who served in such capacity at any time while this Section 11.3 is in effect, on the other hand, pursuant to which the Company and each such Covered Person intend to be legally bound. No amendment, modification or repeal of this Section 11.3 that adversely affects the rights of a Covered Person to indemnification for Losses incurred or relating to a state of facts existing prior to such amendment, modification or repeal shall apply in such a way as to eliminate or reduce such Covered Person's entitlement to indemnification for such Losses without the Covered Person's prior written consent.

**11.4 Survival.** The provisions of this ARTICLE XI shall survive the dissolution, liquidation, winding up and termination of the Company. The provisions of this ARTICLE XI shall not be exclusive of any other right under any law, agreement, the provision of the Articles or this Operating Agreement, or otherwise. Any amendment, repeal or modification of the foregoing provisions of this ARTICLE XI, or the adoption of any provision in an amended or restated Articles inconsistent with this ARTICLE XI, by the Members shall not apply to, or adversely affect, any right or protection of a Covered Person, existing at the time of such amendment, repeal, modification or adoption.

**11.5 No Securities Act Indemnification.** The provisions of this ARTICLE XI shall not include indemnification for liabilities arising under the Securities Act of 1933, as, in the opinion of the Securities and Exchange Commission, such indemnification is contrary to public policy.

## **ARTICLE XII TAXES**

**12.1 Tax Status.** The Company shall file as a partnership for Federal income tax purposes. Any provision hereof to the contrary notwithstanding, solely for United States federal income tax purposes, each of the Members hereby recognizes that the Company may be subject to the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of U.S. Partnership Returns of Income shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members. The Members may change the Company's tax status at any time in their discretion.

**12.2 Tax Returns.** The Company shall prepare and timely file all federal, state, and local tax returns required to be filed by the Company. Each Member shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is necessary to enable the Company's tax returns to be timely prepared and filed. The Company shall deliver a copy of each such return to the Members, together with such additional information as may be required by the Members in order for the Members to timely file their individual returns reflecting the Company's operations. The Company shall bear the costs of the preparation and filing of its returns.

**12.3 Tax Elections.** The Company shall make the following elections on the appropriate tax returns:

**12.3.1** to adopt a fiscal year beginning January 1st, and ending December 31st; and

**12.3.2** any other election the Managers may deem appropriate and in the best interests of the Members.

**12.4 Partnership Representative.** Pursuant to Code Section 6223, the Managers shall designate (in the manner prescribed by the Secretary of the Treasury) a Person with a substantial presence in the United States as the Company's representative, who shall have the sole authority to act on behalf of the Company under Chapter 63, Subchapter C, of the Code (the "Partnership Representative"). The Partnership Representative shall inform each other Member of all significant matters that may come to its attention in its capacity as Partnership Representative by giving notice thereof on or before the fifth business day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The Partnership Representative shall take no action without the authorization of a Majority Interest, other than such action as may be required by applicable law. Any cost or expense incurred by the Partnership Representative in connection with its duties, including the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company. The Company's initial Partnership Representative shall be Mr. William Kerby.

## **ARTICLE XIII BOOKS, RECORDS AND BANK ACCOUNTS**

**13.1 Maintenance of Books.** The Managers shall keep or cause to be kept at the principal office of the Company complete and accurate books and records of the Company, supporting documentation of the transactions with respect to the conduct of the Company's business, and minutes of the proceedings of its Managers, Members, and each committee of the Managers. The books and records shall be maintained with respect to accounting matters in accordance with sound accounting practices, and all books and records shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours. The Managers shall maintain and preserve all accounts, books, and other relevant Company documents at the Company's principal place of business during the term of the Company and for seven (7) years thereafter.

**13.2 Reports.** The Manager will prepare an annual information package that will be available on request by April 1st of each year. The annual information package will include such things as an annual operations update, financial statements, and a copy of the Company tax return, as applicable. However, the K-1 forms will be sent to all of the Members as available.

**13.3 Accounts.** The Managers shall establish one or more separate bank and investment accounts and arrangements for the Company, which shall be maintained in the Company's name with financial institutions and firms that the Managers determine. The Managers may not commingle the Company's funds with the funds of any Manager or Member.

## **ARTICLE XIV WINDING UP AND TERMINATION**

### **14.1 Winding Up.**

**14.1.1** The Company's affairs shall be wound up on the first to occur of the following events:

- (i) the expiration of the Company's period of duration, if one is specified in the Articles or in this Operating Agreement;
- (ii) the determination of a Majority Interest of the Common Units Members and the Managers;
- (iii) an event specified in the Florida Act, the Articles or this Operating Agreement requiring the winding up or termination of the Company; or
- (iv) entry of a decree by a court requiring the winding up of the Company, rendered under the Florida Act or other applicable law.

**14.1.2** The death, expulsion, withdrawal, winding up, termination, or Bankruptcy of any Member, or the occurrence of any other event that terminates the continued membership of any Member in the Company shall not require the winding up and termination of the Company.

### **14.2 Winding Up and Termination.**

**14.2.1** On the occurrence of an event described in Section 14.1.1, the Managers shall act as liquidator or may appoint one or more Members or Managers as liquidator; provided, however, that (i) no Member with respect to whom an event described in Section 14.1.1 has occurred shall serve as (or act with any other Person as) a liquidator, either in its capacity as a Member or (if applicable) a Manager, and (ii) if application of the foregoing clause (i) results in there being no liquidator, then the liquidator shall be selected by a Majority Interest (calculated without reference to any Member referred to in such clause (ii)). The liquidator shall proceed diligently to wind up the affairs of the Company as provided in the Florida Act. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Managers. The costs of winding up shall be borne as a Company expense. For the sake of clarity and in an abundance of caution, any and all liabilities of the Company shall be repaid prior to the Company making any distributions to Members in connection with the winding up process.

**14.2.2** Any assets of the Company remaining at the conclusion of the winding up process shall be distributed among the Members in accordance with their positive capital accounts. All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination. The distribution of cash and/or property to a Member in accordance with the provisions of this Section 14.2.2 constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Interest and all the Company's property and constitutes a compromise to which each Member has consented within the meaning of the Applicable Law.

**14.2.3** On completion of such final distribution, the Managers shall file Articles of Dissolution with the Secretary of State of Florida, cancel any other filings made pursuant to Section 1.6, and take such other actions as may be necessary to terminate the existence of the Company.

**14.3 No Restoration of Deficit Capital Accounts.** No Member shall be required to pay to the Company, to any other Member or to any third party any deficit balance that may exist from time to time in any capital or similar account maintained for such Member for any purpose.

