

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2020

or

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

For the transition period from _____ to _____

Commission file number: 001-36616

Nxt-ID, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

46-0678374

(I.R.S. Employer
Identification No.)

**288 Christian Street
Hangar C 2nd Floor
Oxford, CT 06478**

(Address of principal executive offices)(Zip Code)

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

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

Title of each class:

Name of each exchange on which registered:

Common Stock, par value \$0.0001

The Nasdaq Stock Market LLC

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

None

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically, every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III or this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the common stock held by non-affiliates of the registrant, as of June 30, 2020, the last business day of the second fiscal quarter, was approximately \$14,258,634 based on a total number of shares of our common stock outstanding on that day of 30,496,474 and a closing price of \$0.504. Shares of common stock held by each director, each officer and each person who owns 10% or more of the outstanding common stock have been excluded from this calculation in that such persons may be deemed to be affiliates. The determination of affiliate status is not necessarily conclusive.

The registrant had 53,311,898 shares of its common stock outstanding as of April 14, 2021.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (this “Report”) contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Forward-looking statements discuss matters that are not historical facts. Because they discuss future events or conditions, forward-looking statements may include words such as “anticipate,” “believe,” “estimate,” “intend,” “could,” “should,” “would,” “may,” “seek,” “plan,” “might,” “will,” “expect,” “predict,” “project,” “forecast,” “potential,” “continue,” negatives thereof or similar expressions. These forward-looking statements are found at various places throughout this Report and include information concerning possible or assumed future results of Nxt-ID, Inc.’s (“Nxt-ID”, the “Company”, “our”, “us” or “we”) operations; business strategies; future cash flows; financing plans; plans and objectives of management; any other statements regarding future operations, future cash needs, business plans and future financial results; and any other statements that are not historical facts.

From time to time, forward-looking statements also are included in our other periodic reports on Forms 10-Q and 8-K, in our press releases, in our presentations, on our website and in other materials released to the public. Any or all of the forward-looking statements included in this Report and in any other reports or public statements made by us are not guarantees of future performance and may turn out to be inaccurate. These forward-looking statements represent our intentions, plans, expectations, assumptions and beliefs about future events and are subject to risks, uncertainties and other factors. Many of those factors are outside of our control and could cause actual results to differ materially from the results expressed or implied by those forward-looking statements. In light of these risks, uncertainties and assumptions, the events described in the forward-looking statements might not occur or might occur to a different extent or at a different time than we have described. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this Report. All subsequent written and oral forward-looking statements concerning other matters addressed in this Report and attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this Report.

Except to the extent required by law, we undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events, a change in events, conditions, circumstances or assumptions underlying such statements, or otherwise.

For discussion of factors that we believe could cause our actual results to differ materially from expected and historical results, see “Item 1A - Risk Factors” below.

PART I

Item 1. Business

Nxt-ID provides technology products and services for healthcare applications. We have extensive experience in access control, biometric and behavior-metric identity verification, security and privacy, encryption and data protection, payments, miniaturization, and sensor technologies and healthcare applications.

During the year ended December 31, 2020, our wholly-owned subsidiary LogicMark, LLC (“LogicMark”) operated in the mobile market: LogicMark is a manufacturer and distributor of non-monitored and monitored personal emergency response systems (“PERS”) that are sold through dealers, distributors and the United States Department of Veterans Affairs (the “VA”).

