

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): **May 30, 2017** (May 23, 2017)

Nxt-ID, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

000-54960

(Commission File Number)

46-0678374

(IRS Employer
Identification No.)

Nxt-ID, Inc.

285 North Drive

Suite D

Melbourne, FL 32934

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(203) 266-2103**

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))

Item 1.01 Entry into a Material Definitive Agreement

On May 23, 2017, Nxt-ID, Inc. (the “Company”), completed a merger (the “Merger”) pursuant to an executed Agreement and Plan of Merger (the “Merger Agreement”) by and among the Company, Fit Merger Sub, Inc., a wholly-owned subsidiary of the Company (the “Merger Sub”), Fit Pay, Inc. (“Fit Pay”), Michael Orlando (“Orlando”), Giesecke & Devrient Mobile Security America, Inc. (“G&D”), the other stockholders of Fit Pay (the “Other Holders”) and Michael Orlando in his capacity as stockholder representative representing the Other Holders (the “Stockholder Representative”, and together with Orlando and G&D, the “Sellers”). Pursuant to the Merger, Fit Pay merged with and into the Merger Sub, with the Merger Sub continuing as the surviving entity and a wholly owned subsidiary of the Company.

Merger Agreement

Pursuant to the terms of the Merger Agreement, the aggregate purchase price paid for Fit Pay was: (i) 19.96% of the outstanding shares of common stock of the Company (the “Common Stock”); (ii) 2,000 shares of the Series C Non- Convertible Preferred Stock of the Company (the “Series C Preferred Stock”); (iii) the payment of certain debts by the Company; and (iv) the payment of certain unpaid transaction expenses by the Company. In addition, the Company will be required to pay the Sellers an earnout payment equal to 12.5% of the gross revenue derived from Fit Pay’s technology for sixteen (16) fiscal quarters commencing on October 1, 2017 and ending on December 31, 2021. The Company also assumed various promissory notes issued by Fit Pay to Orlando. Following the Merger, all of the preferred and common stock of Fit Pay was transferred to the Company.

The Merger Agreement contains customary representations, warranties, covenants and indemnification obligations of the parties to the Merger. The Merger Agreement is also subject to customary closing conditions. Following the Merger, Orlando, Fit Pay’s President, became Chief Operating Officer of the Company, and President of the Merger Sub.

The foregoing description of the Merger Agreement is not complete, and is qualified in its entirety by reference to the full text of the Merger Agreement, the form of which is filed as Exhibit 10.1 hereto, and is incorporated herein by reference.

Series C Non-Convertible Preferred Stock

Ranking

The Series C Preferred Stock will rank junior to our Series A Convertible Preferred Stock, \$0.0001 par value per share, and our Series B Convertible Preferred, \$0.0001 par value per share with respect to dividend rights and/or rights upon distributions, liquidation, dissolution or winding up of the Company.

Dividends on Series C Non-Convertible Preferred Stock

Holders of Series C Preferred Stock shall be entitled to receive from, from and after the first date of issuance of the Series C Preferred Stock, cumulative dividends at a rate of 5% per annum on a compounded basis, which dividend amount shall be guaranteed. Accrued and unpaid dividends shall be payable in cash.

Redemption of Series C Non-Convertible Preferred Stock

The Series C Preferred Stock may be redeemed by the Company in cash at any time, in whole or in part, upon payment of the stated value of the Series C Preferred Stock, and all related accrued but unpaid dividends.

Fundamental Change

If a “fundamental change” occurs at any time while the Series C Preferred Stock is outstanding, the holders of shares of Series C Preferred Stock then outstanding shall be immediately paid, out of the assets of the Company or the proceeds of such fundamental change, as applicable, and legally available for distribution to its stockholders, an amount in cash equal to the stated value of the Series C Preferred Stock, and all related accrued but unpaid dividends.

If the legally available assets of the Company and the proceeds of such “fundamental change” are insufficient to pay the all of the Holders of the Series C Preferred Stock, then the Holders of the Series C Preferred Stock shall share ratably in any such distribution in proportion to the amount that they would have been entitled to. A fundamental change includes but is not limited to any change in the ownership of at least 50% of the voting stock; liquidation or dissolution; or the Common Stock ceases to be listed on the market upon which it currently trades.

Voting Rights

The holders of the Series C Preferred Stock shall be entitled to vote on any matter submitted to the stockholders of the Company for a vote. One (1) share of Series C Preferred Stock shall carry the same voting rights as one (1) share of Common Stock.

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 Merger, Michael Orlando became Chief Operating Officer of the Company and President of the Merger Sub effective as of May 23, 2017.

Mr. Orlando founded Fit Pay in September of 2014. Prior to founding Fit Pay, Mr. Orlando served in numerous roles at payment, authentication, and software-as-a-service companies. In 2012, Mr. Orlando served as Senior Vice President, Sales and Marketing at EZ Prints, Inc., an online merchandise printing and fulfillment services company. From September 2000 to February 2012, Mr. Orlando served as Senior Vice President, Global Sales and Services at CyberSource Inc., a leading e-commerce and credit card systems management company, where he oversaw all enterprise sales and professional services functions worldwide.

There are no arrangements or understandings between Mr. Orlando and any other persons pursuant to which he was named as Chief Operating Officer. There are also no family relationships between Mr. Orlando and any director or executive officer of the Company and he has no direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

In connection with Mr. Orlando’s employment with the Company, Mr. Orlando will receive an annual base salary of \$150,000 and will be granted an award of 250,000 restricted shares of the Company’s common stock on the effective date of his employment from the Company’s Long-Term Incentive Plan of 2013.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Changes in Fiscal Year

Series C Certificate of Designations

On May 23, 2017, the Company filed the Certificate of Designations for its Series C Preferred Stock with the Secretary of State of the State of Delaware, establishing the rights, preferences, privileges, qualifications, restrictions, and limitations relating to its Series C Preferred Stock. The Series C Certificate of Designations became effective with the Secretary of State of the State of Delaware upon filing. A copy of the Certificate of Designations is included in Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference. The information pertaining to the Series C Preferred Stock set forth in Item 1.01 hereof is incorporated herein by reference.

Item 8.01 Other Events

On May 23, 2017, the Company issued a press release (the “Press Release”) announcing the Merger. A copy of the Press Release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
3.1	Certificate of Designations for Series C Non-Convertible Preferred Stock.
10.1	Form of Agreement and Plan of Merger by and between Nxt-ID, Inc., Fit Merger Sub, Inc., Fit Pay, Inc., Michael Orlando, Giesecke & Devrient Mobile Security America, Inc., the other stockholders of the Fit Pay, Inc., and Michael Orlando in his capacity as stockholder representative representing the other stockholders of Fit Pay, Inc., dated as of May 23, 2017.
99.1	Press Release of Nxt-ID, Inc., dated May 23, 2017.

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.

Date: May 30, 2017

NXT-ID, INC.

By: /s/ Gino M. Pereira

Name: Gino M. Pereira

Title: Chief Executive Officer

NXT-ID, INC.

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS

OF

SERIES C NON-CONVERTIBLE VOTING PREFERRED STOCK

Nxt-ID, Inc. (the “Company”), a corporation organized and existing under the General Corporation Law of the State of Delaware (the “DGCL”), does hereby certify that, pursuant to authority conferred upon the Company’s Board of Directors (the “Board”) by the Company’s Certificate of Incorporation, as amended (the “Charter”) and pursuant to Section 151 of the DGCL, the Board adopted resolutions (i) designating a new series of the Company’s previously authorized preferred stock, par value \$0.0001 per share (the “Preferred Stock”), and (ii) providing for the designations, preferences, and relative, optional or other rights, and the qualifications, limitations or restrictions thereof, of 2,000 shares of Series C Non-Convertible Voting Preferred Stock of the Company, as follows:

RESOLVED, that the Company is designating 2,000 shares of Series C Non-Convertible Voting Preferred Stock, par value \$0.0001 per share, which shall have the following terms, designations, preferences and other special rights:

Series C Preferred Stock

1. DESIGNATION AND NUMBER. A series of Preferred Stock, designated as the “Series C Non-Convertible Voting Preferred Stock” (the “Series C Preferred Stock”), is hereby established. The total number of designated shares of Series C Preferred Stock shall be 2,000.

2. RANK. The Series C Preferred Stock shall, with respect to dividend and redemption rights and rights upon liquidation, dissolution or winding up of the Company, rank senior to all classes or series of shares of common stock of the Company, par value \$0.0001 per share (“Common Stock”) of the Company and to all other equity securities issued by the Company from time to time (together with the Common Stock, the “Junior Securities”). The term “equity securities” shall not include convertible debt securities outstanding on the Original Issue Date unless and until such securities are converted into equity securities of the Company. The Series C Preferred Stock shall rank junior to the Company’s Series A Preferred Stock, par value \$0.0001 per share (the “Series A Preferred Stock”), and the Company’s Series B Preferred Stock, par value \$0.0001 per share (the “Series B Preferred Stock”).

3. FUNDAMENTAL CHANGE.

(a) If a Fundamental Change occurs at any time while the Series C is outstanding, (i) the holders of shares of Series C Preferred Stock then outstanding shall be immediately paid, out of the assets of the Company or the proceeds of such Fundamental Change, as applicable, and legally available for distribution to its stockholders, an amount in cash equal to the Stated Amount per share of Series C Preferred Stock plus any accrued but unpaid dividends (the “Fundamental Change Amount”); and (ii) no distributions or payments shall be made in respect of any Junior Securities unless all Fundamental Change Amounts, if any, are first paid in full.

(b) In the event that, upon any such Fundamental Change, that has been approved by the holders of the Series C Preferred Stock in accordance with Section 7(e), the legally available assets of the Company and proceeds of such Fundamental Change are insufficient to pay the full amount of the Fundamental Change Amount on all outstanding shares of Series C Preferred Stock, then the holders of the Series C Preferred Stock shall share ratably in any such distribution of assets in proportion to the full Fundamental Change Amount to which they would otherwise be respectively entitled.

(c) In furtherance of the foregoing, the Company shall take such actions as are necessary to give effect to the provisions of this Section 3 including, without limitation, (i) in the case of a Change in Control structured as a merger, consolidation or similar reorganization, causing the definitive agreement relating to such transaction to provide for a rate at which the shares of Series C Preferred Stock are converted into or exchanged for cash or (ii) in the case of a Change in Control structured as an asset sale or a transfer of Capital Stock of the Company, as promptly as practicable following such transaction, either dissolving the Company and distributing the assets of the Company in accordance with applicable law or redeeming all outstanding shares of Series C Preferred Stock and, in the case of both (i) and (ii), giving effect to the preferences and priorities set forth in this Section 3.

(d) Except as limited by Section 3(b), to the extent the full amount required to be paid to the holders of Series C Preferred Stock pursuant to Section 3(a) are not paid within sixty (60) days of a Fundamental Change, any such unpaid Fundamental Change Amount shall increase by ten percent (10%) each thirty (30) days thereafter (pro-rated for partial periods) until paid in full.

(e) After payment of the full amount of the Fundamental Change Amount (subject to limitation pursuant to Section 3(b)), the holders of Series C Preferred Stock will have no right or claim to any of the remaining assets of the Company.

Upon the Company's provision of written notice as to the effective date of any Fundamental Change, accompanied by cash payment in the amount of the full Fundamental Change Amount to each record holder of the Series C Preferred Stock, the Series C Preferred Stock shall no longer be deemed outstanding shares of the Company and all rights of the holders of such shares will terminate. Such notice shall be given by first class mail, postage pre-paid, to each record holder of the Series C Preferred Stock at the respective mailing addresses of such holders as the same shall appear on the share transfer records of the Company.

4. DEFINITIONS.

(a) "Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

(b) “Affiliated Entities” means, with respect to any Holder, means (i) any Affiliate of such Holder, and (ii) any fund that is administered or managed by such Holder, any Affiliate of such Holder or any entity or an Affiliate of an entity that administers or manages such Holder.

(c) “Business Day” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(d) “Capital Stock” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity; provided that “Capital Stock” shall not include any indebtedness that is convertible or exchangeable for Capital Stock that is outstanding as of the Original Issue Date.

(e) A “Change in Control” shall be deemed to have occurred if any of the following occurs after the Original Issue Date:

(i) any “person” or “group” within the meaning of Section 13(d) of the Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder (the “Exchange Act”) is or becomes the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of shares of the Company’s voting stock representing 50% or more of the total voting power of all outstanding classes of the Company’s voting stock entitled to vote generally in elections of directors;

(ii) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, combination or change in par value and any recapitalization, reclassification or change of the Common Stock pursuant to a transaction described in Clause (B) below) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation, merger or similar transaction involving the Company pursuant to which the Common Stock will be converted into, or exchanged for, cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Subsidiaries; *provided that* a transaction described in clause (A) or (B) above pursuant to which the Persons that “beneficially owned,” directly or indirectly, the shares of the Company’s voting stock immediately prior to such transaction “beneficially own,” directly or indirectly, shares of voting stock representing at least a majority of the total voting power of all outstanding classes of voting stock of the surviving or transferee Person and such holders’ proportional voting power immediately after such transaction vis-à-vis each other with respect to the securities they receive in such transaction shall be in substantially the same proportions as their respective voting power vis-à-vis each other immediately prior to such transaction shall not constitute a “Change in Control”; or

(iii) the Board of Directors or holders of the Capital Stock of the Company approve any plan or proposal for the liquidation, dissolution or winding up of the Company; provided, however, that a Change in Control shall not be deemed to have occurred if at least ninety percent (90%) of the consideration received or to be received by the holders of the Common Stock in a transaction or transactions described under clause (ii) above, excluding cash payments for any fractional share and cash payments made pursuant to dissenters' appraisal rights, consists of shares of common stock traded on The Nasdaq Capital Market (or any of their respective successors), or will be so traded immediately following such transaction. In addition, for purposes of this definition, a transaction or event described under both clause (i) and clause (ii) above (whether or not the exceptions in clause (ii) apply) shall be evaluated solely under clause (ii) of this definition of Change in Control. If any transaction in which the Common Stock is replaced by, converted into or exchanged for property consisting of common equity of another entity, following the effective date of the related transaction that would have been a Fundamental Change but for the proviso immediately following clause (iii)(C) of this definition, references to the Company in this definition shall instead be references to such other entity.

(f) "Dividend Rate" means five percent (5%) per annum. In the event that the Company's market capitalization is \$50,000,000 for greater than thirty (30) consecutive days, then the Dividend Rate shall increase to fifteen percent (15%) per annum.

(g) "Fundamental Change" means an event that shall be deemed to have occurred at the time after the date hereof when any of the following occurs:

(i) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries and the Company's and its Subsidiaries' employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than fifty percent (50%) of the voting power of all classes the Company's equity securities entitled to vote generally in the election of the Company's directors;

(ii) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) pursuant to which the Common Stock would be converted into, or exchanged for, stock, other securities or other property or assets; (B) any share exchange, consolidation, merger or similar event involving the Company pursuant to which the Common Stock will be converted into, or exchanged for, cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company's Subsidiaries (any such share exchange, consolidation, merger, similar event, transaction or series of transactions being referred to for purposes of this clause (ii) as an "event"); *provided* that any such event described in clause (A) or (B) where the holders of all classes of the Company's voting capital stock immediately prior to such event own, directly or indirectly, more than fifty percent (50%) of the Voting Stock of the continuing or surviving Person or transferee or the parent thereof immediately after such event and such holders' proportional voting power immediately after such event vis-à-vis each other with respect to the securities they receive in such event will be in substantially the same proportions as their respective voting power vis-à-vis each other immediately prior to such event shall not constitute a Fundamental Change under this clause (ii);

(iii) the holders of the Common Stock approve any plan or proposal for the Company's liquidation or dissolution; or

(iv) the Common Stock ceases to be listed, quoted, or admitted for trading on any Permitted Exchange, or the announcement by any Permitted Exchange on which the Common Stock is then listed or admitted for trading that the Common Stock will no longer be so listed or admitted for trading, unless the Common Stock has been accepted for listing or admitted for trading on another Permitted Exchange.

(h) "Original Issue Date" means May 22, 2017.

(i) "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(j) "Permitted Exchange" means the Nasdaq Capital Market; the Nasdaq Global Market; the Nasdaq Global Select Market; the New York Stock Exchange; the NYSE MKT, any level of the OTC Markets operated by OTC Markets Group, Inc. or the OTC Bulletin Board (or any successors to any of the foregoing).

(k) "Relevant Market" means, as of any day, The Nasdaq Capital Market or, if the Common Stock is not listed on The Nasdaq Capital Market on such day, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed for trading.

(l) "Stated Value" means \$1,000.00 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, subdivisions or other similar events occurring after the Original Issue Date.

(m) "Subsidiary" or "Subsidiaries" means any direct or indirect, controlled subsidiary of the Company, and, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

(n) "Termination of Trading" means the Common Stock (or other capital stock for which the Common Stock was exchanged) ceases to be listed or quoted on a Permitted Exchange, or the announcement by any Permitted Exchange on which the Common Stock (or such other common stock) is trading that the Common Stock (or such other common stock) has been delisted (or admission has been revoked) and will not be immediately relisted or readmitted for trading on any Permitted Exchange.

(o) “Trading Day” means any day on which the Common Stock is traded on the Relevant Market, or, if the Relevant Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the holders of at least seventy percent (70%) of the outstanding shares of Series C Preferred Stock; *provided* that if the Common Stock is not listed on a Relevant Market, “Trading Day” means a Business Day.