## **ARTICLE XV GENERAL PROVISIONS**

**15.1 Offset.** Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

**15.2 Writings and Signatures.** Under this Operating Agreement, “signature” and “signed” means any symbol executed or adopted by a person with present intention to authenticate a writing. Unless the context requires otherwise, the term includes a digital signature, an electronic signature, and a facsimile of a signature. “Written” or “writing” means an expression of words, letters, characters, numbers, symbols, figures, or other textual information that is inscribed on a tangible medium or that is stored in an electronic or other medium that is retrievable in a perceivable form. Unless the context requires otherwise, the term (i) includes stored or transmitted electronic data and transmissions and reproductions of writings; and (ii) does not include sound or video recordings of speech other than transcriptions that are otherwise writings. Each of the parties hereto agrees that (a) any consent or signed document transmitted by electronic transmission shall be treated in all manner and respects as an original written document, (b) any such consent or document shall be considered to have the same binding and legal effect as an original document and (c) at the request of any party hereto, any such consent or document shall be re-delivered or re-executed, as appropriate, by the relevant party or parties in its original form. Each of the parties further agrees that they will not raise the transmission of a consent or document by electronic transmission as a defense in any proceeding or action in which the validity of such consent or document is at issue and hereby forever waives such defense. For purposes of this Agreement, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including, but not limited to email.

**15.3 Entire Agreement; Supersedure.** This Operating Agreement constitutes the entire agreement of the Members relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

**15.4 Effect of Waiver or Consent.** A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company.

**15.5 Amendments of Articles and Operating Agreement.** The Articles and this Operating Agreement may be amended or restated only with the approval of the Managers and in accordance with Section 605.04073(2) of the Florida Act, which requires the unanimous consent of all Members.

**15.6 Binding Effect.** Subject to the restrictions on Dispositions set forth in this Operating Agreement, this Operating Agreement is binding on and shall inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

**15.7 Governing Law; Jurisdiction.** THIS OPERATING AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA (EXCLUDING ITS CONFLICT-OF-LAWS RULES). Whenever possible, each provision of this Operating Agreement shall be interpreted in a manner as to be effective and valid under applicable law and public policy.

**15.8 Defaults.** If a Member materially defaults in the performance of his, her or its obligations under this Agreement, and such default is not cured within ten (10) business days after written notice of such default is given by a Manager to the defaulting Member for a default that can be cured by the payment of money, or within thirty (30) calendar days after written notice of such default is given by a Manager to the defaulting Member for any other default, then the non-defaulting Members shall have the rights and remedies described in Section 15.9 hereunder in respect of the default.

**15.9 Remedies.** If a Member fails to perform his or its obligations under this Agreement, the Company and the non-defaulting Members shall have the right, in addition to all other rights and remedies provided herein, on behalf of himself or itself, the Company or the Members, to bring the matter to arbitration pursuant to Section 15.10. The award of the arbitrator in such a proceeding may include, without limitation, an order for specific performance by the defaulting Member of his or its obligations under this Agreement, or an award for damages for payment of sums due to the Company or to a Member.

**15.10 Dispute Resolution.** In the event of any dispute or disagreement between the parties hereto as to the interpretation of any provision of this Agreement (or the performance of obligations hereunder), the matter, upon written request of any party, shall be referred to representatives of the parties for decision. The representatives shall promptly meet in a good faith effort to resolve the dispute. If the representatives do not agree upon a decision within thirty (30) calendar days after reference of the matter to them, any controversy, dispute or claim arising out of or relating in any way to this Agreement or the transactions arising hereunder shall be settled exclusively by arbitration in the County of Broward, Florida. Such arbitration shall be administered by JAMS in accordance with its then prevailing expedited rules, by one independent and impartial arbitrator selected in accordance with such rules. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1 et seq. The fees and expenses of JAMS and the arbitrator shall be shared equally by the parties to the dispute and advanced by them from time to time as required; provided that at the conclusion of the arbitration, the arbitrator shall award costs and expenses (including the costs of the arbitration previously advanced and the reasonable fees and expenses of attorneys, accountants and other experts) to the prevailing party. No pre-arbitration discovery shall be permitted, except that the arbitrator shall have the power in his sole discretion, on application by any party, to order pre-arbitration examination solely of those witnesses and documents that any other party intends to introduce in its case-in-chief at the arbitration hearing. The parties shall instruct the arbitrator to render such arbitrator's award within thirty (30) calendar days following the conclusion of the arbitration hearing. The arbitrator shall not be empowered to award to any party any damages of the type not permitted to be recovered under this Agreement in connection with any dispute between or among the parties arising out of or relating in any way to this Agreement or the transactions arising hereunder, and each party hereby irrevocably waives any right to recover such damages. Notwithstanding anything to the contrary provided in this Section 15.10 and without prejudice to the above procedures, any party may apply to any court of competent jurisdiction for temporary injunctive or other provisional judicial relief if such action is necessary to avoid irreparable damage or to preserve the status quo until such time as the arbitrator is selected and available to hear such party's request for temporary relief. The award rendered by the arbitrator shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction. The decision of the arbitrator shall be in writing and shall set forth findings of fact and conclusions of law.

**15.11 Severability.** If any provision of this Agreement is held to be unenforceable, then this Agreement will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Agreement, valid and enforceable. If a court declines to amend this Agreement as provided herein, the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions, which shall be enforced as if the offending provision had not been included in this Agreement.

**15.12 Waiver of Action for Partition.** Each of the Members irrevocably waives any right that he, she or it may have to maintain any action for partition with respect to any of the Company's property.

**15.13 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 15.13):

If to the Company:	NextTrip Group, LLC Attn: William Kerby 1560 Sawgrass Corporate Parkway, Suite 130 Sunrise, Florida 33323 E-mail: bill.kerby@nexttrip.com
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If to a Member, to such Member's respective mailing address as set forth on Exhibit A.

**15.14 Discretion.** Except as otherwise provided in this Operating Agreement, all actions which the Members or Managers may take and all determinations which the Members or Managers may make pursuant to this Operating Agreement may be taken and made at the sole, absolute and uncontrolled discretion of the Members and/or the Managers to the maximum extent permitted under applicable law.

**15.15 Survival of Rights, Duties and Obligations.** Dissolution, liquidation, winding up or termination of the Company for any reason shall not release any party from any Loss which at the time of such dissolution, liquidation, winding up or termination already had accrued to any other party or which thereafter may accrue in respect of any act or omission prior to such dissolution, liquidation, winding up or termination. For the avoidance of doubt, none of the foregoing shall replace, diminish or otherwise adversely affect any Member's right to indemnification pursuant to Section 11.3.