Healthcare

Overview

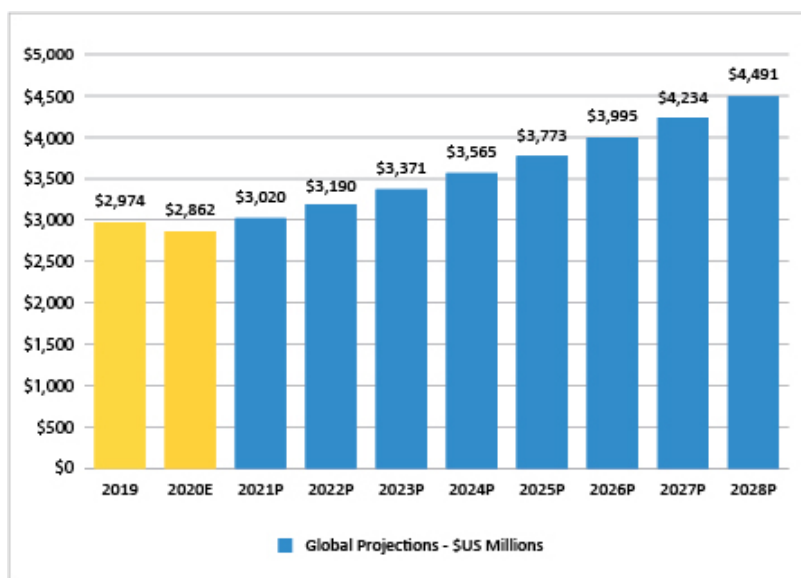
With respect to the healthcare market, our business initiatives are driven by LogicMark, which serves a market that enables two-way communication, medical device connectivity and patient data tracking of key vitals through sensors, biometrics, and security to make home health care a reality. There are four (4) major trends driving this market: (1) an increased desire for connectivity; specifically, a greater desire for connected devices by people over 60 years of age who now represent the fastest growing demographic for social media; (2) the growth of “TeleHealth”, which is the means by which telecommunications technologies are meeting the increased need for health systems to better distribute doctor care across a wider range of health facilities, making it easier to treat and diagnose patients; (3) rising healthcare costs – as healthcare spending continues to outpace the economy, the need to reduce hospital readmissions, increase staffing efficiency and improve patient engagement remain the highest priorities; and (4) the critical shortage of labor in the home healthcare industry, creating an increased need for technology to improve communication to home healthcare agencies by their clients. Together, these trends have produced a large and growing market for us to serve. LogicMark has built a successful business on emergency communications in healthcare. We have a strong business relationship with the VA today, serving veterans who suffer from chronic conditions that often require emergency assistance. Our strategic plan calls for expanding LogicMark’s business into other healthcare verticals as well as retail and enterprise channels in order to better serve the expanding demand for connected and remote healthcare solutions.

Home healthcare, is an emerging area for LogicMark. The long-term trend toward more home-based healthcare is a massive shift that is being driven by demographics (an aging population) and basic economics. People also value autonomy and privacy which are important factors in determining which solutions will suit the market. Consumers are beginning to enjoy the benefits of smart home technologies and online digital assistants.

Our Healthcare Monitoring Market Opportunity

PERS devices are used to call for help and medical care during an emergency. These devices are also used by a wide patient pool, as well as the general population, to ensure safety and security when living or traveling alone. The global medical alert systems market caters to different end-users across the healthcare industry, including individual users, hospitals and clinics, assisted living facilities and senior living facilities. The growing demand for home healthcare devices is mainly driven by an aging population, rising healthcare costs and a severe shortage of workers in the home healthcare market worldwide. It is very beneficial for seniors who have a history of falling or have been identified as having a high fall risk, older individuals who live alone and people who have mobility issues. We believe that the aging population will spur the usage of medical alert systems across the globe, as they offer safety and medical security while being affordable and accessible.

Global PERS Market Growth



Source: Kenneth Research 2020


The PERS market is divided into three (3) device segments: landline-based PERS, mobile PERS, and standalone devices. The global PERS market is projected to grow at a compound annual growth rate (“CAGR”) of 5.8% to \$4.5 billion in 2028, benefiting from strong demographic tailwinds. As landline usage continues to decrease, other technologies such as cellular and WiFi will be used for in-home systems. According to Kenneth Research, North America, Asia and Europe are the largest markets for PERS, accounting for approximately 37%, 31% and 24% of total sales, respectively, in 2028. According to Kenneth Research, improvements in healthcare infrastructure and emerging economies will fuel growth and significantly improve the relative market share of the rest of world regions.

Our Health Care Products

LogicMark produces a range of products within the PERS market and has differentiated itself by offering “no monthly fee” products, which only require a one-time purchase fee, instead of a recurring monthly contract. The “no monthly fee” products contact family, friends or 911 directly, eliminating the monthly fee from a monitoring center. As a result, we believe LogicMark’s products are typically the most cost-effective PERS option. LogicMark’s non-monitored solution offers a significant value proposition over monitored solutions.

The cost of ownership of a monitored solution, which includes a monthly service fee, can be as much as \$1,500 – \$3,000 over a five-year period. This compares to a one-time purchase of a LogicMark no monthly fee device, which provides a similar level of security for a purchase price as low as one tenth of that amount.

LogicMark offers both traditional (*i.e.*, landline) and mPERS (*i.e.*, cell-based) options. Our no monthly fee products are sold primarily through the VA and healthcare distributors.