5. DIVIDENDS. From and after the Original Issue Date, each holder of a share of Series C Preferred Stock shall be entitled to receive dividends (the “Dividends”), which Dividends shall be paid by the Company out of funds legally available therefor, payable, subject to the conditions and other terms hereof, in cash on the Stated Value of such share of Series C Preferred Stock at the Dividend Rate, which shall be cumulative and shall continue to accrue whether or not declared and whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year. Dividends on the Series C Preferred Stock shall commence accumulating on the Original Issue Date and shall be computed on the basis of a 360-day year, 30-day months. Dividends shall be payable quarterly on the following dates (each, a “Dividend Date”): (1) the first (1st) Dividend Date being October 1, 2017; (ii) the second (2nd) Dividend Date being January 1, 2018; (iii) the third (3rd) Dividend Date being April 1, 2018; and the fourth (4th) Dividend Date being July 1, 2018. Thereafter the dividends shall be paid quarterly on January 1, April 1, July 1, and October 1 of each year. The Company shall pay the Dividends in cash.

6. REDEMPTION. The Series C Preferred Stock may be redeemed by the Company in cash at any time, in whole or in part, upon payment of the Stated Value per share of such redeemed Series C Preferred Stock, and all related accrued but unpaid dividends.

7. VOTING RIGHTS. The holders of the Series C Preferred Stock shall be entitled to vote on any matter submitted to the stockholders of the Company for a vote. One (1) share of Preferred Stock shall carry the same voting rights as one (1) share of Common Stock. The Company shall not (and shall not have the power to), by merger, consolidation, reclassification, amendment or otherwise without first obtaining the consent of the holders of at least seventy percent (70%) of the outstanding shares of Series C Preferred Stock, voting as a separate class, directly or indirectly, take or permit any of the following: (a) the authorization or issuance of any equity security senior to or on a parity with the Series C Preferred Stock with respect to payments on a Fundamental Change, payment of dividends, or redemption rights; (b) any amendment to the Company’s Charter or bylaws which effects the rights, preferences or privileges of the Series C Preferred Stock in a manner that is adverse and disproportionate to the effect of such amendment on the rights, preferences or privileges of the other authorized classes or series of capital stock of the Company or which increases the number of authorized or issued shares of Series C Preferred Stock; (c) any amendment to this Certificate of Designations which adversely affects the rights, preferences or privileges of the Series C Preferred Stock; or (d) reclassification of any Series C Preferred Stock, or (e) the consummation of any Fundamental Change unless each holder of Series C Preferred Stock receives in cash upon the occurrence of the Fundamental Change the amount provided for in Section 3(a), or (f) any issuance of shares of Series A Preferred Stock or Series B Preferred Stock after the Original Issue Date.

8. CONVERSION. The shares of Series C Preferred Stock are not convertible into or exchangeable for any other property or securities of the Company. In the event that the Series C Preferred Stock is amended to be convertible, then, the Series C Preferred Stock shall not be convertible into Common Stock unless, in accordance with Nasdaq Rule 5635(a) the Company receives shareholder approval to allow for such conversion into Common Stock of the Company.

9. TERM. The Series C Preferred shall be a perpetual preferred with no Termination Date.

10. LEGEND. In the event the Board determines that the shares of Series C Preferred Stock shall be certificated, the Company shall include on such certificates any legends that the Board determines to be necessary or appropriate.

11. DEFINITIONS. Capitalized terms used herein without definition shall have the same meanings given to such terms in the Charter.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations, Preferences and Rights to be duly executed in its name and on its behalf on this 22nd day of May, 2017.

NXT-ID, INC.

By: /s/ Gino M. Pereira

Name: Gino M. Pereira

Title: Chief Executive Officer

[Signature Page – Nxt-ID, Inc. Certificate of Designations]

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “**Agreement**”), dated as of May 19, 2017, is entered into by and among Nxt-ID, Inc., a Delaware corporation (“**Purchaser**” or “**Parent**”), Fit Merger Sub, Inc. a Delaware corporation and wholly-owned subsidiary of Parent (“**Merger Sub**”), Fit Pay, Inc., a Delaware corporation (the “**Company**”), and Michael Orlando (“**Orlando**”), Giesecke & Devrient Mobile Security America, Inc. (“**G&D**”), the other stockholders of the Company (“**Other Holders**”) and Michael Orlando as the “**Shareholder Representative**” representing the Other Holders (each of Orlando, G&D and the Shareholder Representative, a “**Seller**” and collectively the “**Sellers**”) as the sole shareholders of the Company.

WHEREAS, the respective Boards of Directors or Managers, as applicable, of Parent, Merger Sub, and the Company have determined that it is in the best interest of each company and their respective stockholders and members, as applicable, to consummate the merger transaction provided for herein in which the Company would merge with and into Merger Sub, with Merger Sub surviving the Merger, upon the terms and subject to the conditions set forth herein (the “**Merger**”);

WHEREAS, the respective Boards of Directors or Managers, as applicable, of Parent, Merger Sub, and the Company have approved this Agreement, the Merger, and the other transactions contemplated by this Agreement, upon the terms and subject to the conditions set forth in this Agreement in accordance with the General Corporation Law of the State of Delaware (the “**DGCL**”), and their respective charter documents;

WHEREAS, each of Parent, Merger Sub, and the Company desires to make certain representations, warranties, covenants and agreements in connection with the Merger and the other transactions contemplated by this Agreement and also to prescribe various conditions to the consummation thereof; and

WHEREAS, it is intended that for United States federal income tax purposes, (a) the Merger shall qualify as a “reorganization” within the meaning of Section 368(a) of the Code, and (b) this Agreement shall constitute a plan of reorganization within the meaning of Treasury Regulations Section 1.368-2(g).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, representations, warranties, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I**DEFINITIONS**

1.1 **Definitions.** The following terms shall have the following meanings for the purposes of this Agreement:

“**Act**” means the Securities Act of 1933, as amended.

“**Affiliate**” means, with respect to any specified Person, any other Person which, directly or indirectly, owns or controls, is under common ownership or control with, or is owned or controlled by, such specified Person. For purposes of this definition, the term “**control**” (including the terms “controlling,” “controlled by,” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“**Agreement**” means this Agreement and Plan of Merger, including all exhibits and schedules hereto, as it may be amended from time to time.

“**Balance Sheet**” means the consolidated balance sheet of the Company, dated April 30, 2017, a copy of which is set forth in Schedule 1.1.

“**Balance Sheet Date**” means April 30, 2017.

“**Bankruptcy Code**” means Title 11 of the United States Code, as amended.

“**Business**” means the business of the Company, and shall be deemed to include any of the following incidents of such business: income, cash flow, operations, condition (financial or other), assets/properties, anticipated revenues/income, prospects, Liabilities and personnel/management.

“**Business Confidential Information**” means all information, knowledge or data related to the operation of the Business or the Company that is not in the public domain or otherwise publicly available, other than as a result of any action or inaction by a Seller, or that has been treated as confidential by the Company.

“**Business Day**” means any day other than (a) any Saturday or Sunday or (b) any other day on which banks located in New York, New York are required or permitted to be closed.

“**Certificates**” shall mean stock certificates that, immediately prior to the Effective Time, represented Shares converted into Merger Consideration pursuant to Section 2.3 (including any Shares referred to in the last sentence of Section 2.11).

“**Closing**” has the meaning set forth in Section 2.2.

“**Closing Date**” has the meaning set forth in Section 2.2.

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

“**Common Share**” means the shares of common stock, par value \$0.0001 per share, of the Company.

“**Company**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Company Charter Documents**” means the Company’s Certificate of Incorporation, as amended to the date hereof, and the Company’s Bylaws, as amended to the date hereof.

“**Company Plans**” has the meaning set forth in Section 3.14(a).

“**Company IP Rights**” has the meaning set forth in Section 3.10(b).

“**Company Registered IP**” has the meaning set forth in Section 3.10(a).

“**Company Technology**” means software and licenses sufficient to enable secure contactless payments at NFC-capable point of sale terminals, tokenization and authentication services, and backend services for digital wallet creation and management.

“**Company Unpaid Transaction Expenses**” means the expenses incurred by the Company in connection with this Agreement and the transactions contemplated hereby that remain unpaid as of the Closing.

“**Consolidated Omnibus Budget Reconciliation Act**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“**Contract**” means any contract, lease, commitment, understanding, task order, sales order, purchase order, delivery order, teaming agreement, joint venture agreement, other agreement, indenture, mortgage, note, bond, right, warrant, instrument, plan, permit or license, whether written or oral, which is intended or purports to be binding and enforceable.

“**De Minimis Claim**” has the meaning set forth in Section 11.3(a).

“**Debt**” means, on a consolidated basis, any and all (a) obligations for borrowed money, whether current or unfunded, secured or unsecured (including any accrued but unpaid interest thereon and any premiums, penalties, termination fees, expenses or breakage costs due upon prepayment of such indebtedness or payable as a result of the consummation of the transactions contemplated hereby) and whether or not evidenced by notes, bonds, debentures, mortgages or other debt instruments, debt securities or other similar instruments, (b) obligations to reimburse any Person for amounts drawn upon or funded under a letter of credit or similar arrangement, but which have not been repaid, (c) obligations arising out of overdrafts, acceptance credit or similar facilities, (d) guarantees of obligations of a type described in clauses (a) - (c) and inclusive of the items set forth in Section 6.11.

“**Determination Letter**” has the meaning set forth in Section 3.14(b).

“**Determined Losses**” has the meaning set forth in Section 11.6.

“**Earnout Payment**” has the meaning set forth in Section 2.3(b).

“**Earnout Period**” means the 16-quarter period commencing on October 1, 2017, and ending on September 30, 2021.

“**Effective Time**” means the time at which the Certificate of Merger is filed with the Secretary of State of Delaware.

“**Equipment**” means machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property accounted for as equipment.

“**Equity Recipients**” has the meaning set forth in Section 4.3.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Final Gross Revenue Statement**” has the meaning set forth in Section 2.3(b)(ii)(B).

“**Financial Statements**” means, collectively, (a) the Company’s consolidated unaudited balance sheet at December 31, 2016 and the Company’s consolidated unaudited statements of income and cash flows for the 12-month period ended December 31, 2016, and (b) the Balance Sheet and the Company’s consolidated unaudited statements of income and cash flows for the 3-month period ended March 31, 2017.

“**Foreign Benefit Plan**” has the meaning set forth in Section 3.14(g).

“**Fundamental Representations**” has the meaning set forth in Section 11.1.

“**G&D**” has the meaning set forth in the introductory paragraph of this Agreement.

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

“**Government Bid**” means a bid, tender or proposal which, if accepted, would result in a Government Contract.

“**Government Contract**” means any Contract between the Company and any Governmental Authority, as well as any subcontract or other arrangement by which (i) such company has agreed to provide goods or services to a prime contractor, to the Governmental Authority, or to a higher-tier subcontractor or (ii) a subcontractor or vendor has agreed to provide goods or services to a company, where, in either event, such goods or services ultimately will benefit or be used by a Governmental Authority.

“**Governmental Authority**” means the government of the United States or any foreign country, any state or political subdivision thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory, administrative or other governmental functions or any court, department, commission, board, agency, instrumentality or administrative body of any of the foregoing.

“**Gross Revenue**” means all revenue derived from Company Technology and prior to any deductions in respect of gross margin and sales, general, and administrative expenses as those terms are generally defined according to GAAP, including (i) all revenue calculated in a manner consistent with current Company pricing methodology for all existing and future agreements, and (ii) all gross revenue derived from Purchaser’s use of the Company’s technology and calculated as the number of devices shipped with Company Technology multiplied by \$3.00. For the avoidance of doubt, Gross Revenue shall include any revenue derived from any use by the Purchaser and its Affiliates (including the Company) of the Company Technology.

“**Gross Revenue Statement**” has the meaning set forth in Section 2.3(b)(ii)(A).

“**Indemnification Payment**” has the meaning set forth in Section 11.9.

“**Indemnitee**” has the meaning set forth in Section 11.2.

“**Indemnitor**” has the meaning set forth in Section 11.2.

“**Intellectual Property**” means, throughout the world, all trade names, trade dress, corporate names and logos, trademarks, service marks, patents, copyrights, industrial designs, Internet domain names, IP Addresses (and any registrations with any Governmental Authority of, and applications for registration pending with respect to, any of the foregoing), works of authorship, trade secrets, proprietary information, mask works, technology, inventions, processes, designs, know-how, computer software and data, databases and data collections, formulas, goodwill, any licenses related to any of the foregoing, and all other intangible intellectual property assets, including all rights to sue and recover for past and future infringement or misappropriation thereof and to receive all income, royalties, damages and payments for past and future infringements thereof and all other intangible intellectual property assets and similar or equivalent rights to any of the foregoing anywhere in the world.

“**IT Systems**” has the meaning set forth in Section 3.10(g).

“**Law**” means any constitution or provision thereof, law, statute, regulation, ordinance, rule, order, decree, judgment, consent decree, settlement agreement or governmental requirement enacted by, promulgated by, entered into by, agreed to or imposed by any Governmental Authority.

“**Leased Real Property**” means all real property leased by the Company.

“**Legal Fees**” has the meaning set forth in Section 6.12.

“**Liability**” means any liability, debt or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether due or to become due, and whether or not required to be reported under GAAP).

“**Lien**” means any mortgage, lien, charge, restriction, pledge, security interest, option, claim, easement, encroachment or encumbrance.

“**Loss**” or “**Losses**” means all Liabilities, losses, costs, claims, damages, lost profits, lost revenues, diminution in value, penalties and expenses (including reasonable attorneys’ and accountants’ fees and expenses and reasonable investigation and litigation costs incurred in relation to the matter or in enforcing such matter), whether or not special, non-compensatory, consequential, indirect, incidental, statutory or punitive.

“**Material**” for the purposes of determining whether an item needs to be disclosed herein shall mean any item, contract, or liability that has a value or effect on the Business of \$10,000 or more.

“**Material Adverse Change**” or “**Material Adverse Effect**” means any change, event, development or effect that has a materially adverse effect on or in the business, operations, assets, Liabilities, results of operations, cash flows, prospects or condition (financial or otherwise) of the Company; provided, however, that Material Adverse Change or Material Adverse Effect shall not include any adverse change, event, development, or effect to the extent arising from or relating to: (a) general business or economic conditions, including such conditions related to the Business (provided the impact on the Company or the Business is not disproportionate to the impact on similar companies in the same industry); (b) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States; (c) financial, banking, or securities markets (including any disruption thereof and any decline in the price of any security or any market index); (d) changes in Laws; or (e) the taking of any action required by this Agreement.

“**Material Contracts**” means all of the Contracts listed or described, or required by Section 3.11 to be listed or described, in Section 3.11 of the Schedule of Exceptions.

“**Merger**” has the meaning set forth in the Recitals.

“**Merger Consideration**” means the Common Stock Payment, the Preferred Stock Payment and the Debt Payment.

“**National Labor Relations Act**” means National Labor Relations Act of 1935, as amended.

“**Neutral Accountant**” means Anton Chia, or in the event that circumstances create an actual conflict of interest that would impair such Person’s ability to impartially determine any issue presented to it pursuant to this Agreement or if such Person is otherwise unwilling or unable to provide such services, a nationally-recognized certified public accounting firm mutually agreed upon by Purchaser and the Sellers. If (1) circumstances create an actual conflict of interest that would impair Anton Chia’s ability to impartially determine any issue presented to it pursuant to this Agreement or if Anton Chia is otherwise unwilling or unable to provide such services and (2) Purchaser and the Sellers cannot agree on a nationally recognized certified public accounting firm to serve as the Neutral Accountant within ten (10) days after either party notifies the other of its intent to submit such dispute to the Neutral Accountant, then the Neutral Accountant shall be selected by JAMS.

“**Note Payments**” has the meaning set forth in Section 6.13.

“**Notice of Claim**” has the meaning set forth in Section 11.4.

“**Notice of Objection**” has the meaning set forth in Section 11.4.

“**Order**” means any decree, injunction, judgment, order, ruling, assessment or writ.

“**Orlando**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Other Holders**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Permits**” means any license, permit, franchise, certificate of authority, or order required to be issued by any Governmental Authority.

“Permitted Liens” means (a) Liens created by Law for current taxes, assessments or similar charges not yet due and payable and (b) Liens on Equipment securing leases or purchase money indebtedness or financing of such Equipment.

“Person” means any individual or any corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association, Governmental Authority or other entity.

“Pre-Closing Taxes” means (i) any Taxes of the Company or any of their Affiliates with respect to any Pre-Closing Tax Period, and (ii) any Taxes for which the Company is held liable under Treasury Regulations Section 1.1502-6 (or any corresponding or similar provision of state, local or foreign Tax law) by reason of such entity being included in any consolidated, affiliated, combined or unitary group in any Pre-Closing Tax Period.

“Pre-Closing Tax Period” means any taxable period ending on or prior to the Closing Date.

“Preferred Shares” shall mean the shares of preferred stock, par value \$0.01 per share, of the Company.

“Pro Rata Share” means, with respect to a Seller, the number of Shares being sold pursuant to this Agreement by such Seller divided by the total number of Shares.

“Public Software” has the meaning set forth in [Section 3.10\(h\)](#).

“Purchaser” has the meaning set forth in the introductory paragraph of this Agreement.

“Purchaser Common Stock” means shares of Purchaser’s common stock, par value \$0.0001 per share.

“Purchaser Share Value” shall mean the average closing sales prices per share of the Purchaser Common Stock on the Nasdaq Global Market during the period of five (5) consecutive trading days ending one trading day prior to the Closing Date.