**15.16 Creditors.** None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company or third parties.

**15.17 Failure to Pursue Remedies.** The failure of any party to seek redress for violation, or to insist upon the strict performance, of any provision of this Agreement will not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

**15.18 Construction.** Unless the context requires otherwise: (a) the gender (or lack of gender) of all words used in this Operating Agreement includes the masculine, feminine, and neuter; (b) the word "**including**" means "**including, without limitation**"; (c) references to Articles and Sections refer to Articles and Sections of this Operating Agreement; (d) references to Exhibits are to the Exhibits attached to this Operating Agreement, each of which is made a part hereof for all purposes; (e) in the event the Company only has one (1) Manager, references to Managers throughout shall refer to such one (1) Manager; (f) any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; and (g) reference to a particular statute, regulation or Law means such statute, regulation or Law as amended or otherwise modified from time to time subsequent to the date hereof.

**15.19 Further Assurances.** In connection with this Operating Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Operating Agreement and those transactions.

**15.20 Informed Decision.** Each Member, by executing this Operating Agreement, represents and warrants that he/she has been furnished with sufficient written and oral information about the Company and the business to be operated by the Company to allow him/her to make an informed decision prior to purchasing a Membership Interest in the Company.

**15.21 Effect of Facsimile and Photocopied Signatures.** This Operating Agreement may be executed in several counterparts, each of which is an original. It shall not be necessary in making proof of this Operating Agreement or any counterpart hereof to produce or account for any of the other counterparts. A copy of this Operating Agreement signed by one Party and faxed or scanned and emailed to another Party (as a PDF or similar image file) shall be deemed to have been executed and delivered by the signing Party as though an original. A photocopy or PDF of this Operating Agreement shall be effective as an original for all purposes.

[Remainder of page left intentionally blank. Signature page follows.]

Adopted by the undersigned Manager(s) on January 25, 2023, to be effective January 25, 2023.

/s/

\_\_\_\_\_  
**William Kerby**  
**Manager**

/s/

\_\_\_\_\_  
**Donald P. Monaco**  
**Manager**

**IN WITNESS WHEREOF**, following adoption of this Amended and Restated Operating Agreement by the Manager(s), the Member have executed this Operating Agreement to be effective as of the date first set forth above.

**NEXTPLAY TECHNOLOGIES, INC.**

/s/

\_\_\_\_\_  
**William Kerby**  
**Co-Chief Executive Officer**  
400,000 Preferred Units

**WILLIAM KERBY**

/s/

\_\_\_\_\_  
**William Kerby**  
457,500 Common Units

**DONALD P. MONACO**

/s/

\_\_\_\_\_  
**Donald P. Monaco**  
457,500 Common Units

**EXHIBIT A**

**MEMBERS/SHARING RATIOS/UNITS**

<b>Member and Address</b>	<b>Units</b>	<b>Sharing Ratio</b>
<b><u>Common Units</u></b>		
William Kerby 1560 Sawgrass Corporate Parkway Suite 130 Sunrise, FL 33323	457,500	50.0%
Donald P. Monaco 325 Lake Avenue S, Unit 604	457,500	50.0%
<b>TOTAL COMMON UNITS</b>	<b>915,000</b>	<b>100.0%</b>
<b><u>Preferred Units</u></b>		
NextPlay Technologies, Inc. 1560 Sawgrass Corporate Parkway Suite 130 Sunrise, FL 33323	400,000	100.0%
<b>TOTAL PREFERRED UNITS</b>	<b>400,000</b>	<b>100.0</b>

\* As provided in ARTICLE V, the Preferred Units have a Liquidation Preference senior to Common Units before Common Units Sharing Ratio is applied.

Exhibit A

**EXHIBIT B**

**CAPITAL CONTRIBUTIONS**

<b>Member(s)</b>	<b>Consideration</b>
NEXTPLAY TECHNOLOGIES, INC.	Contribution of assets pursuant to that certain Subsidiary Formation and Funding Agreement dated on or around January 12, 2021
WILLIAM KERBY	Spin-Off Management Block pursuant to <u>Article XIII</u> of the Original Agreement.
DONALD P. MONACO	Spin-Off Management Block pursuant to <u>Article XIII</u> of the Original Agreement.

Exhibit B

**EXHIBIT C**

**JOINDER TO  
OPERATING AGREEMENT OF  
NEXTTRIP GROUP, LLC**

By execution of this Joinder Operating Agreement of NextTrip Group, LLC, a Florida limited liability company (the “**Company**” and the “**Joinder**”), the undersigned hereby agrees to become a party to, and be bound by, that certain Operating Agreement of the Company, dated as of \_\_\_\_\_ and effective as of \_\_\_\_\_ (and as the same may be amended, supplemented or otherwise modified from time to time, the “**Agreement**”), by and among the Company and the parties thereto, in the same manner as if the undersigned were an original signatory to such Agreement as a Member of the Company.

The undersigned shall have all the rights, and shall observe all the obligations as a party to the Agreement and as a Member of the Company.

By executing and delivering to the Company this Joinder, the undersigned hereby agrees to comply in full with the provisions of the Agreement, in the same manner as if the undersigned were an original signatory to the Agreement as a Member of the Company.

This Joinder shall bind and inure to the benefit of and be enforceable by the Company and its successors and assigns.

The undersigned represents and warrants that the undersigned has received a copy of, and has reviewed the terms of, the Agreement and all related or relevant documents and agreements.

Capitalized terms used but not defined in this Joinder shall have the meanings set forth in the Agreement.

It shall be a requirement to the undersigned becoming a Member of the Company that the undersigned’s Spouse (as defined in the Agreement), if any, execute the Spouse’s Agreement which forms **Exhibit D** of the Agreement.

**IN WITNESS WHEREOF**, the undersigned has executed this Joinder as of this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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

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

Address for Notice: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

Exhibit C

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**EXHIBIT D**

**SPOUSE'S AGREEMENT**

I acknowledge that I have read and reviewed the Operating Agreement of NextTrip Group, LLC, a Florida limited liability company, dated as of \_\_\_\_\_ and effective as of \_\_\_\_\_ (as such may be amended from time to time, the “**Operating Agreement**”), including, but not limited to **Section 3.9** thereof, sought such independent advice as I deem appropriate, and discussed the provisions with my Spouse. I understand that this Operating Agreement specifically covers all interest in the Company now owned, hereafter acquired by, or otherwise attributed to my Spouse. I accept this Operating Agreement and the terms thereof voluntarily and with full understanding of the terms and provisions of this Operating Agreement, which I deem fair and binding as to me while this Operating Agreement shall remain in effect.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

By: \_\_\_\_\_  
Spouse of: \_\_\_\_\_

Exhibit D

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**EXHIBIT E**

**NONDISCLOSURE AGREEMENT**

The undersigned agrees to keep confidential and not to disclose to others not affiliated by office or record ownership with **NextTrip Group, LLC** (the "**Company**"), both during his/her term of ownership [or for so long as the undersigned is a representative of the owner, as the case may be], and thereafter, except as expressly authorized in writing by the Company, any proprietary information, marketing, or other trade secrets of the Company, or any matter or thing ascertained by the undersigned through his/her association with the Company, the use or disclosure of which matter or thing might be contrary to the best interest of the Company.