	Product Information	Products	Channel
GuardianAlert	<ul style="list-style-type: none"> <input type="checkbox"/> Provides two-way voice communication to 911 via a cordless pendant <input type="checkbox"/> Compatible with any standard landline and most VoIP <input type="checkbox"/> 600 ft. Pendant Range <input type="checkbox"/> Rechargeable Pendant Battery <input type="checkbox"/> Package contents include: Pendant, base station, pendant batteries, power adapter, belt clip, lanyard, phone cord splitter, and screwdriver <input type="checkbox"/> Additional accessories include: Battery back-up unit and lock box <input type="checkbox"/> No monthly fees or service agreements 		VA Distribution/Dealers Direct to Consumer
Guardian Alert 911 Plus	<ul style="list-style-type: none"> <input type="checkbox"/> Mobile PERS (mPers) device <input type="checkbox"/> Two-way Voice through the pendant <input type="checkbox"/> Calls 911 directly <input type="checkbox"/> Supervised rechargeable battery (6-9 month standby time) <input type="checkbox"/> No monthly fees or service agreements 		VA Distribution/Dealers Direct to Consumer
FreedomAlert	<ul style="list-style-type: none"> <input type="checkbox"/> Provides two-way voice communication up to 4 pre-programmed contacts <input type="checkbox"/> System allows for 3 modes: call up to 4 contacts; call up to 4 contacts then call 911; and call 911 directly <input type="checkbox"/> Compatible with any standard landline and most VoIP <input type="checkbox"/> 600 ft Pendant Range <input type="checkbox"/> Package contents include: pendant, base station, pendant batteries, power adapter, belt clip, lanyard, phone cord splitter, phone cord, wrist/wheelchair strap. <input type="checkbox"/> Additional accessories include: Emergency Wall Communicator and lockbox <input type="checkbox"/> No monthly fees or service agreements 		VA Distribution/Dealers Direct to Consumer
Notifi 911+	<ul style="list-style-type: none"> <input type="checkbox"/> Cellular system utilizing AT&T network <input type="checkbox"/> Two-way voice <input type="checkbox"/> Calls 911 directly <input type="checkbox"/> Supervised rechargeable battery (3-6 month standby time) <input type="checkbox"/> No monthly fees or service agreements 		Retail Direct to Consumer

LogicMark offers monitored products that are primarily sold by dealers and distributors for the monitored product channel. LogicMark sells its devices to the dealers and distributors, who in turn offer the devices to consumers as part of their product/service offering. The service providers charge consumers a monthly monitoring fee for the associated monitoring service. These products are monitored by a third-party central station.

Our Health Care Competition

LogicMark offers a wide variety of products, enabling it to cater to users with different levels of health and safety needs. Compared to its competitors, we believe LogicMark's PERS products offer enhanced functionality at the best value due to the one-time purchase for non-monitored solutions.

The chart below summarizes LogicMark's product offering versus those of its competitors:

	Pendant Range	2-way Rechargeable Pendant	1-way Pendant	Rechargeable Pendant	# of Learned Pendants	Supervised Pendants	Requires Monitoring Contract	Cellular Solution	VoIP Compatible	Ability to call 911	# of people it can call	Optional wall Unit
Guardian Alert	600'	X		X	1	X	N		X	Y	911 only	
Freedom Alert	600'	X		X	4	X	N		X	Y	4 + 911	X
LifeSentry	600'	X		X	4	X	Y		X	N	Central Station	X
CareTaker Sentry	600'	X	X	X	9	X	Y		X	N	Central Station	X
Guardian Alert 911+	NA	X		X	1	NA	N	Y	NA	Y	911 only	
Notifi 911+	NA	X		X	1	NA	N	Y	NA	Y	911 only	
Belle by Freeus	NA	X		X	1	NA	Y	Y	NA	N	Central Station	
Classic Guardian	1300'		X		1	X	Y		X	N	Central Station	
Home Guardian	1300'		X		1	X	Y	Y		N	Central Station	
SkyAngel 911FD	NA	x		X	1	X	N	Y	NA	Y	911 only	
Great Call	NA	X		X	1	NA	Y	Y	NA	N	Central Station	

Our Health Care Business Strategy

We intend to expand LogicMark's product distribution by using larger distributors who can leverage the consumer value proposition of offering a one-time device purchase as opposed to a leased monthly solution. We also intend to apply our technology to the next generation of PERS devices that will have greater functionality, innovative design and clinical monitoring capability. We believe that there is further potential for expansion in the domestic and international retail and institutional/senior living markets, and we intend to take advantage of this through a new product offering, Notifi911+, which is a non-monitored device developed for direct-to-consumer sales through retail channels and direct marketing initiatives. We are also seeking to leverage our PERS experience to develop new offerings to serve the home healthcare and senior living markets with WiFi notification services.

Overall, our healthcare division, through LogicMark, is positioned to take advantage of favorable market dynamics, a stable revenue-producing customer base, a differentiated product line, a robust new product development pipeline and compelling growth opportunities.