“Receivables” means accounts receivable, notes receivables and other receivables of the Company arising from the operation of the Business.

“Release” means the form of Release Agreement attached hereto as Exhibit C.

“Resolved Amount” has the meaning set forth in [Section 11.4](#).

“Schedule of Exceptions” has the meaning set forth in [Article III](#).

“SEC” means the U.S. Securities and Exchange Commission, or any successor Governmental Authority.

“Seller” and **“Sellers”** have the meaning set forth in the introductory paragraph of this Agreement.

“Sellers’ knowledge” or **“to the knowledge of the Sellers”** or variants thereof mean with respect to any matter in question that Orlando, or any officer or director of the Company has present actual knowledge of such matter or would have knowledge of such matter after reasonable inquiry and investigation of their direct reports.

“Series C Preferred Stock” means the Series C non-convertible, voting preferred stock of Purchaser.

“Shareholder Representative” shall mean Michael Orlando acting in his capacity as the appointed agent and attorney in fact of the Other Holders to take the actions set forth herein. All such actions shall be deemed to be facts ascertainable outside this Agreement and shall be binding on all of the Other Holders of the Company.

“Shares” means all of the issued and outstanding shares of stock of the Company.

“**Supplement**” has the meaning set forth in Section 6.2.

“**Surviving Entity**” has the meaning set forth in Section 2.1.

“**Tax Return**” means any report, return or other information required to be and actually supplied to a Governmental Authority in connection with any Taxes.

“**Taxes**” means all taxes, and all other charges, fees, duties (including customs duties), levies or other assessments in the nature of a tax, including income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value added, stamp, leasing, lease, user, transfer, fuel, excess profits, occupational, interest equalization, windfall profits, severance, license, payroll, environmental, capital stock, disability, employee’s income withholding, other withholding, unemployment and Social Security taxes, which are imposed by any Governmental Authority, and such term shall include any interest, penalties or additions to tax attributable thereto.

“**Termination Date**” has the meaning set forth in Section 10.1(f).

“**Threshold Amount**” has the meaning set forth in Section 11.3(a).

“**Transaction Documents**” means this Agreement and the Releases.

“**Treasury Regulations**” means the Treasury Regulations promulgated under the Code by the U.S. Treasury Department.

“**Total Consideration**” means the Merger Consideration and the Earnout Payment.

“**WARN Act**” has the meaning set forth in Section 3.15.

“**WilmerHale**” has the meaning set forth in Section 6.12.

ARTICLE II

SALE AND PURCHASE OF SHARES

2.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, the Company shall be merged with and into Merger Sub at the Effective Time of the Merger. Also at the Effective Time, the separate corporate existence of the Company shall cease, and Merger Sub shall continue as the surviving entity (the “**Surviving Entity**”). The Merger shall have the effects set forth in Section 259 of the Delaware General Corporation Law.

2.2 Closing.

(a) Upon the terms and subject to the conditions set forth herein and unless this Agreement has been terminated pursuant to its terms, the closing of the Merger (the “**Closing**”) shall take place at the offices of Robinson Brog at 875 Third Avenue, New York, NY 10022 on the second business day after the satisfaction or waiver of the conditions in Article VIII and Article IX (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted hereunder, waiver of any such conditions) or at such other time, date or location as the parties hereto agree. The date on which the Closing actually occurs and the transactions contemplated hereby become effective is hereinafter referred to as the “**Closing Date**.”

(b) At the Closing:

(i) the Company shall deliver to Purchaser and Merger Sub the various certificates, instruments and documents referred to in Section 8.5;

- Section 9.4;
- (ii) Purchaser and Merger Sub shall deliver to the Company the various certificates, instruments and documents referred to in
- with Section 2.4;
- (iii) the Surviving Entity shall file with the Secretary of State of the State of Delaware the Certificate of Merger in accordance
- Section 2.3(c);
- (iv) Purchaser shall deliver to the holders of the Certificates, certificates evidencing the Merger Consideration in accordance with

2.3 Effect on Capital Stock; Earnout; Payment of Merger Consideration.

(a) Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of any party or the holder of any of the following securities:

- (i) The Common Shares and a portion of the Preferred Shares held by G&D issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and Common Shares held in the Company's treasury) shall be converted into and represent the right to receive shares of common stock of the Parent equal to 19.96% of the outstanding shares of Parent on the trading day prior to the Closing as set forth in accordance with the Schedule 2.3(a)(i). (such Schedule 2.3(a)(i)) to be updated by the parties on the trading day immediately prior to the Closing) (the "**Common Stock Payment**").

- (ii) The remaining Preferred Shares issued and outstanding immediately prior to the Effective Time and held by G&D (other than Dissenting Shares and Preferred Shares held in the Company's Treasury) shall be converted into and represent the right to receive 2,000 shares of Series C Preferred Stock, stated value \$1,000 per share (the "**Preferred Stock Payment**").

(b) Earnout.

- (i) During the Earnout Period, the Sellers shall be entitled to receive an Earnout Payment equal to 12.5% of the Gross Revenue (the "**Earnout Payment**").

- (ii) Review and Dispute Procedures.

- (A) For each quarter during the Earnout Period, within five (5) days after the filing of the Purchaser's quarterly report on Form 10-Q with the SEC, Purchaser shall prepare and deliver to the Sellers its good faith calculation of Gross Revenue for such quarter (the "**Gross Revenue Statement**").

- (B) On the tenth (10th) day following Purchaser's delivery of the Gross Revenue Statement to the Sellers, the Gross Revenue Statement shall be deemed to be the "**Final Gross Revenue Statement**" (and shall, for purposes of this Agreement, be deemed to be final and binding on the parties, including with respect to the calculation of the Gross Revenue thereon) unless, prior to such date, the Sellers shall have delivered to Purchaser a notice describing in reasonable detail its objections to the Gross Revenue Statement (including such reasonable detail (to the extent then known to the Sellers) regarding the items in dispute and a statement of the amount of each adjustment that the Sellers believe should be made to the Gross Revenue Statement). Any items in the Gross Revenue Statement that are not objected to in the Sellers' notice shall be deemed to be final and binding on the parties. Purchaser and the Sellers shall each use reasonable best efforts to resolve any objections and any such resolution shall be final and binding on all parties. Any disputes on any Gross Revenue Statement shall be addressed after the close of the fiscal year and the outside independent auditors have reviewed the Purchaser's financial statements and any adjustments have been made that may impact the calculation of the Gross Revenue.

(C) If Purchaser and the Sellers do not resolve all of the Sellers' objections within ten (10) days after the filing of the Purchaser's annual report on Form 10-K with the SEC containing Purchaser's audited financial statements, then either Purchaser or the Sellers may, within ten (10) days after such date, submit the unresolved objections to a Neutral Accountant. Purchaser and the Sellers shall direct the Neutral Accountant to, within twenty (20) days following such submission, resolve such unresolved objections and such resolution shall be final and binding on all parties. The Gross Revenue Statement provided by the Neutral Accountant pursuant to this Section 2.3(b)(ii)(C) (including the calculation of the Gross Revenue thereon) shall be deemed to be the "Final Gross Revenue Statement" and shall, for purposes of this Agreement, be deemed to be final and binding on the parties. If neither Purchaser nor the Sellers submits such unresolved objections to the Neutral Accountant during the ten (10) Business Day period, the Gross Revenue Statement prepared by Purchaser shall be the "Final Gross Revenue Statement" and shall, for purposes of this Agreement, be deemed to be final and binding on the parties, including with respect to the calculation of the Gross Revenue therein.

(D) Within five (5) days after the calculation of the Gross Revenue becomes final and binding on the Parties pursuant to this Section 2.3, Purchaser shall pay the applicable Earnout Payment to the Sellers in accordance with the wire instructions delivered by the Sellers to Purchaser.

(iii) Operating Procedures of the Company.

(A) Generally. Purchaser and the Sellers recognize that decisions made in the management of the Business by Purchaser after the Closing may affect the Earnout Payment. Each Seller acknowledges and agrees that after the Closing, Purchaser will manage the Business with a view to maximizing the long-term value of Purchaser taken as a whole with its subsidiaries as determined by Purchaser and not to maximize the Earnout Payment during the Earnout Period. Neither Purchaser nor any of its officers, employees, directors or shareholders or other Affiliates will owe any duty to any Seller or any Affiliate of any Seller to manage Purchaser (including its subsidiaries), the Company or the Business in such a way as to maximize the Earnout Payment. Notwithstanding the foregoing, during the Earnout Period, (a) Purchaser shall manage the ongoing business in good faith and shall not intentionally take any action or fail to take any action primarily for the purpose of reducing or eliminating the Earnout Payment, (b) the Company shall operate the Business independently from Purchaser's other businesses and subsidiaries and (c) subject to the principles in the other sentences of this Section 2.3(b)(iii), and Purchaser's right to manage the Company and the Business accordingly, Purchaser shall use its good faith efforts to manage the Company and the Business substantially in the same manner as they were managed prior to the Closing (and, to the extent any Seller is then an officer of the Company, permit such Seller(s) to do the same. Without limiting the generality of the foregoing provisions of this Section 2.3(b)(iii), the parties agree that Purchaser's consideration of and decisions made in light of normal business consideration factors, such as profit margins, costs of marketing and sales activities, commercial feasibility, market and technology developments, market acceptance, business opportunities, company resources, competition and competitive advantages and disadvantages, and economic conditions, shall constitute management of the Business by Purchaser in good faith

(B) Internal Restructuring; Acquisitions or Sales. For purposes of clarification, it is the intent of the parties that the economic benefits of this Section 2.3 shall not be modified or decreased if, in the future, there is an internal ownership, organizational or operational change within Purchaser and its Affiliates (including, without limitation, if any business or entity is acquired by Purchaser following the Closing, any current business or Affiliate of Purchaser is combined with the Company, any Affiliate of Purchaser makes use of Company Technology, or the Purchaser otherwise restructures the Business or the Company) that changes the actual entities that conduct the Business of the Company after the Closing.

(C) Certain Acknowledgements. Sellers agree and acknowledge that the right to receive the Earnout Payments, if any, pursuant to this Agreement: (1) is an integral part of the total consideration for the Shares and not an investment; (2) does not represent an ownership interest in Purchaser's or any of its Affiliates (including the Company after Closing); (3) does not carry voting, dividend or liquidation rights; and (4) is not represented by any form of certificate or instrument.

(c) Payment of Merger Consideration.

(i) Purchaser shall serve as the exchange agent and paying agent to effect the payment and exchange of the Merger Consideration. On the Closing Date, Purchaser shall deliver (i) to the Sellers, stock certificates representing the Merger Consideration as set forth in Schedule 2.3(a)(i) and Schedule 2.3(a)(ii) (such schedules may be updated by the parties on the trading day immediately prior to the Closing). As soon as practicable after the Effective Time, Purchaser shall send a notice and a transmittal form to each Seller advising such Seller of the effectiveness of the Merger and the procedure for surrendering to the Purchaser such Certificate in exchange for the payment of the Merger Consideration payable pursuant to this Section 2.3. Each Seller, upon proper surrender thereof to Purchaser in accordance with the instructions in such notice, shall be entitled to receive as payment therefor (subject to any taxes required to be withheld) the Merger Consideration payable pursuant to this Section 2.3 plus cash in lieu of any fractional shares, as provided in Section 1.8 below. Until properly surrendered, each such Certificate shall be deemed for all purposes to evidence only the right to receive the Merger Consideration payable pursuant to Section 2.3.

(ii) In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed, Purchaser shall pay in respect of such lost, stolen or destroyed Certificate the Merger Consideration payable in respect thereof pursuant to Section 2.3.

(iii) No dividends or other distributions that are payable to the holders of record of Purchaser Common Stock as of a date on or after the Closing Date shall be paid to former holders of capital stock of the Company entitled by reason of the Merger to receive Merger Consideration until such holders surrender their Certificates for certificates representing the Merger Consideration. Upon such surrender, Purchaser shall pay or deliver to the persons in whose name the certificates representing such Merger Consideration are issued any dividends or other distributions that are payable to the holders of record of Purchaser Common Stock as of a date on or after the Closing Date and which were paid or delivered between the Effective Time and the time of such surrender; provided that no such person shall be entitled to receive any interest on such dividends or other distributions.

2.4 Effective Time of the Merger. Subject to the provisions of this Agreement, at the Closing, the parties hereto shall (a) cause a certificate of merger in substantially the form of Exhibit B (the "Delaware Certificate of Merger") to be executed and filed with the Secretary of State of the State of Delaware, and (b) take all such other and further actions as may be required by the DGCL or other applicable Law to make the Merger effective. The Merger shall become effective as of the date and time of the filing of the Delaware Certificate of Merger or at such later date or time as may be agreed by the Company and Parent in writing and specified in the Delaware Certificate of Merger in accordance with relevant provisions of the DGCL (the date and time of such effectiveness referred to herein as the "**Effective Time**").

2.5 Withholding. Purchaser (or any other Person responsible for withholding any amount with respect to any payment made under this Agreement) shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax law. To the extent that amounts are so deducted and withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

2.6 Options. The Company shall provide holders of Options reasonable notice of their right to exercise the outstanding options to purchase Shares ("**Options**") and the effect of failing to exercise the Options under this Agreement. Each outstanding Option granted under the Company's 2014 Stock Incentive Plan or any other plan will, at the Effective Time, to the extent not exercised prior to the Effective Time, be terminated and cancelled with no payment due thereon and shall be of no further force and effect.

2.7 Effects of the Merger. Subject to the foregoing, the effects of the Merger shall be as provided in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time all property, rights, privileges, immunities, powers, franchises, licenses and authority of the Company shall vest in the Surviving Entity, and all debts, liabilities, obligations, restrictions and duties of the Company shall become the debts, liabilities, obligations, restrictions and duties of the Surviving Entity.

2.8 Directors and Officers. The managers, directors and officers of Merger Sub, in each case, immediately prior to the Effective Time shall, from and after the Effective Time, be the managers, directors and officers, respectively, of the Surviving Entity until their successors have been duly elected or appointed and qualified or until their earlier death resignation or removal in accordance with the operating agreement of the Surviving Entity.

2.9 Tax Matters. Parent, Merger Sub, and the Company intend that, for United States federal income tax purposes, (a) the Merger shall qualify as a “reorganization” within the meaning of Section 368(a) of the Code, and (b) this Agreement shall constitute a plan of reorganization within the meaning of Treasury Regulations Section 1.368-2(g).

2.10 Fractional Shares. No certificates or scrip representing fractional shares of Merger Consideration shall be issued to Sellers upon the surrender for payment of Certificates, and such Sellers shall not be entitled to any voting rights, rights to receive any dividends or distributions or other rights as a stockholder of Purchaser with respect to any fractional shares of Merger Consideration that would have otherwise been issued to such former holders of capital stock of the Company. In lieu of any fractional shares of Merger Consideration that would have otherwise been issued, each Seller that would have been entitled to receive a fractional share of Merger Consideration shall, upon proper surrender of such person’s Certificates, receive a cash payment equal to the Purchaser Share Value, multiplied by the fraction of a share that such Seller would otherwise be entitled to receive.

2.11 Dissenting Shares.

(a) Dissenting Shares shall not be converted into or represent the right to receive any Merger Consideration, unless the Seller holding such Dissenting Shares shall have forfeited his, her or its right to appraisal under the Delaware General Corporation Law or properly withdrawn, his, her or its demand for appraisal. If such Seller has so forfeited or withdrawn his, her or its right to appraisal of Dissenting Shares, then (i) as of the occurrence of such event, such Seller’s Dissenting Shares shall cease to be Dissenting Shares and shall be converted into and represent the right to receive the Merger Consideration payable in respect of such Shares pursuant to Section 2.3, and (ii) promptly (but in no case later than ten (10) Business Days) following the occurrence of such event, Purchaser shall deliver to such Seller the Merger Consideration to which such holder is entitled pursuant to Section 2.3.

(b) The Company shall give Purchaser (i) prompt notice of any written demands for appraisal of any Shares, withdrawals of such demands and any other instruments that relate to such demands received by the Company and (ii) Purchaser and the Company shall jointly participate in all negotiations and proceedings with respect to such demands for appraisal under the Delaware General Corporation Law. Neither Purchaser nor the Company shall, except with the prior written consent of the other, make any payment with respect to any demands for appraisal of Shares or offer to settle or settle any such demands.

2.12 Additional Action. The Surviving Entity may, at any time after the Effective Time, take any action, including executing and delivering any document, in the name and on behalf of either the Company or the Transitory Subsidiary, in order to consummate the transactions contemplated by this Agreement. From time to time after the Effective Time, upon request of the Buyer, each Specified Stockholder shall execute, acknowledge and deliver all such other instruments and documents and shall take all such other actions required to consummate and make effective the transactions contemplated by the Transaction Documents, provided that Buyer shall not be required to pay any further consideration or amounts therefor.