The undersigned acknowledges, agrees and represents that the proprietary information and trade secrets of the Company protected hereunder, whether now existing or hereafter developed, are and shall be deemed valuable, special and unique assets of the Company, disclosure of which could cause substantial injury and damage to the Company. Further, the undersigned acknowledges that any entrustment with proprietary information or trade secrets protected hereunder has occurred, or shall hereafter occur, only as a result of the fiduciary position held by the undersigned with the Company. The undersigned represents that the proprietary information and trade secrets protected hereunder, whether now existing or hereafter developed, exist only through substantial expenditures of time, effort and money, and are to be used solely to advance the business of the Company.

All files, records, documents, information, data and similar items relating to the business of the Company, whether prepared by the undersigned or otherwise coming into his/her possession, shall remain the exclusive property of the Company. The undersigned further agrees that in the event he/she no longer maintains an affiliation with the Company by ownership interest, as a representative of an owner, or by office, that he/she will neither take nor retain, without prior written authorization from the Company, any papers, agreements, cost or pricing information, files, operating manuals, or any other confidential information of any kind belonging to the Company pertaining to its business, suppliers, customers, financial condition, personnel records, products, or services.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Exhibit E

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RIGHT OF FIRST REFUSAL  
AND DISTRIBUTION AGREEMENT

THIS RIGHT OF FIRST REFUSAL AND DISTRIBUTION AGREEMENT (this “**Agreement**”), is made as of the 25<sup>th</sup> day of January, 2023 by and between NextTrip Group, LLC, a Florida limited liability company (the “**Company**”) and NextPlay Technologies, Inc., a Nevada corporation publicly traded on the Nasdaq Capital Market (Nasdaq: NXTP) (the “**Investor**”).

**WHEREAS**, Investor is the beneficial owner of Preferred Units of the Company;

**WHEREAS**, the Company and the Investor are parties to that certain Separation Agreement, of even date herewith (the “**Separation Agreement**”), and Exchange Agreement pursuant to which the Investor agreed to acquire convertible preferred units of the Company (the “**Preferred Units**”) in exchange for its Common Units in the Company;

**WHEREAS**, the Company is in the process of negotiating a reverse merger transaction with an existing public company (“**NewPubco**”) pursuant to which the Company will be publicly traded on a U.S.-based national securities exchange; and

**WHEREAS**, the Company and Investor agree to further restrict the Preferred Units to provide the Company with the rights and privileges set forth herein.

**NOW, THEREFORE**, the Company and the Investor agree as follows:

1. Definitions.

- (a) “**Affiliate**” means, with respect to any specified Person, any other Person who directly or indirectly, controls, is controlled by or is under common control with such Person, including, without limitation, any general partner, managing member, officer, director or trustee of such Person, or any venture capital fund or registered investment company now or hereafter existing which is controlled by one or more general partners, managing members or investment advisers of, or shares the same management company or investment adviser with, such Person.
  - (b) “**Amended and Restated Operating Agreement**” means the Company’s Operating Agreement, as currently in effect.
  - (c) “**Applicable Law**” means, with respect to any Person, any and all applicable law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, award, Order, injunction, judgment, decree, ruling or other similar requirement, whether domestic or foreign, enacted, adopted, promulgated, rendered, issued, ordered or applied by a governmental entity that is binding upon or otherwise applicable to such person or its business, undertaking, property or securities, and to the extent that they have the force of law, policies, guidelines, notices and protocols of any governmental entity, as amended unless expressly specified otherwise.
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- (d) “**Capital Stock**” means (a) Common Units and Preferred Units (whether now outstanding or hereafter issued in any context) of the Company, (b) Common Shares in NewPubco issued or issuable upon conversion of Preferred Units, in each case now owned or subsequently acquired by Investor or its successors.
- (e) “**Common Shares**” means Common Shares of NewPubco.
- (f) “**Company Notice**” means written notice from the Company notifying the Investor that the Company intends to exercise its Right of First Refusal as to some or all of the Transfer Stock with respect to any Proposed Investor Transfer.
- (g) “**Conversion**” means the conversion of Preferred Units into Common Shares by Investor as governed by Section 5.6 of the Amended and Restated Operating Agreement.
- (h) “**Distribution**” means the disposition by the Investor of Common Shares upon a Conversion to the Investor’s Record Holders.
- (i) “**Distribution Date**” means the date on which the Distribution occurs.
- (j) “**Distribution Effective Time**” means the time established by the board of directors of Investor as the effective time of the Distribution on the Distribution Date.
- (k) “**Investor**” means the signatory hereto.
- (l) “**Investor Common Stock**” means the common stock of Investor.
- (m) “**Managers**” means the Managers of the Company.
- (n) “**NewPubco**” shall have the meaning set forth in the Recitals.
- (o) “**Preferred Units**” means the Company’s Preferred Units as set forth in the Amended and Restated Operating Agreement.
- (p) “**Proposed Investor Transfer**” means any assignment, sale, offer to sell, pledge, mortgage, hypothecation, encumbrance, disposition of or any other like transfer or encumbering of any Transfer Stock (or any interest therein) proposed by Investor.
- (q) “**Proposed Transfer Notice**” means written notice from the Investor setting forth the terms and conditions of a Proposed Investor Transfer.
- (r) “**Prospective Transferee**” means any person to whom the Investor proposes to make a Proposed Investor Transfer.
- (s) “**Record Date**” means the time and date to be determined by the board of directors of Investor as the record date for determining the holders of shares of Investor Common Stock entitled to receive Common Shares in the Distribution.

- (t) **“Record Holder(s)”** means a person whose name is registered on the books of the Investor as a holder of record of Investor Common Stock as of the Record Date.
- (u) **“Right of First Refusal”** means the right, but not an obligation, of the Company, or its permitted transferees or assigns, to purchase some or all of the Transfer Stock with respect to a Proposed Investor Transfer, on the terms and conditions specified in the Proposed Transfer Notice.
- (v) **“Transfer Stock”** means Preferred Units owned by the Investor, or issued to Investor after the date hereof (including, without limitation, in connection with any stock split, stock dividend, recapitalization, reorganization, or the like), but does not include any Preferred Units or Common Shares that are issued or issuable upon Conversion.