Payments and Financial Technology

Overview

Between 2017 and 2019, we also conducted a payment credential management business through our former wholly-owned subsidiary, Fit-Pay, Inc. (“Fit Pay”). With the approval of our board of directors, and upon similar terms and conditions to those set forth in that loan agreement, we entered into a non-binding letter of intent for a potential sale of Fit Pay, excluding certain assets on August 6, 2019. In connection with the letter of intent, the purchaser advanced \$500,000 of non-interest bearing working capital for Fit Pay. On September 9, 2019, we completed the sale of Fit Pay to Garmin International, Inc. for \$3.32 million in cash. After the closing of the sale of our Fit Pay business, we terminated conducting any further business related to payment credential management.

Our Intellectual Property

Our ability to compete effectively depends to a significant extent on our ability to protect our proprietary information. We currently rely and will continue to rely primarily on patents and trade secret laws and confidentiality procedures to protect our intellectual property rights. We have filed the following patent applications, nineteen of which have been awarded to date:

THE UN-PASSWORD™: RISK AWARE END-TO-END MULTI-FACTOR AUTHENTICATION VIA DYNAMIC PAIRING

Filed March 17, 2014

Application Number 14/217,202

Patent Number 9,407,619

METHOD TO LOCALLY VALIDATE IDENTITY WITHOUT PUTTING PRIVACY AT RISK

Filed September 1, 2015

Application Number 14/842,252

Patent Number 10,282,535

METHOD TO LOCALLY VALIDATE IDENTITY WITHOUT PUTTING PRIVACY AT RISK

Filed May 6, 2019

Application Number 16/404,044

METHODS AND SYSTEMS RELATED TO MULTI-FACTOR, MULTIDIMENSIONAL, MATHEMATICAL, HIDDEN AND MOTION SECURITY PINS

Filed August 1, 2016

Application Number 15/224,998

Patent Number 10,565,569

COMPONENTS FOR ENHANCING OR AUGMENTING WEARABLE ACCESSORIES BY ADDING ELECTRONICS THERETO

Filed September 2, 2015

Application Number 14/843,930

Patent Number 10,395,240

COMPONENTS FOR ENHANCING OR AUGMENTING WEARABLE ACCESSORIES BY ADDING ELECTRONICS THERETO

Filed August 22, 2019

Application Number 16/550,698

THE UN-PASSWORD: RISK AWARE END-TO-END MULTI-FACTOR AUTHENTICATION VIA DYNAMIC PAIRING

Filed March 14, 2016

Application Number 15/068,834

Patent Number 10,015,154

THE UN-PASSWORD: RISK AWARE END-TO-END MULTI-FACTOR AUTHENTICATION VIA DYNAMIC PAIRING

Filed July 2, 2018

Application Number 16/025,992

Patent Number 10,609,014

SYSTEM AND METHOD TO AUTHENTICATE ELECTRONICS USING ELECTRONIC-METRICS

Filed July 5, 2016

Application No. 15/202,553

Patent Number 10,419,428

SYSTEM AND METHOD TO AUTHENTICATE ELECTRONICS USING ELECTRONIC-METRICS

Filed September 15, 2019

Application No. 16/571,171

Patent Number 10,841,301

PREFERENCE DRIVEN ADVERTISING SYSTEM AND METHOD

Filed July 15, 2016

Application Number 15/212161

Patent Number 10,643,245

PREFERENCE DRIVEN ADVERTISING SYSTEM AND METHOD

Filed May 4, 2020

Application Number 16/687,487

AN EVENT DETECTOR FOR ISSUING A NOTIFICATION RESPONSIVE TO OCCURRENCE OF AN EVENT

Filed July 27, 2018

Application Number 16/048,181

METHOD AND SYSTEM TO IMPROVE ACCURACY OF FALL DETECTION USING MULTI-SENSOR FUSION

Filed December 17, 2018

Application Number 16/222,359

METHOD AND SYSTEM TO REDUCE INFRASTRUCTURE COSTS WITH SIMPLIFIED INDOOR LOCATION AND RELIABLE COMMUNICATIONS

Filed November 11, 2019

Application Number 16/679,494

WIRELESS CENTRALIZED EMERGENCY SERVICES SYSTEM

Filed January 15, 2008

Application Number 12/007,740

Patent Number 8,275,346

VOICE-EXTENDING EMERGENCY RESPONSE SYSTEM

Filed September 5, 2008

Application Number 12/230,841

Patent Number 8,121,588

LIST-BASED EMERGENCY CALLING DEVICE

Filed March 11, 2009

Application Number 12/402,304

Patent Number 8,369,821

ALARM SIGNALING DEVICE AND ALARM SYSTEM

Filed February 2, 2005

Application Number 10/523,115

Patent Number 7,312,709

FALL DETECTION SYSTEM HAVING A FLOOR HEIGHT THRESHOLD AND A RESIDENT HEIGHT DETECTION DEVICE

Filed June 27, 2008

Application Number 12/216,053

Patent Number 7,893,844

APPARATUS AND METHOD FOR LOCATING AND UPDATING LOW-POWER WIRELESS COMMUNICATION DEVICES

Filed August 24, 2014

Application Number 14/467,268

Patent Number 9,472,088

APPARATUS AND METHOD FOR LOCATING AND UPDATING LOW-POWER WIRELESS COMMUNICATION DEVICES

Filed September 8, 2016

Application Number 15/259,247

Patent Number 9,900,737

ALARM SIGNALING DEVICE AND ALARM SYSTEM

Canadian patent

Filed August 1, 2003

Application Number 2,494,166

Patent Number 2,494,166

APPARATUS AND METHOD FOR LOCATING AND UPDATING LOW-POWER WIRELESS COMMUNICATION DEVICES

Canadian Patent

Filed August 11, 2015