2.13 Shareholder Representative. By their execution of this Agreement or the transmittal form, approval of the Merger and adoption of this Agreement and/or their acceptance of any consideration pursuant to this Agreement, the Other Holders hereby irrevocably appoint the Shareholder Representative as the representative, attorney-in-fact and agent of the Other Holders in connection with the transactions contemplated by this Agreement and in any litigation or arbitration involving this Agreement. In connection therewith, the Shareholder Representative is authorized to do or refrain from doing all further acts and things, and to execute all such documents as the Shareholder Representative shall deem necessary or appropriate, and shall have the power and authority to act for some or all of the Other Holders with regard to all matters pertaining to this Agreement. All decisions and actions of the Shareholder Representative on behalf of the Other Holders shall be deemed to be facts ascertainable outside of this Agreement and shall be binding upon all Other Holders, and no Other Holders shall have the right to object, dissent, protest or otherwise contest the same.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLERS AND THE COMPANY

The Company and each Seller, excluding G&D, severally and not jointly, represents and warrants to Purchaser that, except as set forth on the schedule of exceptions attached hereto as Exhibit A (the “**Schedule of Exceptions**”), which exceptions or disclosure shall be deemed to be part of the representations and warranties made hereunder, the following representations in this Article III are true, correct and complete as of the date hereof. The Schedule of Exceptions shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections of this Article III, and the disclosures in any section or subsection of the Company Disclosure Schedule shall only qualify each section and subsection of this Article III to which it corresponds and each other section and subsection of this Article III to the extent it is reasonably apparent from a reading of the text of the disclosure without reference to any underlying document that such disclosure is applicable to such other section or subsection.

3.1 Due Incorporation. The Company is duly organized, validly existing and in good standing under the laws of Delaware, and possesses all requisite power (corporate or otherwise) and authority and all governmental licenses, permits, authorizations and approvals, necessary to enable it to own, lease and operate its properties and to carry on its business. The Company is duly licensed or qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the nature of the properties owned, leased or operated by it or the business conducted by it requires such licensing or qualification, except where the failure to be so qualified would not have a Material Adverse Effect. The Company does not own, control, or hold any equity or other similar interest or any right (contingent or otherwise) in, directly or indirectly, any corporation, trust, joint venture, limited liability company or other Person and, in furtherance of the foregoing, has no subsidiaries.

3.2 Authorization; Investment Intent; Ownership of Shares.

(a) The Company has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the performance by the Company its obligations hereunder have been duly authorized by all necessary corporate action of the Company in accordance with applicable Law and the Company Charter Documents. This Agreement constitutes the valid and legally binding obligations of the Company enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar Laws affecting the enforcement of creditors’ rights or by general principles of equity, whether such enforceability is considered in a court of law, a court of equity or otherwise.

(b) Section 3.2(b) of the Schedule of Exceptions sets forth all of the Company’s shareholders, the number and class and series of shares of capital stock owned by them and all outstanding securities of the Company convertible into or exercisable or exchangeable for shares of capital stock of the Company along with the holders thereof. Each Seller is the sole record and beneficial owner of the Shares set forth opposite such Seller’s name in Section 3.2(b) of the Schedule of Exceptions, all of which Shares are owned free and clear of all rights, claims and Liens, and have not been sold, pledged, assigned or otherwise transferred except pursuant to this Agreement. There are no outstanding subscriptions, rights, options, warrants or other agreements obligating the Company to issue any shares of capital stock of the Company or securities convertible into or exercisable or exchangeable for shares of capital stock of the Company or obligating any Seller to sell or transfer to any Person any or all of the Shares owned by such Seller, or any interest therein.

(c) The authorized capital stock of the Company consists of 10,000,000 shares of common stock, \$0.01 par value and 2,235,081 shares of Preferred Stock, \$0.01 par value, the number of shares of each class of stock issued and outstanding and the holders of and the number of shares owned by each shareholder are set forth in Section 3.2(b) of the Schedule of Exceptions and all of which constitute Shares hereunder. The Company has not granted, issued or agreed to grant, issue or make available any warrants, options, subscription rights or any other calls, claims or commitments of any character relating to the unissued shares of capital stock of the Company. All of the issued and outstanding capital stock of the Company has been duly authorized and validly issued, is fully paid and non-assessable, and was issued in compliance with all applicable securities Laws, and are not subject to, and immediately after the Closing will not be subject to any option, Lien, right of rescission, right of first refusal, right of first offer, voting agreement, voting trust, proxy, shareholders agreement, or preemptive right. No shares of capital stock of the Company are subject to vesting or repurchase rights.

3.3 Consents and Approvals. Except as set forth on Section 3.3 of the Schedule of Exceptions, no consent, license, authorization or approval of, filing or registration, declaration or filing with, or cooperation from, any Governmental Authority or any other Person not a party to this Agreement is necessary in connection with the execution, delivery, performance, validity and enforceability by the Company or Sellers of this Agreement or any Transaction Documents and the consummation by the parties of the transactions contemplated hereby, other than such consents, licenses, authorizations, approvals, filings, registrations, declarations or cooperation that, if not obtained, made or given, would not, individually or in the aggregate, impair in any material respect the ability of the Company to perform its obligations hereunder or prevent or materially impede, interfere with, hinder or delay the consummation of the transactions contemplated hereby. The execution, delivery and performance under this Agreement and the Transaction Documents, the consummation of the transactions contemplated hereby and thereby and compliance with the terms of this Agreement and the Transaction Documents by the Company or Sellers does not and will not (i) violate or conflict with, result in a material breach or termination of, result in any loss or forfeiture of rights or benefits under, constitute a default under, or permit cancellation of, or require any notice or consent under any Contract to which the Company is a party or any of its properties are bound or affected or any Law applicable to the Company or by which any of its properties are bound or affected, (ii) result in the creation of, or require the creation of any Lien upon any of the Shares or any property of the Company, or (iii) violate or conflict with any provision of the Company Charter Documents.

3.4 Financial Statements.

(a) The Financial Statements were prepared in accordance with GAAP applied on a basis consistent with prior periods (except, to the extent any such Financial Statements are unaudited, such unaudited Financial Statements do not contain footnotes and are subject to normal and recurring year-end adjustments, none of which are, individually or in the aggregate, material in amount or nature) and fairly present in all material respects the financial position, assets and Liabilities of the Company as of the dates thereof and the revenues, expenses, results of operations and cash flows of the Company for the periods covered thereby. The Financial Statements are in accordance with the books and records of the Company, and do not reflect any transactions which are not bona fide transactions. Except as set forth in the Balance Sheet, the Company does not have any material Liabilities, debts, claims or obligations, whether accrued, absolute, contingent or otherwise, whether due or to become due, other than trade payables to third parties and accrued expenses incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date. A true and complete copy of the Financial Statements is attached as Exhibit A to the Schedule of Exceptions.

(b) Financial Books and Records. The financial books and records of the Company have been maintained in accordance with customary business practices for a business at a similar stage as the Company and fairly and accurately reflect in all material respects on a basis consistent with past periods and throughout the periods involved, (i) the consolidated financial position of the Company and (ii) all transactions of the Company, including all transactions between the Company, on the one hand, and a Seller on the other hand. The Company has not received any advice or notification from its current or past independent accountants that the Company has used any improper accounting practice that would have the effect of not reflecting or incorrectly reflecting in the books and records of the Company any properties, assets, Liabilities, revenues, expenses, equity accounts or other accounts.

(c) No Undisclosed Liabilities. Except as set forth in the Financial Statements, the Company does not have any Liabilities (whether or not the subject of any other representation or warranty hereunder) except for Liabilities reflected on the Balance Sheet or that have arisen in the ordinary course of business consistent with past practice since the Balance Sheet Date.

(d) Projections. Any financial projections provided by the Company or any Seller to Purchaser in connection with Purchaser's review of the Company were prepared in good faith based upon assumptions believed by the Company's management and the Sellers to be reasonable at the time made.

3.5 No Changes. Since the Balance Sheet Date, the Company has conducted its business in the ordinary course and in a manner consistent with past practice, and there has not been any Material Adverse Change or event or change (whether alone or with any other event or change) that has had or is reasonably likely to have a Material Adverse Effect. Since the Balance Sheet Date, the Company has not (a) suffered any damage or destruction to, or loss of, any of its assets or properties (whether or not covered by insurance) individually or in the aggregate in excess of \$25,000; (b) permitted the imposition of a Lien (other than Permitted Liens) on, or disposed of, leased, transferred, mortgaged or assigned any of its assets; (c) terminated, modified or entered into any Material Contract or canceled, compromised, knowingly waived or released any right or claim (or series of related rights and claims) under any Material Contract; (d) cancelled, waived, released or otherwise compromised any trade debt, receivable, right or claim exceeding \$25,000 individually or in the aggregate; (e) made or committed (in a binding manner) to make any capital expenditures or capital additions or betterments in excess of \$25,000 individually or in the aggregate; (f) entered into, adopted, amended (except as may be required by Law and except for immaterial amendments) or terminated any bonus, profit sharing, compensation, termination, stock option, stock appreciation right, restricted stock, performance unit, pension, retirement, deferred compensation, employment, severance or other employee benefit agreements, trusts, plans, funds or other arrangements for the benefit or welfare of any director, officer or employee, or increased in any manner the compensation or fringe benefits of any director, officer or employee or paid any benefit not required by any existing plan and arrangement (except for normal salary increases consistent with past practice) or entered into any contract, agreement, commitment or arrangement to do any of the foregoing; (g) disposed of or permitted the lapse in registration of any Intellectual Property; (h) experienced any Material Adverse Change in its Receivables or its accounts payable; (i) changed its accounting methods, systems, policies, principles or practices; (j) incurred, assumed, guaranteed or discharged any Debt outside the ordinary course of business consistent with past practice; (k) modified the Company Charter Documents; (l) issued, sold or otherwise permitted to become outstanding any capital stock, or split, combined, reclassified, repurchased or redeemed any shares of its capital stock; (m) made any capital investment in, any loan to, or any acquisition of the securities or assets of any other Person other than acquisitions of inventory and supplies in the ordinary course of business consistent with past practice; (n) failed to maintain in full force and effect insurance policies on its properties providing coverage and amounts of coverage comparable to the coverage and amounts of coverage provided under its policies of insurance in effect on the Balance Sheet Date; (o) encountered any labor union organizing activity or had any actual or overtly threatened employee strikes, work stoppages, slowdowns or lockouts; (p) materially modified or changed its business organization or materially and adversely modified or changed its relationship with its suppliers, customers and others having business relations with it; (q) entered into any Contract outside the ordinary course of business that is or would be a Material Contract; (r) adopted a plan or agreement of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization, or other material reorganization; or (s) authorized, agreed, resolved or committed to any of the foregoing.

3.6 Title to Assets. The Company has good and marketable title to all of its properties, interests in properties and assets, real and personal, reflected in the Balance Sheet or acquired after the Balance Sheet Date that are material to the conduct of the Business as currently conducted (except properties, interests in properties and assets sold or otherwise disposed of since the Balance Sheet Date in the ordinary course of business consistent with past practice), or with respect to leased properties and assets, valid leasehold interests in such leased properties and assets that are material to the conduct of the Business as currently conducted, in each case free and clear of all Liens other than Permitted Liens. No Person other than the Company owns any material assets, properties or rights relating to or used or held for use in the Business, other than Leased Real Property. The assets and rights of the Company include all of the assets and rights necessary for the conduct of the Business.

3.7 Real Property.

(a) The Company operates the Business at the Leased Real Property, and at no other locations, other than client sites. Except for the Leased Real Property, the Company is not a party to any lease of any real property, whether as lessor or as lessee, and has no ownership of or other interest in any real property. Section 3.7(a) of the Schedule of Exceptions lists the addresses and the leases relating to each Leased Real Property.

(b) The Leased Real Property leases are in full force and effect and the Company holds a valid and existing leasehold interest under such leases free and clear of all Liens, other than Permitted Liens. The Company is not in material default, and no circumstances exist which would result in such default (including upon the giving of notice or the passage of time, or both), under such lease, and no other party to such lease has the right to terminate or accelerate performance under or otherwise modify any of such lease, including upon consummation of Purchaser's acquisition of the Shares pursuant to this Agreement. To the knowledge of the Sellers, no Person other than the Company has any right to use, occupy or lease any of the Leased Real Property.

(c) There is no pending or, to the knowledge of the Sellers, threatened condemnation, expropriation, eminent domain or similar proceeding affecting all or any part of the Leased Real Property, and the Company has not received any written notice thereof.

(d) The buildings and other structures on the Leased Real Property are in good repair, ordinary wear and tear excepted, and fit for the purposes for which they are presently used in all material respects. The Company has rights of egress and ingress with respect to each of the Leased Real Property that is sufficient for it to conduct its business.

3.8 Personal Property. All of the tangible assets (whether owned or leased) used in connection with the Business, (a) are suitable for the purposes for which such assets are presently used and are suitable for the continuing conduct of the Business after the Closing, and (b) have been maintained and are in good operating condition and repair (normal wear and tear excepted).

3.9 No Third Party Options. There are no agreements, options, commitments or rights with, of or to any Person (other than Purchaser) to acquire any of the assets, properties, rights, shares or other equity interests of the Company, and the Company is not a party to any agreement to merge into (or have another entity merge into it) or consolidate with another entity.

3.10 Intellectual Property.

(a) Section 3.10(a) of the Schedule of Exceptions sets forth a complete and accurate list of all Intellectual Property owned by the Company as of the date hereof that is registered, recorded or filed in the name of the Company with a Governmental Authority and all applications therefor ("**Company Registered IP**"). Each item of Company Registered IP is (i) in compliance with all applicable legal requirements and is current with its filing, registration and maintenance requirements, and (ii) to the knowledge of the Sellers, valid and enforceable. Section 3.10(a) of the Schedule of Exceptions also sets forth a complete and accurate list of all material unregistered trademarks or service marks owned by the Company ("**Unregistered Marks**") and used by the Company in the operation of the Business. Each of the Unregistered Marks is, to the knowledge of the Seller, enforceable.

(b) The Company either exclusively owns, free and clear of all Liens (other than Permitted Liens), or has permission to use pursuant to a valid written agreement or, to the knowledge of the Sellers, has other valid rights to use, all Intellectual Property used or held for use in the operation of the Business as presently conducted (collectively, “**Company IP Rights**”). The Company IP Rights comprise all of the Intellectual Property that is used in or necessary for the operation of the Business as currently conducted. No Person has asserted any claims against the Company or, to the knowledge of the Sellers, threatened to assert any claims against the Company (i) contesting the right of the Company to use, transfer or license any Company IP Rights owned by a Person other than the Company or any products, processes, services or materials covered thereby in any manner, or (ii) challenging the ownership, validity or enforceability of any such Company IP Rights. In addition, to the knowledge of the Sellers, no Person has asserted any claims against the Company or any other Person, to the knowledge of the Sellers, threatened to assert any claims against the Company or any other Person (x) contesting the right of the Company or any other Person to use, transfer or license any Company IP Rights owned by the Company or any products, processes, services or materials covered thereby in any manner, or (y) challenging the ownership, validity or enforceability of any such Company IP Rights.

(c) To the knowledge of the Sellers, the operation of the Business has not and does not infringe or misappropriate any Intellectual Property of any Person, and has not and does not violate the rights of any Person (including the right to privacy or publicity) or constitute unfair competition or trade practices under any Laws. To the knowledge of the Sellers, no Person has infringed or misappropriated or is infringing or misappropriating any Company IP Rights.

(d) Following the Closing, the Surviving Entity will be permitted to exercise all of the rights under the Company IP Rights to the same extent the Company would have been able to had the transactions contemplated by this Agreement not occurred. All Company IP Rights are, and immediately after the Closing Date, will be, fully transferable, alienable or licensable by the Surviving Entity to the same extent as they would be transferable, alienable or licensable by the Company immediately prior to the Closing Date, without any restrictions (other than those restrictions set forth in any of the Contracts listed in Section 3.11(b)(xiv) of the Schedule of Exceptions or otherwise identified in Section 3.10(d) of the Schedule of Exceptions), and without payment of any kind to any Person (other than payments which would have been due from Company, notwithstanding the closing of the transactions contemplated in this Agreement, and which are obligations under one or more of the Contracts listed in Section 3.11(b)(xiv) of the Schedule of Exceptions), except as a result of any independent agreements or obligations of Purchaser. The Company has not granted any exclusive licenses or rights of any kind in the Company IP Rights to any Person, and the Company does not hold any rights to Company IP Rights jointly with any third Person.

(e) The Company has not entered into any Contract to settle or resolve any action, claim or dispute with respect to any Intellectual Property. No Company IP Right is subject to any proceeding or outstanding decree, Order, judgment, Contract or stipulation that restricts in any manner the use, transfer or licensing thereof by the Company and subsequently by the Surviving Entity.

(f) The Company has taken all actions reasonably necessary to maintain and protect all Company IP Rights, including all confidential and proprietary information and trade secrets pertaining thereto. All agents, employees and independent consultants of the Company employed or engaged in the five (5) years prior to the date hereof who have participated in or contributed to the development of any Intellectual Property for the Company have executed and delivered to the Company a written assignment agreement that vests in the Company exclusive ownership of all right, title and interest in and to any such Intellectual Property.

(g) The information technology systems used by the Company in connection with the operation of the Business (“**IT Systems**”) as a whole, are adequate and sufficient in all material respects for the conduct of the Business as currently conducted. The Company has taken commercially reasonable steps consistent with industry practice to protect the IT Systems from unauthorized access, use and damage. The IT Systems have not suffered any material failures or defects and have functioned consistently and accurately in all material respects.