2. Agreement Between the Company and Investor.

- (a) Right of First Refusal.
  - (i) Grant. Subject to the terms of Section 3 below, Investor hereby unconditionally and irrevocably grants to the Company a Right of First Refusal to purchase all or any portion of Transfer Stock that Investor may propose to transfer in a Proposed Investor Transfer, at the same price and on the same terms and conditions as those offered to the Prospective Transferee.
  - (ii) Notice. If proposing to make a Proposed Transfer, Investor must deliver a Proposed Transfer Notice to the Company not later than forty-five (45) days prior to the consummation of such Proposed Investor Transfer. Such Proposed Transfer Notice shall contain the material terms and conditions (including price and form of consideration) of the Proposed Investor Transfer, the identity of the Prospective Transferee and the intended date of the Proposed Investor Transfer. To exercise its Right of First Refusal under this Section 2, the Company must deliver a Company Notice to the selling Investor within fifteen (15) days after delivery of the Proposed Transfer Notice specifying the number of shares of Transfer Stock to be purchased by the Company.
  - (iii) Forfeiture of Rights. If the Company does not deliver the Company Notice, then the Company shall be deemed to have forfeited any right to purchase such Transfer Stock, and the Investor shall be free to sell all, but not less than all, of the Transfer Stock to the Prospective Transferee on terms and conditions substantially similar to (and not more favorable to the Prospective Transferee than) the terms and conditions set forth in the Proposed Transfer Notice, it being understood and agreed that (i) any such sale or transfer shall be subject to compliance with (A) Applicable Law and the rules of the applicable stock exchange on which any of shares of the Capital Stock are listed and (B) the other terms and restrictions of this Agreement, including, without limitation, the terms and restrictions set forth in Subsections 2.2 and 6.9(b); (ii) any future Proposed Investor Transfer shall remain subject to the terms and conditions of this Agreement, including this Section 2; and (iii) such sale shall be consummated within forty-five (45) days after receipt of the Proposed Transfer Notice by the Company and, if such sale is not consummated within such forty-five (45) day period, such sale shall again become subject to the Right of First Refusal on the terms set forth herein.

- (iv) Consideration; Closing. If the consideration proposed to be paid for the Transfer Stock is in property, services or other non-cash consideration, the fair market value of the consideration shall be as determined in good faith by the Managers and as set forth in the Company Notice. If the Company cannot for any reason pay for the Transfer Stock in the same form of non-cash consideration, the Company may pay the cash value equivalent thereof, as determined in good faith by the Managers and as set forth in the Company Notice. The closing of the purchase of Transfer Stock by the Company shall take place, and all payments from the Company and the Investors shall have been delivered to the selling Investor, by the later of (i) the date specified in the Proposed Transfer Notice as the intended date of the Proposed Investor Transfer; and (ii) forty-five (45) days after delivery of the Proposed Transfer Notice. Notwithstanding the foregoing, in the event of any regulatory restrictions or delays (including but not limited to stock exchange or securities regulators in the U.S.), such closing shall take place no later than fifteen (15) days following regulatory approval of such sale of Transfer Stock.
- (b) Distribution. As set forth in the Amended and Restated Operating, in connection with a Conversion of the Preferred Units into Common Shares, the Investor shall distribute such Common Shares to its stockholders in accordance with the following:
  - (i) Form of Distribution. In connection with a Conversion, the board of directors of Investor (or a committee of the board of directors of Investor acting pursuant to delegated authority), in accordance with the Nevada Revised Statutes any applicable securities laws and the rules and regulations of the Nasdaq Capital Market (or such applicable trading market at the time of such Conversion), shall set the Record Date and the Distribution Date and Investor shall establish appropriate procedures in connection with the Distribution. In connection with the Distribution, all Common Shares held by Investor on the Distribution Date will be distributed to Record Holders in the manner determined by Investor and in accordance with Section 2.2(b).

(ii) Manner of Effecting Distribution.

- (1) Subject to the terms and conditions established pursuant to Section 2.2(a), each Record Holder shall be entitled to receive for each share of Investor Common Stock held by such Record Holder a number of shares of Common Shares equal to the number of shares of Common Shares held by the Investor on the Distribution Date, multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of shares of Investor Common Stock outstanding on the Record Date.
- (2) No Party, nor any of its Affiliates, will be liable to any Person in respect of any shares of Common Shares, or distributions in respect thereof, that are delivered to a public official in accordance with the provisions of any applicable escheat, abandoned property or similar Applicable Law.

(iii) Actions Prior to the Distribution.

- (1) Company shall use reasonable commercial efforts to cooperate with Investor to give effect to and accomplish the Distribution, including in connection with the preparation of all documents and the making of all filings required under Applicable Law in connection with the Distribution. Investor shall be entitled to direct and control the efforts of the Parties in connection with, and prior to, the Distribution, including the selection of an investment bank or banks to manage the Distribution, as well as any financial, legal, accounting and other advisors of Investor, and Company shall use reasonable commercial efforts to take, or to cause to be taken, all actions and to do, or cause to be done, all other things reasonably necessary to facilitate the Distribution as reasonably requested by Investor. Notwithstanding the foregoing, in the event that the Distribution requires a regulatory filing by the Company, then the Company shall be entitled to direct and control such filing. Without limiting the foregoing, prior to the Distribution, Company shall use commercially reasonable efforts to, and shall cause its employees, advisors, agents, accountants, counsel and other representatives to, as requested by Investor, reasonably cooperate in and take the following actions: (i) preparing and filing a registration statement or statements for the registration on an appropriate registration form or forms designated by Investor; (ii) participating in meetings, drafting sessions, due diligence sessions, management presentation sessions, “road shows” and similar meetings or sessions in connection with the Distribution; (iii) furnishing to any dealer manager or similar agent participating in the Distribution (A) “comfort” letters from independent public accountants in customary form and covering such matters as are customary for an underwritten public offering (including with respect to events subsequent to the date of financial statements included in any offering document) and (B) opinions and negative assurance letters of counsel in customary form and covering such matters as reasonably may be requested; and (iv) furnishing all historical and forward-looking financial and other relevant financial and other information that is available to Company and is reasonably required in connection with the Distribution.

- (2) Investor and Company shall prepare and mail, prior to the Distribution Date and in accordance with Applicable Law, to the holders of Investor Common Stock, such information concerning Company and Investor, their respective businesses, operations and management, the Distribution and such other matters as Investor reasonably shall determine and as may be required by Applicable Law. Investor and Company shall use reasonable commercial efforts to prepare, and Company shall, to the extent required by Applicable Law, file with applicable securities regulators and exchanges any such documentation that Investor reasonably determines are necessary or desirable to effectuate the Distribution, and Investor and Company each shall use reasonable commercial efforts to obtain all necessary approvals from applicable securities regulators and exchanges with respect to the foregoing as soon as practicable.
- (3) Investor and Company shall take all actions as may be reasonably necessary under any applicable securities, “blue sky” or comparable laws of the United States, the states and territories thereof and any foreign jurisdiction in connection with the Distribution.
- (4) Investor and Company shall use reasonable commercial efforts to take all actions and steps reasonably necessary and appropriate to cause the conditions to the Distribution set forth in Section 2.2(d) to be satisfied as soon as practicable and to effect the Distribution on the Distribution Date in accordance with this Agreement.
- (5) Notwithstanding any other provision of this Agreement, if the Company is in possession of material information that has not been disclosed to the public and the Company, in accordance with the advice of its counsel, reasonably deems it to be advisable not to disclose such information in a prospectus, registration statement or other public filing and, in the reasonable judgment of the Managers, there is a reasonable likelihood that such disclosure would be materially adverse to the Company’s interests, be seriously detrimental to the Company’s shareholders, or would materially interfere with any financing, acquisition, disposition, arrangement, amalgamation, merger, business combination or similar transaction involving the Company, then the period during which the Company would otherwise be required to make such disclosure will be extended while such information remains non-public for a period not to exceed sixty (60) days after such notice of Conversion; provided, however, that the Company may not invoke this right more than once.