Application Number 2,900,180

We enter into confidentiality agreements with our consultants and key employees, and maintain control over access to and distribution of our technology, software and other proprietary information. The steps that we have taken to protect our technology may be inadequate to prevent others from using what we regard as our technology to compete with us.

We do not generally conduct exhaustive patent searches to determine whether the technology used in our products infringes on the patents that are held by third parties. In addition, product development is inherently uncertain in a rapidly evolving technological environment in which there may be numerous patent applications pending, many of which are confidential when filed, with regard to similar technologies.

We may face claims by third parties that our products or technology infringe their patents or other intellectual property rights in the future. Any claim of infringement could cause us to incur substantial costs defending against the claim, even if the claim is invalid, and could distract the attention of our management. If any of our products are found to violate third-party proprietary rights, we may be required to pay substantial damages. In addition, we may be required to re-engineer our products or seek to obtain licenses from third parties to continue to offer our products. Any efforts to re-engineer our products or obtain licenses on commercially reasonable terms may not be successful, which would prevent us from selling our products, and in any case, could substantially increase our costs and have a material adverse effect on our business, financial condition and results of operations.

Corporate Information

History

We were incorporated in the State of Delaware on February 8, 2012. We are a security technology company and we currently operate our business in one segment – hardware and software security systems and applications. We are engaged in the development of proprietary products and solutions that serve multiple end markets, including the security, healthcare, financial technology and the Internet of Things (“IoT”) markets. We evaluate the performance of our business on, among other things, profit and loss from operations. With extensive experience in access control, biometric and behavior-metric identity verification, security and privacy, encryption and data protection, payments, miniaturization, and sensor technologies, we develop and market solutions for payment, IoT and healthcare applications.

Our wholly-owned subsidiary, LogicMark LLC (“LogicMark”), manufactures and distributes non-monitored and monitored personal emergency response systems sold through the United States Department of Veterans Affairs, healthcare durable medical equipment dealers and distributors and monitored security dealers and distributors.

Our principal executive offices are located at 288 Christian Street, Hangar C 2nd Floor, Oxford, CT 06478, and our telephone number is (203) 266-2103. Our website address is www.nxt-id.com. The information contained therein or connected thereto shall not be deemed to be incorporated into this Report. The information on our website is not part of this Report.

Employees

As of April 14, 2021, we had a total of 19 full-time employees, comprising 3 employees in product engineering, 2 employees in finance and administration, 10 employees in sales and customer service and 4 employees in product fulfillment. None of our employees are represented by a collective bargaining agreement, nor have we experienced any work stoppage. We consider our relations with our employees to be good. Our future success depends on our continuing ability to attract and retain highly qualified engineers, graphic designers, computer scientists, sales and marketing and senior management personnel. In addition, we have independent contractors whose services we are using on an as-needed basis to assist with the engineering and design of our products.

Item 1A. Risk Factors

Our business, financial condition and operating results are subject to a number of risk factors, both those that are known to us and identified below and others that may arise from time to time. These risk factors could cause our actual results to differ materially from those suggested by forward-looking statements in this Report and elsewhere, and may adversely affect our business, financial condition or operating results. If any of these risk factors should occur, moreover, the trading price of our securities could decline, and investors in our securities could lose all or part of their investment in our securities. These risk factors should be carefully considered in evaluating our prospects.