(h) No software owned by the Company incorporates any Public Software. For purposes of this Agreement, “**Public Software**” means any software that contains, or is derived in any manner from, in whole or in part, any software, that is distributed as freeware, shareware, open source software (e.g., Linux) or similar licensing or distribution models that (i) requires the licensing or distribution of source code of other software that is combined or used with such software to licensees, (ii) prohibits or limits the receipt of consideration in connection with sublicensing or distributing any other software that is combined with such software, (iii) except as specifically required to be permitted by applicable Law, allows any Person to decompile, disassemble or otherwise reverse-engineer any other software that is combined with such software, or (iv) requires the licensing of any other software that is combined with such software to any other Person for the purpose of making derivative works. No software owned by the Company has been provided or disclosed in source code form to any Person (including without limitation, any escrow agents), other than employees, agents and independent contractors of the Company who have executed nondisclosure agreements and intellectual property assignment agreements for their use on behalf of the Company. To the extent the Company has provided or disclosed any such source code, such provision or disclosure has been pursuant to a written confidentiality agreement adequate to protect the proprietary and confidential nature of such source code.

3.11 Contracts.

(a) All of the Material Contracts are in writing and are in full force and effect and constitute the legal, valid and binding obligations of the Company and, to the knowledge of the Sellers, the other parties thereto. All of the Material Contracts are enforceable in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the rights of creditors generally and by equitable limitations on the availability of specific remedies. No termination notice has been delivered by the Company to any other party or, to the knowledge of Sellers, by any other party to the Company, with respect to any Material Contract. As to each Material Contract, there does not exist thereunder any breach, violation or default on the part of the Company or, to the knowledge of the Sellers, any other party to such Material Contract, and there does not exist any event, occurrence or condition, including the consummation of the transactions contemplated hereby, which (with or without notice, passage of time, or both) would constitute a breach, violation or default thereunder on the part of the Company. No waiver has been granted by the Company or, to the knowledge of the Sellers, any of the other parties thereto under any of the Material Contracts. The Company has delivered or made available to Purchaser true and complete copies of each Material Contract that Purchaser has requested.

(b) Section 3.11(b) of the Schedule of Exceptions sets forth a true and complete list of all Contracts of the following types to which a Company is a party, by which it is bound, or which otherwise pertain to the Business of the Company (including in each case which subsection(s) of this Section 3.11 to which such Material Contract is responsive) (each such Contract, whether or not so listed, is referred to as a “**Material Contract**”):

(i) any Contract or arrangement of any kind with any employee, officer, director, shareholder or other equity interest holder or other Persons with whom the Company is not dealing at arm’s-length;

(ii) any Contract or arrangement with a broker, advertising agency, placement agent or other Person engaged in sales, marketing, distributing or promotional activities, or any Contract to act as one of the foregoing on behalf of any Person;

(iii) any Contract or arrangement of any nature (A) having an aggregate value in excess of \$100,000, (B) of any value that is not terminable by the Company at any time on notice of thirty (30) days or less or (C) is otherwise material to the Company;

(iv) any indenture, credit agreement, loan agreement, note, mortgage, security agreement, letter of credit, loan commitment, guaranty, repurchase agreement or other Contract or arrangement relating to the borrowing of funds, an extension of credit or financing, pledging of assets or guarantying the obligations of any Person;

(v) any Contract or arrangement involving the Company as a participant in or an owner of a partnership, limited liability company, corporation, joint venture, strategic alliance, or other cooperative undertaking;

(vi) any Contract or arrangement involving any restrictions on the Company or any Affiliate of the Company with respect to the geographical area of operations where such Person may conduct business, or scope or type of business that such Person may conduct or the solicitation of any individual or class of individuals for employment;

- (vii) any Contract granting to any Person a right at such Person's option to purchase or acquire any asset or property of the Company (or interest therein);
- (viii) any Contract for capital improvements or expenditures in excess of \$20,000 individually or \$40,000 in the aggregate;
- (ix) any Contract for which the full performance thereof may extend beyond ninety (90) days from the date of this Agreement;
- (x) any Contract not made in the ordinary course of business which is to be performed in whole or in part at or after the date of this Agreement;
- (xi) any Contract or arrangement relating to management support, facilities support or similar arrangement which, if breached, could have a Material Adverse Effect on the Business;
- (xii) any Contract whereby any Person agrees (A) not to compete with the Company or to solicit employees, clients or customers of the Company, or (B) to maintain the confidentiality of any information of the Company;
- (xiii) any Contract of the Company for the provision of consulting services of any type or nature and any arrangement for the payment of commissions, in each case, whether by or for the Company;
- (xiv) any Contract (A) under which the Company is granted a right or license to use the Intellectual Property of any Person (other than for generally commercially available software) and (B) pursuant to which the Company has granted any right or license to any Person in respect of Company IP Rights;
- (xv) any Contract evidencing or relating to any obligations of the Company with respect to the issuance, sale, repurchase or redemption of any securities of the Company;
- (xvi) all Leased Real Property leases;
- (xvii) any Contract that obligates the Company with respect to contingent payments of any type;
- (xviii) any Contract relating to any litigation or claim involving the Company at any time during the last five (5) years or under with there are ongoing responsibilities;
- (xix) any Contract relating to the acquisition or disposition of any capital stock, all or substantially all the assets or business or product line of any other Person; and
- (xx) any Government Bid or Government Contract.

3.12 Permits. Section 3.12 of the Schedule of Exceptions contains a true and complete list as of the date hereof of all Permits used or held for use by the Company in the Business. Except for such Permits, there are no Permits that are necessary for the lawful operation of the Business. The Company is in compliance in all material respects with all requirements and limitations under such Permits. No employee, officer, director, shareholder, consultant, advisor or manager of the Company owns or has any interest in any such Permit.

3.13 Insurance. Section 3.13 of the Schedule of Exceptions contains a true and complete list as of the date hereof of all policies of fire, liability, errors and omissions, workmen's compensation, public and product liability, title and other forms of insurance owned or held by the Company, which insurance, to the knowledge of the Sellers, is comprised of the types and in the amounts customarily carried by businesses of similar size in the same industry, and a claims history for the past three years. All such policies are in full force and effect and all applicable premiums, which are due and owing as of the Closing Date, have been paid. No notice of cancellation or termination or increase in premiums (except for general increases in rates to which similarly situated companies are subject) has been received with respect to any such policy. No insurer has cancelled or refused to renew any insurance applicable to the Company nor has any insurer applied any additional material restrictions to any existing insurance policy during the term of the policy or upon renewal. The Company has timely filed all claims for which it is seeking payment or other coverage under any of its insurance policies. The Company has not made any claim against an insurance policy as to which the insurer is denying coverage or defending the claim under a reservation of rights. The Company is not in default in any material respect under any insurance policy maintained by any of them.

3.14 Employee Benefit Plans and Employment Agreements.

(a) Section 3.14(a) of the Schedule of Exceptions contains a list as of the date of this Agreement of each "employee benefit plan," as defined in Section 3(3) of ERISA and all other material employment Contracts, and employee benefit plans, programs, policies and arrangements (including all collective bargaining, stock purchase, stock option, compensation, deferred compensation, pension, retirement, severance, termination, separation, vacation, sickness, health insurance, welfare and bonus plans or Contracts) entered into, maintained or contributed to by the Company for the benefit of continuing employees or other service-providers (or former employees or service-providers) of the Company or with respect to which the Company has any obligation or Liability (collectively, the "**Company Plans**").

(b) The Company has provided or made available to Purchaser true and materially correct copies of each of the Company Plans (including all amendments thereto) and all Contracts relating thereto, or to the funding thereof, including all trust Contracts, insurance Contracts, administration Contracts, investment management Contracts, subscription and participation Contracts, and recordkeeping Contracts, each as in effect on the date hereof, to the extent such Company Plans are in written form (and, as to any Company Plan that is not in writing, a description of the material terms of such plan). To the extent applicable, a true and correct copy of the most recent annual report, actuarial report, summary plan description, and Internal Revenue Service determination, opinion, notification or advisory letter ("**Determination Letter**") with respect to each of the Company Plans has been supplied or made available to Purchaser by the Company.

(c) Reserved.

(d) There are no actions, suits or claims pending or, to the knowledge of Sellers, threatened involving any Company Plan (other than routine claims for benefits) or the assets thereof (other than with respect to publicly traded securities or insurance company products and as to which neither the Company Plan or the Company is a named party), and no audits, inquiries or proceedings pending or, to the Seller's knowledge, threatened by the IRS or other Governmental Authority with respect to any Company Plan. Each Company Plan has been maintained and administered in all material respects in material compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations (foreign and domestic), including (without limitation) ERISA and the Code, which are applicable to such Company Plan. All contributions, reserves or premium payments required to be made or accrued as of the date hereof to the Company Plans have in all material respects been timely made or accrued. No "Prohibited Transaction," within the meaning of Section 4975 of the Code or Sections 406 or 407 of ERISA and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Company Plan. No Company Plan provides, or reflects or represents any Liability to provide, health or welfare benefits with respect to any former or current employee, or any spouse or dependent of any such employee, beyond the employee's retirement or other termination of employment with the Company (other than coverage mandated by Part 6 of Title I of ERISA or Section 4980B of the Code or analogous provision of applicable U.S. state or foreign Law).

(e) There is no Contract or plan covering any employee or former employee of the Company that, individually or collectively, could give rise to the payment as a result of the transactions contemplated by this Agreement of any amount that would not be deductible by the Company by reason of Section 280G of the Code. The execution of this Agreement and the consummation of the transactions contemplated by this Agreement (alone or together with any other event which, standing alone, would not by itself trigger such entitlement or acceleration) will not (1) entitle any Person to any payment, forgiveness of indebtedness, vesting, distribution, or increase in benefits under or with respect to any Company Plan, (2) otherwise trigger any acceleration (of vesting or payment of benefits or otherwise) under or with respect to any Company Plan, or (3) trigger any obligation to fund any Company Plan.

(f) With respect to each Company Plan that is a “nonqualified deferred compensation plan” (as defined for purposes of Section 409A(d)(1) of the Code) that is subject to, and not exempt from, Section 409A of the Code, (1) such plan has been operated since January 1, 2005 in compliance with Section 409A of the Code and all applicable IRS guidance promulgated thereunder; (2) the document or documents that evidence each such plan have conformed to the provisions of Section 409A of the Code and the final regulations under Section 409A of the Code since December 31, 2008; and (3) as to any such plan in existence prior to January 1, 2005 and not subject to Section 409A of the Code, has not been “materially modified” (within the meaning of IRS Notice 2005-1) at any time after October 3, 2004. No stock option covering securities of the Company is subject to any tax, penalty or interest under Section 409A of the Code.

(g) No Company Plan is maintained outside the jurisdiction of the United States, or covers any employee residing or working outside the United States (any such Company Plan, a “**Foreign Benefit Plan**”). With respect to any Foreign Benefit Plans, (A) all Foreign Benefit Plans have been established, maintained and administered in compliance in all material respects with their terms and all applicable statutes, laws, ordinances, rules, orders, decrees, judgments, writs, and regulations of any controlling Governmental Authority, (B) all Foreign Benefit Plans that are required to be funded are fully funded, and with respect to all other Foreign Benefit Plans, adequate reserves therefor have been established on the Financial Statements, and (C) no material Liability or obligation of the Company exists with respect to such Foreign Benefit Plans.

3.15 Employees. Section 3.15 of the Schedule of Exceptions contains a true and complete list of the names, titles, annual base compensation and target bonuses for the current year for each director, officer, manager and employee of the Company. There is not currently, and during the past two years there has been no, labor strike, picketing, dispute, slow-down, work stoppage, union organization effort, grievance filing or proceeding, or other labor difficulty actually pending or, to the knowledge of Sellers, threatened against or involving the Company. The Company is not a party to any collective bargaining agreement; there are no labor unions or other organizations representing any employee of the Company; and to the knowledge of Sellers, no labor union or organization is engaged in any organizing activity with respect to any employee of the Company. In the three years prior to the Closing Date, the Company has not effectuated a “plant closing” as defined in the Worker Adjustment and Retraining Notification Act (the “**WARN Act**”) (or any similar state, local or foreign law) or a “mass layoff” as defined in the WARN Act (or any similar state, local or foreign law) affecting any site of employment or facility of the Company. Neither the Company nor any Seller has received written notice that any of the Company’s current key employees (including, without limitation, the Sellers) intends to terminate his employment with the Company. The Company has complied, and is presently in compliance in all material respects with all Laws relating to employment.

3.16 Taxes.

(a) Except for current Taxes not due and payable through Closing, each of the Company has paid to, and where necessary collected or withheld and remitted to, the proper Governmental Authority, all Taxes that are due and payable.

(b) The Company has filed all Tax Returns which are required to be filed and all such Tax Returns are complete and accurate in all material respects. All unpaid Taxes of the Company for periods through the date of the Financial Statements are reflected on the balance sheets of the Company. The Company does not have any Liability for Taxes accruing after the Financial Statements other than Taxes accrued in the ordinary course of business and which are not yet due and payable.

(c) There is no, and there has never been any, action, suit, investigation, audit, claim, collection or assessment pending or, to the knowledge of the Sellers, proposed or threatened, with respect to any Tax Return or Taxes of the Company. No claim has ever been made by a Taxing authority in a jurisdiction where the Company is not paying Taxes or filing Tax Returns asserting that the Company is or may be subject to Taxes assessed by such jurisdiction. There are no Liens for Taxes upon the any of the assets of the Company except Liens relating to current Taxes not yet due.

(d) The Company is not (and has never been) a party to any Tax sharing agreement, Tax indemnity agreement or Tax allocation agreement, or has assumed the Tax Liability of any other Person under contract with the exception of customary commercial leases or Contracts that are not primarily related to Taxes entered into in the ordinary course of business.

(e) The Company has not been the “distributing corporation” or the “controlled corporation” (in each case, within the meaning of Section 355(a)(1) of the Code) with respect to a transaction described in Section 355 of the Code (i) within the three (3)-year period ending as of the date of this Agreement, or (ii) in a distribution that could otherwise constitute part of a “plan” or “series of related transactions” (within the meaning of Section 355(e) of the Code) that includes the transactions contemplated by this Agreement.

(f) The Company has never been a member of an affiliated group filing consolidated Tax Returns. With the exception of customary commercial leases or Contracts that are not primarily related to Taxes entered into in the ordinary course of business and Liabilities thereunder, the Company does not have any actual or potential Liability under Treasury Regulations Section 1.1502-6 (or any comparable or similar provision of federal, state, local or foreign law), as a transferee or successor, pursuant to any contractual obligation, or otherwise for any Taxes of any Person.

(g) There are no adjustments under Section 481 of the Code (or any similar adjustments under any provision of the Code or the corresponding foreign, state or local Tax laws) that are required to be taken into account by the Company in any period ending after the Closing Date by reason of a change in method of accounting in any taxable period ending on or before the Closing Date.

(h) There are no outstanding waivers or agreements extending the statute of limitations for any period with respect to any Tax to which the Company may be subject.

(i) The Company has not engaged in a “reportable transaction,” as set forth in Treasury Regulation Section 1.6011-4(b), or any transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a “listed transaction,” as set forth in Treasury Regulation Section 1.6011-4(b)(2).

(j) The Company is in compliance with all terms and conditions of all Tax exemptions, or order of a foreign government with respect to taxes and the transactions contemplated by this Agreement shall not have any adverse effect on the continued validity and effectiveness of any such Tax exemptions or orders.

(k) No Seller holds equity in the Company that is non-transferable and subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code with respect to which a valid election under Section 83(b) of the Code has not been made.

(l) Notwithstanding anything to the contrary in this Agreement, it is agreed and understood that (i) no representation or warranty is made by the Sellers or the Company in this Agreement in respect of Tax matters, other than the representations and warranties set forth in this [Section 3.16](#), (ii) the representations and warranties of the Company in this [Section 3.16](#) refer only to activities prior to the Closing and shall not serve as representations and warranties regarding, or a guarantee of, nor can they be relied upon with respect to, Taxes attributable to any Tax period (or portion thereof) beginning, or Tax positions taken, after the Closing Date, and (iii) no representations or guarantees are made with respect to the amount or availability of Tax attributes of the Company or any Subsidiary for any Tax period ending after the Closing Date.

3.17 No Defaults or Violations.

(a) The Company is not in material breach of or default under any Material Contract, no event has occurred or circumstance exists which, with notice or lapse of time or both, would constitute a material breach of or default under any Material Contract, and, to the knowledge of the Sellers, no other party to any Material Contract is in material breach of or default under any such Material Contract.

(b) The Company is not, and during the past two (2) years the Company has not been, in violation of, in any material respect, and, to the knowledge of the Sellers, no event has occurred or circumstance exists that (with or without notice or lapse of time) would constitute or result in a violation in any material respect by the Company of, or failure on the part of the Company to comply with in any material respect, any Law that is or was applicable to it or the conduct or operation of its business or the ownership or use of any of its assets.

(c) No written notice from any Governmental Authority has been received by or on behalf of the Company within the past three (3) years claiming any violation of any Law or requiring any work, construction (other than pursuant to sales contracts with Governmental Authorities), or expenditure, or asserting any Tax, assessment or penalty, with respect to the Company.

3.18 Reserved.

3.19 Litigation. There are no actions, litigation, claims, suits, mediations, arbitrations, inquiries, government or other investigations or proceedings of any nature pending or, to the Sellers' knowledge, threatened, involving the Company, its properties or the Business or, with respect to the operation of the Business, any of its officers, directors, employees, consultants, advisors or shareholders, before any Governmental Authority, or that have been settled, dismissed or resolved since January 1, 2015. The Company is not subject to any Order arising from any litigation.

3.20 Related Parties.

(a) No Seller has any direct or indirect interest in any other Person which conducts a business similar to the Business, or in any customer or supplier of the Company.