(iv) Additional Matters in Connection with the Distribution.

- (1) Investor, Company, and any agent appointed in connection with the Distribution, as applicable, shall be entitled to withhold and deduct from the consideration otherwise payable pursuant to this Agreement such amounts as are required to be withheld and deducted in connection with such payments under Applicable Law. Any withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Persons otherwise entitled thereto.
- (2) Upon consummation of the Distribution, Investor shall deliver to the agent a global certificate representing the Common Shares being distributed in the Distribution for the account of the Investor stockholders that are entitled to such shares.
- (3) From immediately after the Conversion, the Company the Common Shares shall not be transferable and the transfer agent for the Common Shares shall not transfer any Common Shares except as provided in this Agreement. Investor shall give written notice of the Distribution Effective Time to the transfer agent with written authorization to proceed as set forth in Section 2.2(b). Investor shall not exercise any voting rights attached to such Common Shares between the date of Conversion and the Date of the Distribution.

(c) Effect of Failure to Comply.

- (i) Transfer Void; Equitable Relief. Any Proposed Investor Transfer or Conversion not made in compliance with the requirements of this Agreement shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent and shall not be recognized by the Company. Each party hereto acknowledges and agrees that any breach of this Agreement would result in substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocably agree that any non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales and other transfers of the Preferred Units not made in strict compliance with this Agreement).

- (ii) Violation of First Refusal Right. If any Investor becomes obligated to sell any Transfer Stock to the Company under this Agreement and fails to deliver such Transfer Stock in accordance with the terms of this Agreement, the Company may, at its option, in addition to all other remedies it may have, send to such Investor the purchase price for such Transfer Stock as is herein specified and transfer to the name of the Company on the Company's books any certificates, instruments, or book entry representing the Transfer Stock to be sold.
- (iii) Violation of Distribution Rights. In addition to such Prohibited Transfer being null and void ab initio, if Investor purports to sell any Common Shares following a Conversion in contravention of Section 2.2 (a "**Prohibited Transfer**"), Investor shall reimburse Company for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Investor's rights in contravention of Section 2.2.

3. Exempted Offerings. Notwithstanding the foregoing or anything to the contrary herein, the provisions of Section 2 shall not apply to the sale of any Preferred Units pursuant to a Deemed Liquidation Event (as defined in the Amended and Restated Operating Agreement).

4. Legend. Each certificate, instrument, or book entry representing Preferred Units held by the Investor shall be notated with the following legend:

THE SALE, PLEDGE, HYPOTHECATION, OR TRANSFER OF THE SECURITIES REPRESENTED HEREBY IS SUBJECT TO, AND IN CERTAIN CASES PROHIBITED BY, THE TERMS AND CONDITIONS OF A CERTAIN RIGHT OF FIRST REFUSAL AND DISTRIBUTION AGREEMENT BY AND AMONG THE INVESTOR AND THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

Investor agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares notated with the legend referred to in this Section 4 above to enforce the provisions of this Agreement, and the Company agrees to promptly do so. The legend shall be removed upon termination of this Agreement at the request of the holder.

5. Miscellaneous.

- (a) Term. This Agreement shall automatically terminate upon the consummation of a Deemed Liquidation Event (as defined in the Amended and Restated Operating Agreement), Transfer of all of the Preferred Units held by Investor or Distribution of all Company Common Stock issued upon a Conversion of the Preferred Units, as provided in the Amended and Restated Operating Agreement.
- (b) Stock Split. All references to numbers of shares in this Agreement shall be appropriately adjusted to reflect any stock dividend, split, combination or other recapitalization affecting the Capital Stock occurring after the date of this Agreement.

- (c) Ownership. Investor represents and warrants that Investor is the sole legal and beneficial owner of the Preferred Units subject to this Agreement and that no other person or entity has any interest in such shares (other than a community property interest as to which the holder thereof has acknowledged and agreed in writing to the restrictions and obligations hereunder).
- (d) Jurisdiction. Each of the Parties hereto irrevocably consents to the non-exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware in connection with any matter based upon or arising out of this Agreement.

WAIVER OF JURY TRIAL: EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AND ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

- (e) Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial messenger or courier service, or mailed by registered or certified mail (return receipt requested) or sent via email (with automated or personal acknowledgment of receipt) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice or, if specifically provided for elsewhere in this Agreement, by email):

- (i) if to Company, to:

NextTrip Group, LLC  
1560 Sawgrass Corporate Parkway, Suite 130  
Sunrise, Florida 33323  
Attention: Bill Kerby, CEO  
Email: bill.kerby@nexttrip.com

- (ii) If to the Investor, to:

NextPlay Technologies, Inc.  
1560 Sawgrass Corporate Parkway, Suite 130  
Sunrise, Florida 33323  
Attention: Nithinan Boonyawattapisut, Co-CEO  
Email: nithinan.boonyawattapisut@nextplaytechnologies.com

Any notice given as specified in this Section 5.5 (i) if delivered personally shall conclusively be deemed to have been give or served at the time of delivery (ii) if delivered by electronic mail shall conclusively be deemed to have been given effective upon actual receipt if during the recipient's normal business hours, or at the beginning of the recipient's next normal Business Day after receipt if not received during the recipient's normal business hours, and (iii) if sent by commercial delivery service or mailed by registered or certified mail (return receipt requested) shall conclusively be deemed to have been received on the third Business Day after the post of the same. No notice to the Investor or the Company shall be deemed given or received unless the entity noted "with a copy to" is simultaneously given notice in the same manner as any notice given to the Investor or the Company as the case may be; provided, however, that no notice to such Party shall constitute notice to the Investor or the Company for purposes of this Section 5.5.