Risks Relating to our Business

We are uncertain of our ability to generate sufficient revenue and profitability in the future.

We continue to develop and refine our business model, but we can provide no assurance that we will be able to generate a sufficient amount of revenue, from our business in order to achieve profitability. It is not possible for us to predict at this time the potential success of our business. The revenue and income potential of our proposed business and operations are currently unknown. If we cannot continue as a viable entity, you may lose some or all of your investment in our Company.

The Company incurred a net loss from operations of \$2,864,984 for the year ended December 31, 2020. As of December 31, 2020, the Company had cash and stockholders' equity of \$4,387,416 and \$9,159,209, respectively. At December 31, 2020, the Company had a working capital deficiency of \$578,797. We cannot provide any assurance that we will be able to raise additional cash from equity financings, secure debt financing, and/or generate revenue from the sales of our products. If we are unable to secure additional capital, we may be required to curtail our research and development initiatives and take additional measures to reduce costs in order to conserve our cash in amounts sufficient to sustain operations and meet our obligations.

Significant disruptions of information technology systems or security breaches could adversely affect our business.

We are increasingly dependent upon information technology systems, infrastructure and data to operate our business. In the ordinary course of business, we collect, store and transmit large amounts of confidential information (including, among other things, trade secrets or other intellectual property, proprietary business information and personal information). It is critical that we do so in a secure manner to maintain the confidentiality and integrity of such confidential information. We also have outsourced elements of our operations to third parties, and as a result we manage a number of third-party vendors who may or could have access to our confidential information. Attacks on information technology systems are increasing in their frequency, levels of persistence, sophistication and intensity, and they are being conducted by increasingly sophisticated and organized groups and individuals with a wide range of motives and expertise. The size and complexity of our information technology systems, and those of third-party vendors with whom we contract, and the large amounts of confidential information stored on those systems, make such systems vulnerable to service interruptions or to security breaches from inadvertent or intentional actions by our employees, third-party vendors, and/or business partners, or from cyber-attacks by malicious third parties. Cyber-attacks could include the deployment of harmful malware, ransomware, denial-of-service attacks, social engineering and other means to affect service reliability and threaten the confidentiality, integrity and availability of information.

Significant disruptions of our information technology systems, or those of our third-party vendors, or security breaches could adversely affect our business operations and/or result in the loss, misappropriation and/or unauthorized access, use or disclosure of, or the prevention of access to, confidential information, including, among other things, trade secrets or other intellectual property, proprietary business information and personal information, and could result in financial, legal, business and reputational harm to us.

Any failure or perceived failure by us or any third-party collaborators, service providers, contractors or consultants to comply with our privacy, confidentiality, data security or similar obligations to third parties, or any data security incidents or other security breaches that result in the unauthorized access, release or transfer of sensitive information, including personally identifiable information, may result in governmental investigations, enforcement actions, regulatory fines, litigation or public statements against us, could cause third parties to lose trust in us or could result in claims by third parties asserting that we have breached our privacy, confidentiality, data security or similar obligations, any of which could have a material adverse effect on our reputation, business, financial condition or results of operations. Moreover, data security incidents and other security breaches can be difficult to detect, and any delay in identifying them may lead to increased harm. While we have implemented data security measures intended to protect our information technology systems and infrastructure, there can be no assurance that such measures will successfully prevent service interruptions or data security incidents.

Our supply chains in China subject us to risks and uncertainties relating to the laws and regulations of China and the changes in relations between the United States and China.

Under its current leadership, the government of China has been pursuing economic reform policies, including by encouraging foreign trade and investment. However, there is no assurance that the Chinese government will continue to pursue such policies, that such policies will be successfully implemented, that such policies will not be significantly altered, or that such policies will be beneficial to our supply chains in China. China's system of laws can be unpredictable, especially with respect to foreign investment and foreign trade. The United States government has called for substantial changes to foreign trade policy with China and has raised (as well as has proposed to further raise in the future), tariffs on several Chinese goods. China has retaliated with increased tariffs on United States goods. Moreover, China's legislature has recently adopted a national security law to substantially change the way Hong Kong has been governed since the territory was handed over by the United Kingdom to China in 1997. This law increases the power of the central government in Beijing over Hong Kong, limits the civil liberties of residents of Hong Kong and could restrict the ability of businesses in Hong Kong to continue to conduct business or to continue to conduct business as previously conducted. The U.S. State Department has indicated that the United States no longer considers Hong Kong to have significant autonomy from China and President Trump signed an executive order and the Hong Kong Autonomy Act to remove Hong Kong's preferential trade status. The United States may impose the same tariffs and other trade restrictions on exports from Hong Kong that it places on goods from mainland China. Any further changes in United States trade policy could trigger retaliatory actions by affected countries, including China, resulting in trade wars. Any changes in United States and China relations may have a material adverse effect on our supply chains in China which could materially harm our business and financial condition.