(b) To the knowledge of the Sellers, no officer, director, employee, consultant, shareholder of the Company or any Affiliate of any of the foregoing (a) has any interest in any property (real, personal, or mixed and whether tangible or intangible), used in or pertaining to the Business, (b) except for the ownership of less than 2% of the outstanding common stock of a publicly-held corporation, owns of record or as a beneficial owner, an equity interest or any other financial or a profit interest in a Person that has had business dealings or a material financial interest in any transaction with the Company or (c) is a party to any Contract (except for employment and similar agreements), including with respect to compensation or remuneration to be paid to such officer, director, shareholder or Affiliate in connection with this Agreement or the transactions contemplated hereby.

3.21 Receivables. All Receivables represent bona fide, current and valid obligations arising from sales actually made or services actually performed in the ordinary course of business. The Company has not received written notice from any obligor of any Receivable that such obligor is refusing to pay or contesting payment of amounts in excess of \$10,000 in any individual case, or \$25,000 in the aggregate, which has not been resolved prior to the date hereof, other than returns in the ordinary course of business under and in accordance with any Contract with any obligor of any Receivable.

3.22 Brokers. Except as disclosed on Section 3.22 to the Schedule of Exceptions, none of the Company or any of the Company's directors, officers, employees, consultants, advisors or agents, nor any Seller, has employed or incurred any Liability to any broker, finder or agent with respect to this Agreement, the Transaction Documents and the transactions contemplated hereby.

3.23 Disclaimer of Additional Representations and Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE COMPANY EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER THE COMPANY NOR ANY OTHER PERSON MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY ON BEHALF OF THE COMPANY IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Each Seller, severally and not jointly, represents and warrants to Purchaser that the following representations in this Article IV are true, correct and complete as of the date hereof:

4.1 Authorization; Investment Intent; Ownership of Shares.

(a) Such Seller has full power, authority and capacity to enter into this Agreement and the Transaction Documents to which such Seller is a party, and to consummate the transactions contemplated hereby and thereby. This Agreement and each Transaction Document to which such Seller is a party constitutes, or upon execution and delivery will constitute, a valid and legally binding obligation of such Seller, enforceable against such Seller in accordance with their respective terms, except as limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights or by general principles of equity, whether such enforceability is considered in a court of law, a court of equity or otherwise. The Shares held by such Seller do not constitute community property under applicable Laws.

(b) Such Seller is the sole record and beneficial owner of the Shares set forth opposite such Seller's name in Section 3.2(b) of the Schedule of Exceptions, all of which Shares are owned free and clear of all Liens, and neither such Shares nor any interest therein have been sold, pledged, assigned or otherwise transferred except pursuant to this Agreement. There are no outstanding subscriptions, rights, options, warrants or other agreements obligating such Seller to sell or transfer to any third person any or all of the Shares owned by such Seller, or any interest therein. Following the Closing, Purchaser shall own one-hundred percent (100%) of the issued and outstanding shares of capital stock of the Company. This Agreement, together with any stock powers or assignments delivered at the Closing by the Sellers to Purchaser, are sufficient to transfer to Purchaser the entire right, title and interest, legal and beneficial, in the Shares, free and clear of all Liens.

4.2 Consents and Approvals. Except as set forth on Schedule 4.2, no consent, license, authorization or approval of, filing or registration, declaration or filing with, or cooperation from, any Governmental Authority or any other Person not a party to this Agreement is necessary in connection with the execution, delivery or performance by such Seller of this Agreement or any Transaction Document to which such Seller is a party or the validity and enforceability of this Agreement or any Transaction Document to which such Seller is a party with respect to such Seller, or the consummation of the transactions contemplated by this Agreement or any such Transaction Document by such Seller. The execution, delivery and performance of this Agreement and the Transaction Documents, the consummation of the transactions contemplated hereby or thereby and compliance with the terms of this Agreement and the Transaction Documents by such Seller does not and will not (i) violate or conflict with, result in a material breach or termination of, result in any loss or forfeiture of rights or benefits under, constitute a default under, or permit cancellation of, or require any notice or consent under any Contract to which the Company is a party or any of its properties are bound or affected or any Law applicable to the Company or by which any of its properties are bound or affected, or (ii) result in the creation of, or require the creation of any Lien upon any of the Shares.

4.3 Securities Laws. The Shareholder Representative and the Other Holders (and any other Seller electing to receive shares pursuant to Section 2.3(c) (Other Holders and such Sellers, if any, collectively, the “**Equity Recipients**”) are each an “accredited investor” within the meaning of Rule 501 of Regulation D of the Act. Such Equity Recipient is acquiring shares of Purchaser Common Stock pursuant to this Agreement not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and such Equity Recipient has no present intention of selling, granting any participation or otherwise distributing the same. Such Equity Recipient understands that the shares of Purchaser Common Stock to be issued to him pursuant hereto are “restricted securities” under the U.S. federal securities laws inasmuch as they are being acquired from Purchaser in a transaction not involving a public offering and that under such laws and applicable regulations, such securities may be resold without registration only in certain limited circumstances. “Equity Recipient” as used in this Section 4.3 shall include any transferee or assignee of shares of Purchaser Common Stock issued pursuant to this Agreement.

4.4 Disclaimer of Additional Representations and Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, NETHER THE SELLER NOR ANY OTHER PERSON MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY ON BEHALF OF THE SELLER IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY. THIS SECTION 4.4 DOES NOT LIMIT THE SELLERS’ INDEMNIFICATION OBLIGATIONS IN ARTICLE XI HEREOF.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to the Company and each Seller that the following representations in this Article V are true, correct and complete as of the date hereof:

5.1 Due Incorporation. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of Delaware with all requisite power and authority to own, lease and operate its properties and to carry on its business as now being owned, leased, operated and conducted. The Company is duly licensed or qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the nature of the properties owned, leased or operated by it or the business conducted by it requires such licensing or qualification, except where the failure to be so qualified would not have a material adverse effect on Purchaser and its subsidiaries, taken as a whole.

5.2 Due Authorization. Purchaser has full power and authority to enter into this Agreement and the Transaction Documents and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement have been duly and validly approved by all necessary corporate action and no further corporate action is necessary. Purchaser has duly and validly executed and delivered this Agreement. This Agreement and the Transaction Documents constitute the legal, valid and binding obligations of Purchaser, enforceable in accordance with their respective terms, except as such enforceability may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors’ rights generally or (b) equitable limitations on the availability of specific remedies.

5.3 Consents and Approvals. Except as set forth on Schedule 5.3, no consent, license, authorization or approval of, filing or registration, declaration or filing with, or cooperation from, any Governmental Authority or any other Person not a party to this Agreement is necessary in connection with the execution, delivery, performance, validity and enforceability by Purchaser of this Agreement or any Transaction Documents and the consummation by the Purchaser of the transactions contemplated hereby, other than such consents, licenses, authorizations, approvals, filings, registrations, declarations or cooperation that, if not obtained, made or given, would not, individually or in the aggregate, impair in any material respect the ability of Purchaser to perform its obligations hereunder or prevent or materially impede, interfere with, hinder or delay the consummation of the transactions contemplated hereby. The execution, delivery and performance by Purchaser of this Agreement and the Transaction Documents, the consummation of the transactions contemplated hereby or thereby and compliance with the terms of this Agreement and the Transaction Documents do not and will not (i) materially violate or conflict with, result in a material breach or termination of, result in any material loss or forfeiture of rights or benefits under, constitute a default under, or permit cancellation of, or require any written notice or consent under any Contract to which Purchaser is a party or any of its properties are bound or affected or any Law applicable to Purchaser or by which any of its properties are bound or affected, (ii) violate or conflict with any provision of Purchaser's certificate of incorporation or bylaws, (iii) result in any breach or termination of, or constitute a default under, or constitute an event which notice or lapse of time, or both, would become a default under, or result in the creation of any Lien upon any asset of Purchaser under, or create any rights of termination, cancellation or acceleration in any Person or entity under any material Contract or violate any Order, to which Purchaser is a party or by which Purchaser or its assets, business or operations receive benefits, or result in the loss or adverse modification of any material license, franchise, Permit or other authorization granted to or otherwise held by Purchaser that is material or otherwise held by Purchaser that is material to the business or financial condition of Purchaser, in any such case as would have a material adverse effect on Purchaser and its subsidiaries taken as a whole or as would be reasonably likely to prevent Purchaser from consummating the transactions contemplated by this Agreement.

5.4 Legal Proceedings. There are no actions, litigation, claims, suits, mediations, arbitrations, inquiries, government or other investigations or proceedings of any nature pending or, to the Purchaser's knowledge, threatened, involving the Purchaser, or any subsidiary of Purchaser, or against any property, asset, or rights or interest of Purchaser, in each case that would be reasonably likely to prevent the consummation of the transactions contemplated by this Agreement.

5.5 Brokers. None of Purchaser or any of Purchaser's directors, officers, employees, consultants, advisors or agents has employed or incurred any Liability to any broker, finder or agent with respect to this Agreement, the Transaction Documents and the transactions contemplated hereby.

5.6 Tax Matters. No party to this Agreement has taken any action or knows of any fact or circumstance that could reasonably be expected to prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

ARTICLE VI

COVENANTS

6.1 Preservation of Business. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing, the Company agrees and the Sellers agree to use their reasonable efforts to cause the Company (in each case except to the extent expressly contemplated by this Agreement or as consented to in writing by Purchaser, which such consent shall not be unreasonably withheld, conditioned or delayed) to carry on the Business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay its debts and Taxes when due, to pay or perform other obligations when due, and to use all commercially reasonable efforts consistent with past practice to preserve intact its present business organization, keep available the services of its present officers and key employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it to the end that its goodwill and ongoing business shall be materially unimpaired at the Closing Date. Without limiting the foregoing, except as expressly contemplated by this Agreement, the Company shall not cause or permit any of the following without the prior written consent of Purchaser:

(a) Charter Documents. Cause or permit any amendments to the Company Charter Documents;

(b) Dividends; Changes in Capital Stock. Declare or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any of its capital stock, or split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or repurchase or otherwise acquire, directly or indirectly, any shares of its capital stock except from former employees, directors and consultants in accordance with agreements providing for the repurchase of shares in connection with any termination of service to the Company;

(c) Material Contracts; Other Activities. Enter into any commitment or agreement not in the ordinary course of business or any material Contract (including any Contract that would have been a Material Contract if in existence on the date hereof), or violate, amend or otherwise modify or waive any of the terms of any of its material Contracts (including Material Contracts) or otherwise engage in any activities or transactions that are outside the ordinary course of its business and consistent with past practice;

(d) Issuance of Securities. Issue, deliver or sell or authorize or propose the issuance, delivery or sale of, or purchase or propose the purchase of, any shares of its capital stock or securities convertible into or exercisable or exchangeable for, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating it to issue any such shares or other convertible, exercisable or exchangeable securities, including the grant of options pursuant to a stock option plan;

(e) Intellectual Property. Transfer to any person or entity any rights to the Company's Intellectual Property, other than non-exclusive licenses to customers in the ordinary course of business consistent with past practices;

(f) Exclusive Rights. Enter into or amend any agreements pursuant to which any other party is granted exclusive marketing or other exclusive rights of any type or scope with respect to any of its products or technology;

(g) Dispositions. Sell, lease, license or otherwise dispose of or encumber any of its properties or assets;

(h) Indebtedness. Incur any Debt or guarantee any Debt or issue or sell any debt securities or guarantee any debt securities of others;

(i) Leases. Enter into any lease with aggregate payment obligations in excess of \$10,000;

(j) Payment of Obligations. Pay, discharge or satisfy in an amount in excess of \$5,000 in any one case or \$25,000 in the aggregate, any claim, Liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) arising other than in the ordinary course of business, other than the payment, discharge or satisfaction of Liabilities reflected or reserved against in the Balance Sheet;

(k) Capital Expenditures. Make any capital expenditures, capital additions or capital improvements except in the ordinary course of business and consistent with past practice;

(l) Insurance. Materially reduce the amount of any insurance coverage provided by existing insurance policies;

(m) Termination or Waiver. Terminate or waive any right of substantial value;

(n) Employee Benefit Plans; New Hires; Pay Increases. Adopt or amend any employee benefit or stock purchase or option plan, enter into any employment Contract, or hire any new officer-level employee, pay any special bonus or special remuneration to any employee or director (except payments made pursuant to written agreements outstanding on the date hereof and that have been delivered to Purchaser prior to the date hereof), or increase the salaries or wage rates of any employee;

(o) Severance Arrangements. Grant any severance or termination pay to any director, officer or other employee;

(p) Lawsuits. Commence a lawsuit other than (i) for the routine collection of bills, or (ii) in such cases where it in good faith determines that failure to commence suit would result in the material impairment of a valuable aspect of its business, provided that it consults with Purchaser prior to the filing of such a suit or (iii) for breach of this Agreement;

(q) Acquisitions. Acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any Person or division or business thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the Company;

(r) Taxes. Make or change any material election in respect of Taxes, adopt or change any accounting method in respect of Taxes, file any material Tax Return or any amendment to a material Tax Return, enter into any closing agreement, settle any material claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any material claim or assessment in respect of Taxes;

(s) Notices. Fail to give all material notices and other information required to be given, if any, to the employees of the Company, any collective bargaining unit representing any group of employees of the Company, and any applicable government authority under the WARN Act, the National Labor Relations Act, the Internal Revenue Code, the Consolidated Omnibus Budget Reconciliation Act, and other applicable Law in connection with the transactions provided for in this Agreement;

(t) Revaluation. Revalue any of its assets, including without limitation writing down the value of inventory or writing off notes or Receivables other than in the ordinary course of business;

(u) Obligations. Fail to pay or otherwise satisfy its material monetary obligations as they become due, except such as are being contested in good faith; or

(v) Other. Take or agree in writing or otherwise to take, any of the actions described in (a)-(u) above, or any action that would cause a material breach of its representations or warranties contained in this Agreement or prevent it from performing or cause it not to perform its covenants hereunder or result in the failure of any closing condition hereunder.

6.2 Supplemental Information. None of the Sellers or the Company shall take any action or fail to take any action which, from the date hereof through the Closing, would cause or constitute a breach of any of the representations, warranties, agreements or covenants of the Sellers or the Company set forth in this Agreement or cause such representations, warranties, agreements or covenants to be inaccurate at the Closing. From time to time prior to the Closing, each party shall promptly (and in any event within 72 hours) disclose in writing to the other Parties any matter (i) occurring after the date hereof, or (ii) which such party becomes aware of after the date hereof, which, if existing and known on the date hereof, would have been required to be disclosed on the Schedule of Exceptions or which would render inaccurate any of the representations and warranties set forth in Article III, Article IV or Article V hereof (each such disclosure referred to herein as a “**Supplement**”). However, no Supplement provided pursuant to clause (ii) of this Section 6.2 shall be deemed to cure any prior existing breach of any representation, warranty or covenant in this Agreement nor shall such Supplement be deemed to amend the Schedule of Exceptions with respect to any prior breach without the written consent of Purchaser; provided, however that Sellers shall be permitted to provide a Supplement pursuant to clause (ii) of this Section 6.2 at any time up to two weeks following the date of this Agreement which will be deemed to amend the Schedule of Exceptions with respect to updates or additions which are approved by prior written consent of Purchaser. A Supplement provided pursuant to clause (i) of this Section 6.2 shall be deemed to amend the Schedule of Exceptions.

6.3 Reserved.

6.4 Confidentiality. From and for a period of twelve (12) months after the Closing, no Seller shall divulge or convey to any Person (other than Purchaser and its subsidiaries (including the Company), any Business Confidential Information. In this regard, the Company and the Sellers acknowledge that the Purchaser’s common stock is publicly traded and that any Business Confidential Information obtained by the Company and the Sellers regarding Purchaser will be considered to be material non-public information within the meaning of federal and state securities Laws. Accordingly, the Company and the Sellers acknowledge and agree not to engage in any transactions in Purchaser Common Stock in violation of applicable Laws.

6.5 Public Announcement. Except for public announcements or press releases that are required by SEC disclosure laws concerning the proposed purchase and sale transactions herein contemplated, no public announcement or press release announcing such transactions will be made without the joint written consent of Purchaser and the Sellers. Purchaser and the Sellers shall cooperate on the form, content, timing and manner of any such announcement.

6.6 Access. The Company and the Sellers will permit representatives of Purchaser from and after the date hereof up and through Closing to have full access at all reasonable times during normal business hours to the books, accounts, records, properties, operations, facilities, clients, customers, creditors, suppliers and personnel pertaining to the Company or the Business, and will furnish Purchaser with such financial and operating data concerning the Company or the Business as Purchaser shall from time to time reasonably request.

6.7 Transition and Cooperation. From and after the Closing, the Sellers, excluding G&D, shall promptly deliver to Purchaser all correspondence, papers, documents and other items and materials received by either Seller or found to be in the possession of either Seller which pertain to the Company or the Business. Upon the reasonable request of the Purchaser, each of the Sellers hereto shall use commercially reasonable efforts to do, execute, acknowledge and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances and other instruments and papers as may be reasonably required or appropriate to carry out the transactions contemplated by this Agreement, subject to applicable Law.