- (f) Entire Agreement. This Agreement, the Exchange Agreement, the Amended and Restated Operating Agreement and the Separation Agreement (including, the Exhibits and Schedules thereto) constitutes the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled.
- (g) Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.
- (h) Amendment; Waiver and Termination. This Agreement may be amended, modified or terminated (other than pursuant to Section 5.1 above) and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by the Company and the Investor. Any amendment, modification, termination or waiver so effected shall be binding upon the Company, the Investor and all of their respective successors whether or not such party, or other shareholder entered into or approved such amendment, modification, termination or waiver. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.
- (i) Assignment of Rights and Assumption of Obligations.
  - (i) The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

- (ii) The rights and obligations of the Investor hereunder are not assignable without the Company's written consent.
  - (iii) The Investor shall not enter into a transaction that would result in a change of control of the Investor unless the counterparty to such transaction first agrees to assume the obligations of the Investor hereunder.
  - (iv) The Investor will not consummate any transaction (whether by way of arrangement, amalgamation, merger, reorganization, consolidation, sale of assets or otherwise) whereby all or substantially all of its undertaking, property and assets would become the property of any other person or, in the case of a business combination, of the continuing person resulting therefrom, unless such other person (the "**Successor**"), by operation of law, becomes bound by the terms and provisions of this Agreement or, if not so bound, executes, prior to or contemporaneously with the consummation of such transaction, an agreement supplemental hereto and such other instruments (if any) as are reasonably necessary or advisable to evidence the assumption by the Successor of liability for all amounts payable and property deliverable hereunder and the covenant of such Successor to pay and deliver or cause to be delivered the same and its agreement to observe and perform all the covenants and obligations of the Investor under this Agreement.
  - (v) Whenever the conditions of Section 5.9(d) have been duly observed and performed, if required by Section 5.9(d), the Successor and the other parties hereto will execute and deliver the supplemental agreement provided for herein and thereupon the Successor will possess and, from time to time, may exercise each and every right and power and will be subject to each and every obligation of the Investor under this Agreement in the name of the Investor or otherwise and any act or proceeding under any provision of this Agreement required to be done or performed by the Investor or any officer of the Investor may be done and performed with like force and effect by the directors or officers of such Successor.
- (j) Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either of the parties and each provision is hereby declared to be separate, severable and distinct.

- (k) Governing Law. This Agreement shall be governed by the internal law of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware.
- (l) Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- (m) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.
- (n) Specific Performance. In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, each Party shall be entitled to specific performance of the agreements and obligations of the other Party hereunder and to such other injunction or other equitable relief as may be granted by a court of competent jurisdiction.
- (o) Expenses. The Investor shall pay all expenses incident to the Company's performance under or compliance with this Agreement, including, without limitation all registration and filing fees, printing expenses, expenses and out-of-pocket costs relating to road shows (including the expenses of the Company, the underwriters or agents and any other person involved in such road show), listing fees, fees and disbursements of counsel and independent auditors for the Company, fees of securities dealers, transfer taxes, fees of transfer agents and registrars and reasonable out-of-pocket expenses (including without limitation, reasonable legal fees and disbursements of legal counsel for the Company and the reasonable legal fees and disbursements of underwriters or agents counsel) of the Company, underwriting fees, discounts and selling commissions allocable to the Distribution.
- (p) Indemnity. The Investor agrees to indemnify and hold harmless the Company, its directors, officers, employees and agents and each person (other than the Investor), if any, who controls the Company against any demands, claims, actions, proceedings, losses (other than loss of profit), damages, costs, expenses or liabilities (including reasonable fees, charges and disbursements of legal counsel) whatsoever to which the Company may become subject under Applicable Law or stock exchange rule, or otherwise or as a result of a Distribution under this Agreement. This indemnification provision will survive the expiry of this Agreement and will remain in full force and effect regardless of any investigation made by or on behalf of the Company or any officer, director or controlling person of the Company and will survive any transfer of securities pursuant to a Distribution to which this Agreement relates. Notwithstanding the foregoing, the Investor shall not be liable for any demands, claims, actions, proceedings, losses (other than loss of profit), damages, costs, expenses or liabilities (including reasonable fees, charges and disbursements of legal counsel) whatsoever to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with information furnished by or on behalf of the Company expressly for use in connection with such Distribution.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the parties have executed this Right of First Refusal and Distribution Agreement as of the date first written above.

**COMPANY:**

**NEXTTRIP GROUP, LLC.**

By:    /s/ \_\_\_\_\_  
Name:  \_\_\_\_\_

Title:  \_\_\_\_\_

**INVESTOR:**

**NEXTPLAY TECHNOLOGIES, INC.**

By:    /s/ \_\_\_\_\_  
Name:  \_\_\_\_\_

Title:  \_\_\_\_\_

\_\_\_\_\_

**EXCHANGE AGREEMENT**

This EXCHANGE AGREEMENT ("Agreement"), dated as of January 25, 2023 (the "Effective Date"), is made and entered into by and between NextTrip Group, LLC, a Florida limited liability company (the "Company") and NextPlay Technologies, Inc. ("Member").

**RECITALS**

A. Member owns 1,000,000 Membership Units of the Company (the "Common Units"), which represents a 52.5% membership interest in the Company.

B. In connection with the restructuring of the Company, the Member and the Company desire for the Member to exchange its Common Units in the Company for newly created Preferred Units (the "Preferred Units") with the rights, preferences and terms as set forth in that certain Amended and Restated Operating Agreement of the Company dated as of January 25, 2023 (the "Restated Operating Agreement").

**AGREEMENT**

NOW, THEREFORE, BE IT RESOLVED, that in consideration for the promises and the mutual agreements of the parties contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Exchange of Member's Common Units for Preferred Units. As of the Effective Date, the Company assigns, conveys and transfers to Member 400,000 Preferred Units in the Company in exchange for all of Member's current membership interests in the Company, consisting of 1,000,000 Common Units. As of the Effective Date, Member accepts such exchange and Member agrees to be bound by, keep and observe all of the obligations of members in the LLC with respect to the Units. As of the Effective Date, Member agrees to execute an Agreement To Be Bound, substantially in the form set forth in Exhibit A hereto, by all of the terms and conditions of the Restated Operating Agreement.

2. No Prior Assignment. Each of Member and the Company represents and warrants that it has not previously sold, transferred or assigned all or any portion of the Common Units or Preferred Units, respectively, or entered into any agreement, other than this Agreement, to assign the Common Units or Preferred Units, respectively, or any portion thereof, to any one other than the Company or Member, respectively.

3. Governing Law. Each of the parties agrees that this Agreement shall be interpreted, construed, governed, and enforced under and pursuant to the laws of the State of Florida.

4. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties hereto, and their respective successors in interest and assigns.

5. Counterparts. This Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original, and counterpart signature pages may be assembled to form a single original document. This Agreement may be executed and delivered by the exchange of electronic facsimile copies or counterparts of the signature page, which shall be considered the equivalent of ink signature pages for all purposes.

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first set forth above.