If we fail to keep pace with changing industry technology and consumer preferences, we will be at a competitive disadvantage.

The industry segments in which we are operating are evolving rapidly. They are characterized by changing technology, budding industry standards, frequent new and enhanced product introductions, rapidly changing end-user/consumer preferences and product obsolescence. In order to continue to compete effectively in these markets, we need to respond quickly to technological changes and to understand their impact on our customers' preferences. It may take significant time and resources to respond to these technological changes. If we fail to keep pace with these changes, our business may suffer. Moreover, developments by others may render our technologies and intended products noncompetitive or obsolete, or we may be unable to keep pace with technological developments or other market factors. If any of our competitors implement new technologies before we are able to implement them, those competitors may be able to provide more effective products than ours. Any delay or failure in the introduction of new or enhanced products could have a material adverse effect on our business, results of operations and financial condition. Furthermore, our inability to keep pace with changing industry technology and consumer preferences may cause our inventory to become obsolete at a rate faster than anticipated, which may result in our taking goodwill impairment charges in past or future acquisitions that negatively impact our results of operations.

If we cannot obtain additional capital required to finance our research and development efforts, our business may suffer and you may lose the value of your investment.

We may require additional funds to further execute our business plan and expand our business. If we are unable to obtain additional capital when needed, we may have to restructure our business or delay or abandon our development and expansion plans. We will have ongoing capital needs as we expand our business. If we raise additional funds through the sale of equity or convertible securities, your ownership percentage of our common stock will be reduced. In addition, these transactions may dilute the value of our common stock. We may have to issue securities that have rights, preferences and privileges senior to our common stock. The terms of any additional indebtedness may include restrictive financial and operating covenants that would limit our ability to compete and expand. There can be no assurance that we will be able to obtain the additional financing we may need to fund our business, or that such financing will be available on terms acceptable to us.

We face intense competition in our market, especially from larger, well-established companies, and we may lack sufficient financial or other resources to maintain or improve our competitive position.

A number of other companies engage in the business of developing applications for facial recognition for access control. The market for biometric security products is intensely competitive, and we expect competition to increase in the future from established competitors and new market entrants. Our current competitors include both emerging or developmental stage companies, such as ourselves, as well as larger companies. Many of our existing competitors have, and some of our potential competitors could have, substantial competitive advantages such as:

- greater name recognition and longer operating histories;
- larger sales and marketing budgets and resources;
- broader distribution and established relationships with distribution partners and end-customers;
- greater customer support resources;
- greater resources to make acquisitions;
- larger and more mature intellectual property portfolios; and
- substantially greater financial, technical, and other resources.

In addition, some of our larger competitors have substantially broader product offerings and leverage their relationships based on other products or incorporate functionality into existing products to gain business in a manner that discourages users from purchasing our products, including through selling at zero or negative margins, product bundling, or closed technology platforms. Conditions in our market could change rapidly and significantly as a result of technological advancements, partnering by our competitors or continuing market consolidation. New start-up companies that innovate and large competitors that are making significant investments in research and development may invent similar or superior products and technologies that compete with our products and technology. Our current and potential competitors may also establish cooperative relationships among themselves or with third parties that may further enhance their resources.

Our markets are subject to technological change and our success depends on our ability to develop and introduce new products.

Each of the governmental and commercial markets for our products is characterized by:

- changing technologies;
- changing customer needs;
- frequent new product introductions and enhancements;
- increased integration with other functions; and
- product obsolescence.

Our success will be dependent in part on the design and development of new products. To develop new products and designs for our target markets, we must develop, gain access to and use leading technologies in a cost-effective and timely manner and continue to expand our technical and design expertise. The product development process is time-consuming and costly, and there can be no assurance that product development will be successfully completed, that necessary regulatory clearances or approvals will be granted on a timely basis, or at all, or that the potential products will achieve market acceptance. Our failure to develop, obtain necessary regulatory clearances or approvals for, or successfully market, potential new products could have a material adverse effect on our business, financial condition and results of operations.

Claims by others that we infringe their intellectual property rights could increase our expenses and delay the development of our business. As a result, our business and financial condition could be harmed.

Our industries are characterized by the existence of a large number of patents as well as frequent claims and related litigation regarding patent and other intellectual property rights. We cannot be certain that our products do not and will not infringe issued patents, patents that may be issued in the future, or other intellectual property rights of others.