6.8 No Claims. Each Seller hereby expressly acknowledges and agrees that he/she/it has reviewed (and has had the opportunity to review with counsel) and understands the Purchase Price, including each element of the Closing Payment set forth in Section 2.3(a) and Schedule 2.3(a)(i) and the Earnout Payment set forth in Section 2.3(b), and the indemnification obligations set forth in Article IX. Effective as of the Closing, each Seller, by its execution and delivery of this Agreement, hereby forever waives, releases and discharges (and hereby agrees to cause each of its representatives to forever waive, release and discharge) with prejudice the Company from any and all claims, rights (including rights of indemnification, contribution and other similar rights, from whatever source, whether under contract, applicable Law or otherwise), causes of action, protests, suits, disputes, orders, obligations, debts, demands, proceedings, contracts, agreements, promises, liabilities, controversies, costs, expenses, fees (including attorneys' fees), or damages of any kind, arising by any means (including subrogation, assignment, reimbursement, operation of law or otherwise), whether known or unknown, suspected or unsuspected, accrued or not accrued, foreseen or unforeseen, or mature or unmature related or with respect to, in connection with, or arising out of, directly or indirectly, the type, form, value, or distribution of the consideration paid by Purchaser to the Sellers or any indemnification obligations by the Sellers in favor of the Purchaser, in relation to the transactions contemplated by this Agreement; provided, however, this clause (b) shall not be construed as releasing any party from its obligations otherwise expressly set forth in this Agreement or any agreement delivered pursuant hereto. Each Seller hereby expressly waives any and all provisions, rights and benefits conferred by §1542 of the California Civil Code (or any similar, comparable or equivalent provision or law) which section provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

6.9 Tax Cooperation. After the Closing, the Sellers shall cooperate fully with Purchaser and the Company in the preparation of all Tax Returns and shall provide to Purchaser and the Company any records and other information reasonably requested by such Persons in connection therewith. The Sellers shall cooperate fully with Purchaser and the Company in connection with any Tax investigation, audit or other proceeding. After the Closing, Purchaser and the Company shall cooperate with each Seller in the preparation of any Tax Return of a respective Seller and shall provide to such Seller any records and other information reasonably requested by such Seller in connection therewith. The Purchaser and the Company shall cooperate fully with each Seller in connection with any Tax investigation, audit or other proceeding.

6.10 Reorganization Treatment. Purchaser, the Surviving Entity, the Company, and the Sellers and each of their respective Affiliates will (i) use all reasonable best efforts to cause the Merger to constitute a reorganization under Section 368(a) of the Code, and (ii) not take any action or fail to take any action that could reasonably be expected to prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. Purchaser, the Surviving Entity, the Company and the Sellers shall file all Tax Returns consistent with the Merger qualifying as a reorganization under Section 368(a), unless otherwise required by law.

6.11 Payment of Debt and Company Unpaid Transaction Expenses. (a) Purchaser shall pay to the holders of the outstanding balance of Debt listed on Schedule 6.11(a) in 18 consecutive monthly installments commencing 30 days after the Closing; (b) all the Company Unpaid Transaction Expenses which the Company and/or the Sellers are obligated to pay at or substantially contemporaneous with the Closing as set forth on Schedule 6.11(b), a cash amount in 12 consecutive monthly installments commencing 30 days after the Closing; (c) the amount owed to the broker listed on Schedule 6.11(c) payable as follows: \$100,000 in cash payable over the next six (6) months commencing with the first payment five (5) days after the Effective Time and the issuance of 375,554 shares of restricted common stock of the Purchaser (such payment of Debt and Company Unpaid Transaction Expenses, collectively, the “**Debt Payment**”).

6.12 Payment of Legal Fees. Within sixty (60) days of the Effective Time, the Company and/or Purchaser shall pay to Wilmer Cutler Pickering Hale and Dorr LLP (“**WilmerHale**”) the invoices which are outstanding as of the date hereof in the aggregate amount of \$91,245.33 (the “**Legal Fees**”). For the avoidance of doubt, such obligation of the Company and Purchaser to pay the Legal Fees shall be joint and several.

6.13 Payment of Promissory Notes. Michael Orlando has issued promissory notes to the Company as listed on Schedule 6.13. Orlando’s notes will be paid in equal quarterly payments (“**Note Payments**”) payable on October 1, January 1, April 1 and July 1 of each year for a period of four (4) years. The initial payment will be a double payment due on January 1, 2018 (comprised of the January 1, 2018 payment and the deferred October 1, 2017 payment) on which date Orlando will receive two (2) quarterly payments. All Note Payments after the initial payment will be single payments payable.

6.14 Third-Party Beneficiary. Purchaser, Merger Sub and the Company hereby expressly acknowledge that WilmerHale is a third-party beneficiary under this Agreement and that it is the intention of each of Purchaser, Merger Sub and the Company to confer third-party beneficiary rights upon WilmerHale in relation to, and to allow WilmerHale to rely upon, the terms of Sections 6.11 and 6.12.

ARTICLE VII

POST CLOSING OPERATIONS

7.1 Reserved.

ARTICLE VIII

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser under Article II of this Agreement are subject to the satisfaction of the following conditions precedent on or before the Closing, unless waived in writing by Purchaser in its sole discretion:

8.1 Warranties True. The representations and warranties of the Company and the Sellers contained herein shall have been true and correct in all respects on and as of the date of this Agreement; and, the representations and warranties of the Company and the Sellers contained herein shall be true and correct in all material respects on and as of the Closing (except in the case of any representation or warranty which itself is qualified by materiality or Material Adverse Effect or Material Adverse Change, which representation and warranty must be true and correct in all respects).

8.2 Compliance with Covenants. The Company and Sellers shall have performed and complied in all material respects with all of their respective covenants, obligations and agreements contained in this Agreement to be performed by them on or prior to the Closing Date.

8.3 Consents; Approvals. Purchaser shall have received written evidence to the satisfaction of Purchaser that all consents and approvals of any Governmental Authorities or any other Persons required, if any, for the Sellers' consummation of the transactions contemplated hereby and the ownership of the Company and operation of the Business by Purchaser resulting therefrom have been obtained by the Sellers and/or the Company.

8.4 No Action. No Order of any court or Governmental Authority shall have been entered that enjoins, restrains or prohibits this Agreement or the consummation of the transactions contemplated by this Agreement. No governmental action shall be pending or threatened that seeks to enjoin, restrain, prohibit or obtain damages with respect to this Agreement or the complete consummation of the transactions contemplated by this Agreement. No governmental investigation shall be pending or threatened that might result in any such Order, suit, action or proceeding.

8.5 Closing Deliveries. Purchaser shall have received, in form and substance reasonably satisfactory to Purchaser, such agreements, documents, instruments and certificates as shall be reasonably requested by Purchaser to consummate the transactions contemplated hereby to and convey to Purchaser all of the Shares as contemplated herein, including the following duly executed instruments:

(a) all consents listed in Section 3.3 of the Schedule of Exceptions;

(b) a good standing certificate for the Company, dated within five (5) days of the Closing Date, from the State of Delaware and each other State where the Company is or is required to be qualified to do business;

(c) stock certificates relating to the Shares duly endorsed for transfer to Purchaser or accompanying duly executed and delivered stock powers effecting the same;

(d) a certificate of the Company's Secretary's certifying as to resolutions adopted by the Company's Board of Directors approving the transactions described herein; and

(e) a Release duly executed and delivered by each Seller;

8.6 Participation in the Closing. Each Seller shall have proceeded with the Closing such that at the Closing, Purchaser shall own all of the outstanding shares of capital stock of the Company.

8.7 No Bankruptcy; Material Adverse Effect. The Company shall not have entered, or have entered against it, an Order of relief under the Bankruptcy Code, and there shall not have occurred any Material Adverse Effect or Material Adverse Change.

8.8 Resignation. Each director of the Company shall have resigned as a director effective immediately prior to the Closing.

ARTICLE IX

CONDITIONS PRECEDENT TO OBLIGATIONS OF THE COMPANY

The obligations of the Company under Article II of this Agreement are subject to the satisfaction of the following conditions precedent on or before the Closing, unless waived by the Company:

9.1 Warranties True. The representations and warranties of Purchaser contained herein shall have been true and correct in all respects on and as of the date of this Agreement; and, the representations and warranties of Purchaser contained herein shall be true and correct in all material respects on and as of the Closing (except in the case of any representation or warranty which itself is qualified by materiality or material adverse effect or material adverse change, which representation and warranty must be true and correct in all respects).

9.2 Compliance with Covenants. Purchaser shall have performed and complied in all material respects with all of its covenants, obligations and agreements contained in this Agreement to be performed by it on or prior to the Closing Date.

9.3 No Action. No Order of any court or Governmental Authority shall have been entered that enjoins, restrains or prohibits this Agreement or the consummation of the transactions contemplated by this Agreement. No governmental action shall be pending or threatened that seeks to enjoin, restrain, prohibit or obtain damages with respect to this Agreement or the complete consummation of the transactions contemplated by this Agreement. No governmental investigation shall be pending or threatened that might result in any such Order, suit, action or proceeding.

9.4 Closing Deliveries. The Company shall have received the following duly executed instruments:

(a) a good standing certificate for Purchaser, dated within five (5) days of the Closing Date, from the State of Delaware and each other State where Purchaser is or is required to be qualified to do business;

(b) a certificate of Purchaser's Secretary certifying as to resolutions adopted by the Board of Directors of Purchaser approving the transactions described herein;

9.5 No Bankruptcy. Purchaser shall not have entered, or have entered against it, an Order of relief under the Bankruptcy Code.

9.6 Purchaser Common Stock Issuances. Purchaser shall have issued to each of Orlando, G&D and the Other Holders an aggregate number of shares of Purchaser Common Stock equal to 19.96% (rounded to the nearest whole share of Purchaser Common Stock).

9.7 Purchaser Series C Preferred Stock Issuance. Purchaser shall have issued to G&D 2,000 shares of Series C Preferred Stock.

9.8 Employment Agreements. Purchaser and each of the employees set forth on Schedule 9.8 shall have executed and delivered valid and binding employment agreements which shall be in full force and effect concurrently with the execution and delivery of this Agreement.

ARTICLE X

TERMINATION

10.1 Termination. This Agreement may be terminated at any time on or prior to the Closing:

(a) By the written consent of each of the Company and Purchaser;

(b) By Purchaser by written notice to the Company if any event occurs or condition exists that would render impossible the satisfaction of one or more conditions to the obligations of Purchaser to consummate the transactions contemplated by this Agreement as set forth in Article VIII and that, if capable of cure, has not been cured within ten (10) Business Days of receipt by the Company of notice thereof from Purchaser;

(c) By the Company by written notice to Purchaser if any event occurs or condition exists that would render impossible the satisfaction of one or more conditions to the obligation of the Company to consummate the transactions contemplated by this Agreement as set forth in Article IX and that, if capable of cure, has not been cured within ten (10) Business Days of receipt by Purchaser of notice thereof from the Company;

(d) By Purchaser by written notice to the Company if there has been a material misrepresentation or other material breach by any Seller or the Company of the representations, warranties or covenants of any Seller or the Company set forth herein that, if capable of cure, has not been cured within ten (10) Business Days of receipt by the Company of notice thereof from Purchaser; or by the Company if there has been a material misrepresentation or other material breach by Purchaser of the representations, warranties and covenants of Purchaser set forth herein that, if capable of cure, has not been cured within ten (10) Business Days of receipt by Purchaser of notice thereof from the Company;

(e) By written notice of the Company or Purchaser, to the other parties, if any court of competent jurisdiction or other Governmental Authority shall have issued an Order or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby and such Order, ruling or other action shall have become final and nonappealable; or

(f) By written notice of Purchaser, on the one hand, or the Company, on the other hand, to the other parties hereto, if the Closing has not occurred on or before May 31, 2017 (the "**Termination Date**"), provided, that the right to terminate under this Agreement under this Section 10.1(f) shall not be available to a party if the failure of such party to fulfill or breach by such party of any of its obligations under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date. Any extension of the Closing Date shall require the mutual written consent of the Company and Purchaser.

10.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 10.1, this Agreement shall forthwith become void and there shall be no Liability or obligation on the part of any party hereto or their respective officers, directors, stockholders or Affiliates, except to the extent that such termination results from a breach by a party hereto of any of its representations, warranties or covenants contained herein; provided that, the provisions of this Article X and Article XII shall remain in full force and effect and survive any termination of this Agreement, as well as Section 3 and Schedule 3 of that certain Letter of Intent dated as of March 26, 2017, which is attached hereto as Exhibit 10.2.

ARTICLE XI

INDEMNIFICATION

11.1 Survival. The representations and warranties of the Company and the Sellers in this Agreement shall survive the Closing until a date that is eighteen (18) months from the Closing Date, provided, however, that (a) such time limitation shall not apply to the representations and warranties set forth in Sections 3.2, 4.1 and 4.3 (the "**Fundamental Representations**") (such representations and warranties to survive until the date that is sixty (60) days following the expiration of the applicable statute of limitations) and (b) [reserved]. After the end of the relevant survival period specified above, the applicable Sellers' obligations under this Article XI with respect to such representations and warranties shall expire, terminate and shall be of no further force and effect unless a claim for indemnification is made hereunder prior to the expiration of the relevant survival period in which case such claim shall continue in effect until final resolution of such claim. Notwithstanding anything in this Agreement to the contrary, the covenants and agreements of the Sellers and the Company (but not representations and warranties) under this Agreement shall survive until the date that is sixty (60) days following the expiration of the applicable statute of limitations.

11.2 Indemnification. Subject to the limitations and conditions for indemnification contained in Sections 11.1, 11.3 and 11.7, the Sellers, excluding G&D, (each, an “**Indemnitor**”), shall severally (based on their Pro Rata Share) and not jointly, indemnify, defend and hold harmless Purchaser and its Affiliates, and each of their officers, directors, employees and agents, and their heirs and successors (each, an “**Indemnitee**”), against Losses, up to an amount equal to seventy-seven percent (77%) of such Losses with respect to any individual claim or aggregation of claims, relating to or arising out of:

- (a) any breach of any representation or warranty made by the Company or any Seller in this Agreement in Article III;
- (b) any breach of any representation or warranty made by any Seller in Article IV;
- (c) any breach of any covenant of the Company or any Seller in this Agreement; and
- (d) any Pre-Closing Taxes.

11.3 Limitations. Notwithstanding anything to the contrary in this Agreement:

(a) no claim may be made by any Indemnitee(s) for indemnification pursuant to Section 11.2(a) unless and until the aggregate amount of Losses for which the Indemnitee(s) seeks to be indemnified pursuant to Section 11.2(a) exceeds \$50,000 (the “**Threshold Amount**”), at which time the Indemnitee(s) shall be entitled to indemnification for all such Losses (including all Losses included within the Threshold Amount); provided, that the Sellers shall not have any liability relating to an individual claim (or a series of related or similar claims) resulting in Losses in the amount of \$5,000 or less (a “**De Minimis Claim**”), regardless of whether or not aggregate Losses as of the time of such claim have exceeded the Threshold Amount.

(b) except for any claim based on fraud or intentional misrepresentation, the maximum aggregate indemnification obligation of each Seller for money damages pursuant to Section 11.2(a), other than with respect to a claim for indemnification arising from any breach or inaccuracy of any Fundamental Representations, shall be limited to such Seller’s Pro Rata Share of the Total Consideration;

(c) notwithstanding anything in this Agreement to the contrary, except for any claim based on fraud or intentional misrepresentation, the maximum aggregate indemnification obligation of each Seller for money damages pursuant to Article XI shall be limited in the aggregate to the consideration actually received by such Seller pursuant to this Agreement; and

(d) no Seller shall be liable or have any indemnification obligation for the breach of any representations or warranty made by any other Seller in Article IV of this Agreement, the breach of any covenant of any other Seller in this Agreement or for the actions or inaction of any other Seller in connection with this Agreement.

(e) for the avoidance of doubt, each Indemnitor shall only be responsible (based on their Pro Rata Share) for an amount up to seventy-seven percent (77%) of their Pro Rata Share of Losses with respect to any claim or claims for indemnification by Indemnitee pursuant to this Article XI.