**NextTrip Group, LLC**, a Florida limited liability company

By: /s/  
Name: Don Monaco  
Title: Co-Manager

**NextPlay Technologies, Inc.**, a Nevada corporation

By: /s/  
Name: William Kerby  
Title: Co-Chief Executive Officer

**EXHIBIT A**

**AGREEMENT TO BE BOUND**

In partial consideration for the issuance of 400,000 Preferred Units of NextTrip Group, LLC, the undersigned acknowledges that it has read the Amended and Restated Operating Agreement of NextTrip Group, LLC dated January 25, 2023 (the “Restated Operating Agreement”), a copy of which is attached hereto as Attachment I and incorporated herein by this reference, and agrees to be bound by all of the terms of that Restated Operating Agreement.

Dated: January 25, 2023

**NextPlay Technologies, Inc.**, a Nevada corporation

By: /s/

Name: William Kerby

Title: Co-Chief Executive Officer

EXHIBIT A TO EXCHANGE AGREEMENT



### Next Play Technologies Completes Separation of NextTrip Group, LLC

**SUNRISE, FL – JANUARY 31, 2023 – NextPlay Technologies, Inc. (NASDAQ: NXTP) (the “Company”),** a digital native ecosystem for finance, digital advertisers, and video gamers, announced that the Company has completed the separation of its online travel business, NextTrip Group, LLC, to a consortium led by former Co-CEO William Kerby. On June 29, 2022, the Company announced the proposed sale of NextTrip and Reinhart Zappware to TGS Esports Inc. (TSX-V: TGS, OTC: TGSEF). That agreement was terminated by mutual consent. NextPlay continues to explore strategic alternatives for the interactive TV business, now known as ZW Inc.

As consideration for the assets of NextTrip, NextPlay will receive nonvoting convertible preferred LLC units of NextTrip Group, LLC in the amount of US \$4 million. The convertible preferred LLC units are redeemable, can be sold subject to certain transfer restrictions, and are distributable to NextPlay shareholders of record once certain conditions are met, including upon a Nasdaq listing of the NextTrip business.

In conjunction with the transaction, Mr. Kerby will be leaving NextPlay Technologies to assume the CEO role at NextTrip Group, LLC. Additionally, Mr. Donald Monaco, Ms. Carmen Diges, and Mr. Kerby have resigned their positions as Directors of Next Play Technologies to assume Director roles on the Board of Directors of NextTrip, LLC., and are pursuing a going public transaction.

“We are pleased to complete the separation of NextTrip and look forward to their anticipated success as an independent company. The value they create will accrue to the benefit of NextPlay shareholders”, commented Todd Bonner, NextPlay’s Chairman.

The divestiture streamline’s Next Play’s business allowing for increased focus on our core businesses in the areas of financial technology, digital banking, and ad-tech, and advances the company’s initiatives in capital allocation”, noted NextPlay CEO Nithinan “Jess” Boonyawattapisut.

Further details regarding the separation can be found in NextPlay’s current report on Form 8-K filed with the Securities and Exchange Commission on January 31, 2023, available at sec.gov and in the Investors section of the company’s website.

#### About NextPlay Technologies

NextPlay Technologies, Inc. (Nasdaq: NXTP) is a technology solutions company offering games, in-game advertising, digital banking, and crypto-banking services to consumers and corporations within a growing worldwide digital ecosystem. NextPlay’s engaging products and services utilize innovative AdTech, Artificial Intelligence and Fintech solutions to leverage the strengths and channels of its existing and acquired technologies. For more information about NextPlay Technologies, visit [www.nextplaytechnologies.com](http://www.nextplaytechnologies.com) and follow us on Twitter @NextPlayTech and LinkedIn.

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## **Forward-Looking Statements**

This press release includes “forward-looking statements” within the meaning of, and within the safe harbor provided by the Safe Harbor Provisions of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements give our current expectations, opinions, belief or forecasts of future events and performance. A statement identified by the use of forward-looking words including “will,” “may,” “expects,” “intends,” “projects,” “anticipates,” “plans,” “believes,” “estimate,” “should,” and certain of the other foregoing statements may be deemed forward-looking statements. Although the Company believes that the expectations reflected in such forward-looking statements are reasonable, these statements involve risks and uncertainties that may cause actual future activities and results to be materially different from those suggested or described in this news release. Factors that may cause such a difference include risks and uncertainties including, and not limited to, our ability to convert and distribute NextTrip common shares to our shareholders in the future in a tax-efficient and cost-effective manner; our need for additional capital which may not be available on commercially acceptable terms, if at all, which raises questions about our ability to continue as a going concern; current regulation governing digital currency activity is often unclear and is evolving; the future development and growth of digital currencies are subject to a variety of factors that are difficult to predict and evaluate, many of which are out of our control; the value of digital currency is volatile; amounts owed to us by third parties which may not be paid timely, if at all; certain amounts we owe under outstanding indebtedness which are secured by substantially all of our assets and penalties we may incur in connection therewith; the fact that we have significant indebtedness, which could adversely affect our business and financial condition; uncertainty and illiquidity in credit and capital markets which may impair our ability to obtain credit and financing on acceptable terms and may adversely affect the financial strength of our business partners; the officers and directors of NextPlay have the ability to exercise significant influence over the company; stockholders may be diluted significantly through our efforts to obtain financing, satisfy obligations and complete acquisitions through the issuance of additional shares of our common or preferred stock; if we are unable to adapt to changes in technology, our business could be harmed; if we do not adequately protect our intellectual property, our ability to compete could be impaired; unfavorable changes in, or interpretations of, government regulations or taxation of the evolving Internet and e-commerce industries which could harm our operating results; risks associated with the operations of, the business of, and the regulation of, Longroot and NextBank International (formerly IFEB); the markets in which we participate being highly competitive, and because of that we may be unable to compete successfully with our current or future competitors; our potential inability to adapt to changes in technology, which could harm our business; the volatility of our stock price; and that we have incurred significant losses to date and require additional capital which may not be available on commercially acceptable terms, if at all. More information about the risks and uncertainties faced by NextPlay are detailed from time to time in NextPlay’s periodic reports filed with the SEC, including its most recent Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, under the headings “Risk Factors”. These reports are available at [www.sec.gov](http://www.sec.gov). Other unknown or unpredictable factors also could have material adverse effects on the company’s future results and/or could cause our actual results and financial condition to differ materially from those indicated in the forward-looking statements. Investors are cautioned that any forward-looking statements are not guarantees of future performance and actual results or developments may differ materially from those projected. The forward-looking statements in this press release are made only as of the date hereof. The company takes no obligation to update or correct its own forward-looking statements, except as required by law, or those prepared by third parties that are not paid for by the company. If we update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements.

SOURCE: NextPlay Technologies, Inc.

### **Company Contacts:**

#### **NextPlay Technologies, Inc.**

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Director of Corporate Development

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