11.4 Procedures for Making Claims. If and when an Indemnitee desires to assert a claim for Losses against any Indemnitor, the Indemnitee shall deliver to the Indemnitor a certificate signed by such Indemnitee (if the Indemnitee is an entity, the certificate shall be signed by its chief executive officer) (a “**Notice of Claim**”), which Notice of Claim shall: (i) state that the Indemnitee has paid or accrued (or intends or expects to pay or accrue) Losses to which it is entitled to indemnification pursuant to this Article XI and the amount thereof (to the extent then known); and (ii) specifying to the extent possible (A) the individual items of Losses in the certificate, (B) the date each such item was or is expected to be paid or accrued, to the extent known, and (C) the basis upon which Losses are claimed (including the specific clause of this Agreement pursuant to which such indemnification is being sought. Such Notice of Claim shall be delivered prior to the expiration of any applicable survival period as set forth in Section 11.1. If the Indemnitor shall object to such Notice of Claim, the Indemnitor shall deliver written notice of objection (the “**Notice of Objection**”) to the Indemnitee within fifteen (15) Business Days after receipt of the Notice of Claim. The Notice of Objection shall set forth the grounds upon which the objection is based and state whether the Indemnitor objects to all or only a portion of the matter described in the Notice of Claim. The Losses set forth in the Notice of Claim shall be payable to the Indemnitee within twenty (20) Business Days of the expiration of such fifteen (15) Business Day period without the necessity of further action to the extent the Indemnitor has not delivered a Notice of Objection. If the Indemnitor shall timely deliver a Notice of Objection, the Indemnitor and the Indemnitee shall attempt in good faith to agree upon the rights of such Persons with respect to the claim in the Notice of Claim. If an agreement on the amount of Losses is reached, then the Losses set forth in the Notice of Claim shall be payable to the Indemnitee within fifteen (15) Business Days of the date of such agreement. If the parties are unable to reach an agreement within fifteen (15) Business Days, either the Indemnitor or the Indemnitee may demand arbitration of the matter (such arbitration to be conducted by JAMS in New York City) (unless the matter is at issue in a pending third party claim, in which case arbitration shall not be commenced until such amount is ascertained or both persons agree to arbitration), and the matter shall be settled by arbitration conducted by one arbitrator mutually agreeable to the Indemnitor and the Indemnitee. In the event that within ten (10) days after submission of any dispute to arbitration, the Indemnitor and the Indemnitee cannot mutually agree on one arbitrator, the Indemnitor and the Indemnitee shall each select one arbitrator and the two arbitrators so selected shall select a third arbitrator. The arbitrator(s) shall set a limited time period and establish procedures designed to reduce the cost and time for discovery. The decision of the arbitrator or a majority of the arbitrators, as the case may be, as to the validity and amount of any claim for indemnification for Losses (a “**Resolved Amount**”) shall be binding and conclusive upon the Indemnitor and the Indemnitee. Such decision shall be delivered in writing and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrator(s). Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

11.5 Defense Procedure for Third Party Claims. If any claim, demand or Liability that could constitute indemnifiable Losses hereunder is asserted by any third party against any Indemnitee, the Indemnitee shall promptly provide the Indemnitor with a Notice of Claim with respect to such third-party claim. The Indemnitor shall, upon the written request of the Indemnitee, have the right to defend any actions or proceedings brought against the Indemnitee in respect of matters embraced by the indemnity provided under this Article XI, but the Indemnitee shall have the right to conduct and control the defense, compromise or settlement of any such claim, demand or Liability if the Indemnitee chooses to do so, on behalf of and for the account and risk of the Indemnitor who shall be bound by the result so obtained to the extent provided herein; provided, that Indemnitee may not compromise or settle such claim without the prior written consent of Indemnitor; provided, further, that if the Indemnitor is not allowed to control the defense, they may provide advice or participate in the defense of any third party claim through counsel of its choosing, but the fees and expenses of such counsel shall be at the expense of the Indemnitor. If, after a request to defend any action or proceeding, the Indemnitor neglects to defend the Indemnitee, a recovery against the latter suffered by it in good faith, is conclusive in its favor against the Indemnitor, provided, however, that, if the Indemnitor did not receive reasonable notice of the action or proceeding against the Indemnitee, or is not allowed to control the defense, judgment against the Indemnitee is only presumptive evidence against the Indemnitor that any resulting Losses constitute an indemnifiable claim under this Article XI. The parties shall cooperate in the defense of all third party claims that may give rise to indemnifiable claims hereunder. In connection with the defense of any claim, each party shall make available to the party controlling such defense, any books, records or other documents within its control that are reasonably requested in the course of such defense. Except with the consent of the Indemnitor (which consent shall not be unreasonably withheld or delayed), no settlement of any such claim with any third party claimant shall be determinative of the amount of Losses relating to such matter, but shall only be presumptive evidence of the amount of Losses constituting such indemnifiable claim. In the event that the Indemnitor has consented to any such settlement, the Indemnitor shall have no power or authority to object under any provision of this Article XI to the existence and amount of any claim by the Indemnitee with respect to such settlement. Indemnification payments with respect to third party claims shall be paid by the Indemnitor upon (i) the entry of a judgment against the Indemnitee and the expiration of any applicable appeal period; (ii) the entry of an unappealable judgment or final appellate decision against the Indemnitee; or (iii) a settlement of such claim, in each case subject to the dispute resolution provisions of Section 11.4.

11.6 Right of Setoff. If there is determined to be any indemnifiable Losses (whether by agreement, failure to object or decision of arbitrator(s)) (“**Determined Losses**”) payable to an Indemnitee or if there is otherwise determined to be any amount owing to any Seller under this Agreement, Purchaser shall be entitled to retain as an offset, without any further action by any Indemnitor or Purchaser, if and as applicable, a portion (up to all) of any Earnout Payment equal to such Determined Losses and in satisfaction thereof to the extent of such offset, and such offset shall be deemed to occur automatically such as to reduce, as applicable, the applicable payments otherwise payable by Purchaser. In addition, if a Indemnitee has made a claim for Losses that has not yet been resolved (including in connection with a third party claim), Purchaser shall be entitled to hold back from any payments that would otherwise be due as part of the Earnout Payment the full amount of such claim until resolution and determination thereof.

11.7 Exclusive Remedy.

(a) In the event the Closing occurs, subject to Section 12.11, the sole and exclusive remedy of Purchaser or any other Indemnitee for Losses for any breach or inaccuracy of any representation or warranty or for any breach of any covenant or obligation by the Company or any of the Sellers shall be indemnification pursuant to this Article XI; provided, however, this exclusive remedy does not preclude (i) a party from bringing an action for specific performance or other equitable remedy to require a party to perform its obligations under this Agreement or any of the Transaction Agreements or (ii) a party from pursuing remedies under applicable Law for fraud or intentional misrepresentation, provided that the maximum indemnification obligation of any Seller for fraud of another party shall be limited to the total consideration received by such Seller pursuant to this Agreement.

11.8 Treatment of Indemnity Payments. Any payments made pursuant to this Article XI shall be treated as an adjustment to the Total Consideration for all income Tax purposes and none of the parties shall take a contrary position with respect to any Tax Return, audit or other proceeding.

11.9 Insurance Proceeds. Any amount of Losses payable hereunder will be reduced (including retroactively) by any insurance proceeds actually recovered by or on behalf of the Indemnitee in relation to such Losses. If an Indemnitee will have received, any amount as a result of a claim for Losses hereunder (an “**Indemnification Payment**”), and an Indemnitee subsequently recovers insurance proceeds in respect of such Losses, then such Indemnitee will promptly pay to the Indemnitor the amount of such insurance proceeds in respect of such Losses, or, if less the amount of the Indemnification Payment. The Indemnitee shall use commercially reasonable efforts to seek recovery under its applicable third party insurance policies, provided, that nothing in this sentence shall obligate an Indemnitee to seek recovery of insurance proceeds prior to pursuing indemnification pursuant to this Article XI. If an Indemnitee receives any insurance proceeds after having recovered amounts in respect of the related Losses from an Indemnitor, it shall promptly pay such recovered amounts to the Indemnitor (net of the amount of any collection costs or retrospective premium adjustments). Notwithstanding anything in this Agreement to the contrary, in no event shall the Indemnitee be obligated to institute any action against any third party to seek recovery of indemnifiable damages.

ARTICLE XII

MISCELLANEOUS

12.1 Expenses. Except as otherwise expressly provided in this Agreement, each party hereto shall bear its own expenses with respect to the transactions contemplated hereby.

12.2 Amendment. This Agreement may be amended, modified or supplemented only by written agreement of Purchaser, the Company and the Sellers.

12.3 Notices. Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person or by personal-delivery, (b) on the date of transmission if sent by facsimile or other electronic transmission including email with electronic confirmation of successful transmission and if sent on a Business Day prior to 5:00 p.m. at the place of receipt, and if not sent during such time, on the next succeeding Business Day, (c) three (3) Business Days after being deposited in the U.S. mail, certified or registered mail, postage prepaid, or (d) on the date of scheduled delivery if delivered by nationally recognized express mail or courier service:

If to Purchaser, addressed as follows:

Nxt-ID, Inc.
Attn: Gino Pereira, CEO
285 North Drive – Suite D
Melbourne, FL 32934
Email: gino@nxt-id.com

with a copy to (which shall not constitute notice):

Robinson Brog
875 3rd Avenue
9th Floor
New York, NY 10022
Attn.: David E. Danovitch, Esq.
Email: ded@robinsonbrog.com

If to Michael Orlando, addressed as follows:

Michael Orlando
9000 Crow Canyon Road
Suite S292
Danville, CA 94506
Email: michael@fit-pay.com

If to G&D, addressed as follows:

Giesecke & Devrient Mobile Security America, Inc.
45925 Horseshoe Drive
Dulles, VA 20166
Email:

with a copy to (which shall not constitute notice):

Womble Carlyle Sandridge & Rice LLP
8065 Leesburg Pike, 4th Floor
Tysons Corner, VA 22182-2738
Attn: John Gambaccini, Esq.
Email: jgambaccini@wcrs.com

Other Holders to the Shareholder Representative, addressed as follows:

Michael Orlando
9000 Crow Canyon Road
Suite S292
Danville, CA 94506
Email: michael@fit-pay.com

If to the Company, addressed as follows:

Fit Pay, Inc.
Attn: Chief Executive Officer
9000 Crow Canyon Road
Suite S292
Danville, CA 94506

with a copy to (which shall not constitute notice):

Wilmer Cutler Pickering Hale and Dorr LLP
650 Page Mill Road
Palo Alto, CA 94304
Attn: Glenn Luinenburg, Esq.
Email: Glenn.Luinenburg@wilmerhale.com

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

12.4 Waivers. The failure of a party to require performance of any provision shall not affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing.

12.5 Counterparts; Facsimile or Electronic Signature. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature of a party transmitted by facsimile or electronic mail shall constitute an original for all purposes.

12.6 Interpretation. The headings preceding the text of Articles and Sections included in this Agreement and the headings to exhibits, schedules or annexes to this Agreement are for convenience only and shall not be deemed part of this Agreement or be given effect in interpreting this Agreement.

12.7 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York without giving effect to the principles of conflicts of law thereof.

12.8 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to confer rights upon any other Person, other than as expressly set forth in Section 6.4, Section 6.5 and Article XI.

12.9 Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

12.10 Remedies Cumulative. The remedies provided in this Agreement shall be cumulative and shall not preclude the assertion or exercise of any other rights or remedies available by law, in equity or otherwise, except as limited in Section 11.7(e).

12.11 Jurisdiction, Service of Process. The parties agree that irreparable damage would occur 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 seek an injunction or injunctions to prevent or to address breaches or threatened breaches of this Agreement, without the necessity of proving actual damages or posting bond, and to enforce specifically the terms and provisions of this Agreement in any Federal Court located in the Southern District of New York or any New York State Court, this being in addition to any other remedy to which they are entitled at law or in equity pursuant to, and as limited by, the terms of this Agreement. In addition, except to the extent an alternative dispute resolution mechanism is expressly provided for herein, each of the parties hereto (a) consents to submit itself to the personal jurisdiction in the Federal District Court of the Southern District of New York in the event any dispute arises out of this Agreement or any transaction contemplated hereby, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (c) agrees that it will not bring any action relating to this Agreement or any transaction contemplated hereby in any court other than the Federal District Court for the Southern District of New York or any New York State Court, and (d) waives any right to trial by jury with respect to any action related to or arising out of this Agreement or any transaction contemplated hereby. **EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY MATTER ARISING OUT OF THIS AGREEMENT.**

12.12 Attorney Fees and Costs. Except as otherwise expressly set forth herein, the prevailing party in any litigation, arbitration proceeding or other action shall be awarded all of its or their costs and expenses including, but not limited to, reasonable attorney fees against the non-prevailing party. This provision shall apply to such expenses incurred at the trial and all appellate levels, without respect to who is the initiating party and shall apply to an action for declaratory relief if the party instituting it asserts specific contentions concerning this Agreement which is ruled upon by the court or arbitration. Such reasonable attorney's fees shall include, but not be limited to, fees for attorneys, paralegals, legal assistants and expenses incurred in any and all judicial, bankruptcy, reorganization, administrative receivership, or other proceedings affecting creditors' rights and involving a claim under this Agreement, even if such proceedings arise before or after entry of a final judgment

12.13 Waivers of Inducement. The parties hereto waive any right to assert or claim that they were induced to enter into this Agreement by any representation, promise, statement, or warranty made by any party or any party's agent which is not expressly set forth in this Agreement in writing.

12.14 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither the Company nor any Seller may assign, delegate or otherwise transfer such party's rights or obligations hereunder, including by operation of law, without the prior written consent of Purchaser. In the event of any permitted assignment, the assignor shall be responsible for all obligations of the assignee and shall be bound in all respects by the provisions hereof.

12.15 Use of Certain Terms. As used in this Agreement, the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular paragraph, subparagraph or other subdivision. The use of the term "including" shall be deemed to be followed by "without limitation".

12.16 Entire Understanding. This Agreement and the Transaction Documents sets forth the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings among the parties. The parties expressly agree that the Binding Letter of Intent dated March 26, 2017 among the parties has, upon the execution of this Agreement, been and is terminated and of no further force and effect.

{Signature page to follow}

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

NXT-ID, INC.

By: _____
Name: Gino M. Pereira
Title: Chief Executive Officer

Fit Merger Sub, Inc.

By: _____
Name: Gino M. Pereira
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

FIT PAY, INC.

By: _____

Name: Michael Orlando

Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

Michael Orlando

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

GIESECKE & DEVRIENT MOBILE SECURITY
AMERICA, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

TIMOTHY SHANAHAN AND NANCY SHANAHAN,
JOINT TENANTS WITH RIGHT OF SURVIVORSHIP

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

Shareholder Representative:

Michael Orlando

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

Michael Orlando

Scott Stevelinck

Michael Walsh

Laura Marion

Chris Orlando

Brad Snyder

Benjamin Walford

Steven Kurtz

Brendan Walsh

J. Michael Bradley

Other Holders



NXT-ID and Fit Pay, Inc. Complete Business Combination

*Transaction creates comprehensive security, payment and authentication platform for Internet of Things and expands
NXT-ID's existing products and capabilities*

MELBOURNE, Florida, May 23, 2017– NXT-ID, Inc. (NXTD) (“NXT-ID” or the “Company”), a security technology company, and Fit Pay, Inc., a privately held provider of payment, credential management, and authentication platform services, today announced the completion of a transaction to combine their businesses and create a comprehensive Internet of Things (IoT) platform.

“Combining NXT-ID’s security and authentication technology with Fit Pay’s comprehensive platform-as-a-service (PaaS) capabilities will enable us to significantly expand our offerings to include both hardware and IoT enablement services,” said Gino Pereira, chief executive officer of NXT-ID. “This provides an important avenue to create new and compelling use cases for our existing products as well as access new potential customers for whom secure authentication and credential management are critical.”

Under the terms of the agreement, Fit Pay, Inc. will be a wholly owned subsidiary of NXT-ID, and Fit Pay CEO, Michael Orlando, will become chief operating officer of NXT-ID and remain president of Fit Pay, Inc. The companies will combine their technology, engineering and business teams to deliver complete enablement services to device manufacturers and to bring innovative IoT devices to market.

“Bringing powerful new capabilities to the Internet of Things requires seamlessly connecting devices to robust services, reliably authenticating users, and keeping data safe,” said Orlando. “Security and authentication are the essential to the growth of the IoT market, combining our platform with NXT-ID’s identification technology and hardware expertise positions us to offer transformational products and services that capture IoT market share.”

Fit Pay’s white-label technology platform delivers payment, credential management, authentication and other secure services to the IoT ecosystem. Fit Pay has developed a highly secure payment network tokenization scheme and integrated with the major credit card networks to provide an all-in-one solution that allows manufacturers to add payment and authentication capabilities to IoT devices.

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About NXT- ID Inc. - Mobile Security for a Mobile World

NXT-ID, Inc. (NXTD) is a security technology Company providing security for finance, assets, and healthcare. The Company's innovative MobileBio® solution mitigates risks associated with mobile computing, m-commerce, and smart OS-enabled devices. With extensive experience in biometric identity verification, security and privacy, encryption and data protection, payments, miniaturization and sensor technologies, the Company partners with industry leading companies to provide solutions for modern payment and the Internet of Things ("IoT") applications. The Company's wholly owned subsidiary, LogicMark, LLC, manufactures and distributes non-monitored and monitored personal emergency response systems ("PERS") sold through the United States Department of Veterans Affairs ("VA"), healthcare durable medical equipment dealers and distributors and monitored security dealers and distributors. <http://www.nxt-id.com>

About Fit Pay, Inc.

Based in San Francisco, California, [Fit Pay, Inc.](#) is led by former CyberSource and Visa executives with more than 50 years of payment and identity authentication domain expertise. With payment capabilities enabled by Fit Pay, wearable and IoT device manufacturers can create customer loyalty, tap into recurring revenue streams, open new markets, and differentiate their products in an increasingly competitive market. The company was named a "[Startup of the Year](#)" for payment technology by industry publication Paybefore. Learn more at www.fit-pay.com, or on [Twitter](#).

Forward-Looking Statements for NXT-ID: This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements reflect management's current expectations, as of the date of this press release, and involve certain risks and uncertainties. Forward-looking statements include statements herein with respect to the successful execution of the Company's business strategy. The Company's actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors. Such risks and uncertainties include, among other things, our ability to establish and maintain the proprietary nature of our technology through the patent process, as well as our ability to possibly license from others patents and patent applications necessary to develop products; the availability of financing; the Company's ability to implement its long range business plan for various applications of its technology; the Company's ability to enter into agreements with any necessary marketing and/or distribution partners; the impact of competition, the obtaining and maintenance of any necessary regulatory clearances applicable to applications of the Company's technology; and management of growth and other risks and uncertainties that may be detailed from time to time in the Company's reports filed with the Securities and Exchange Commission.

NXT-ID Inc. Contact :

Corporate info: info@nxt-id.com

Media:

D. Van Zant

+1-800-665-0411

press@nxt-id.com

Fit Pay, Inc. Contact:

Chris Orlando

+1-760-468-7273

chris@fit-pay.com