We do not have the resources to conduct exhaustive patent searches to determine whether the technology used in our products infringe patents held by third parties. In addition, product development is inherently uncertain in a rapidly evolving technological environment in which there may be numerous patent applications pending, many of which are confidential when filed.

We may face claims by third parties that our products or technology infringe on their patents or other intellectual property rights. Any claim of infringement could cause us to incur substantial costs defending against the claim, even if the claim is invalid, and could distract our management. If any of our products are found to violate third-party proprietary rights, we may be required to pay substantial damages. In addition, we may be required to re-engineer our products or obtain licenses from third parties to continue to offer our products. Any efforts to re-engineer our products or obtain licenses on commercially reasonable terms may not be successful, which would prevent us from selling our products, and, in any case, could substantially increase our costs and have a material adverse effect on our business, financial condition and results of operations.

We may not be able to protect our intellectual property rights adequately.

Our ability to compete for government contracts is affected, in part, by our ability to protect our intellectual property rights. We rely on a combination of patents, trademarks, copyrights, trade secrets, confidentiality procedures and non-disclosure and licensing arrangements to protect our intellectual property rights. Despite these efforts, we cannot be certain that the steps we take to protect our proprietary information will be adequate to prevent misappropriation of our technology or protect that proprietary information. The validity and breadth of claims in technology patents involve complex legal and factual questions and, therefore, may be highly uncertain. Nor can we assure you that, if challenged, our patents will be found to be valid or enforceable, or that the patents of others will not have an adverse effect on our ability to do business. In addition, the enforcement of laws protecting intellectual property may be inadequate to protect our technology and proprietary information.

We may not have the resources to assert or protect our rights to our patents and other intellectual property. Any litigation or proceedings relating to our intellectual property, whether or not meritorious, will be costly and may divert the efforts and attention of our management and technical personnel.

We also rely on other unpatented proprietary technology, trade secrets and know-how and no assurance can be given that others will not independently develop substantially equivalent proprietary technology, techniques or processes, that such technology or know-how will not be disclosed or that we can meaningfully protect our rights to such unpatented proprietary technology, trade secrets, or know-how. Although we intend to enter into non-disclosure agreements with our employees and consultants, there can be no assurance that such non-disclosure agreements will provide adequate protection for our trade secrets or other proprietary know-how.

Our success will depend, in part, on our ability to obtain new patents.

Our success will depend, in part, on our ability to obtain patent and trade secret protection for proprietary technology that we currently possess or that we may develop in the future. No assurance can be given that any pending or future patent applications will issue as patents, that the scope of any patent protection obtained will be sufficient to exclude competitors or provide competitive advantages to us, that any of our patents will be held valid if subsequently challenged or that others will not claim rights in or ownership of the patents and other proprietary rights held by us.

Furthermore, there can be no assurance that our competitors have not or will not independently develop technology, processes or products that are substantially similar or superior to ours, or that they will not duplicate any of our products or design around any patents issued or that may be issued in the future to us. In addition, whether or not patents are issued to us, others may hold or receive patents which contain claims having a scope that covers products or processes developed by us.

We may not have the resources to adequately defend any patent infringement litigation or proceedings. Any such litigation or proceedings, whether or not determined in our favor or settled by us, is costly and may divert the efforts and attention of our management and technical personnel. In addition, we may be required to obtain licenses to patents or proprietary rights from third parties. There can be no assurance that such licenses will be available on acceptable terms if at all. If we do not obtain required licenses, we could encounter delays in product development or find that the development, manufacture or sale of products requiring such licenses could be foreclosed. Accordingly, challenges to our intellectual property, whether or not ultimately successful, could have a material adverse effect on our business and results of operations.

Our business, financial condition and results of operations has been and may continue to be adversely affected by the coronavirus outbreak or other similar epidemics or adverse public health developments.

The pandemic resulting from the novel coronavirus disease 2019 (“COVID-19”) has caused many governments to implement quarantines and significant restrictions on travel, and to advise that people remain at home where possible and avoid crowds. This has led to many businesses shutting down or limiting operations as well as greater uncertainty in financial markets. To date, an economic downturn and other adverse impacts resulting from COVID-19 have resulted in our distributors and/or the VA significantly reducing orders for our products and being unable to pay us in accordance with the terms of already fulfilled orders. Continuing effects of COVID-19, or other similar epidemics or adverse public health developments, may, in all likelihood, extend these reduced product orders and continue the inability of our distributors and/or the VA to pay us for orders, for an undeterminable period of time. Delays and disruptions, such as difficulty obtaining components and temporary suspension of operations, have resulted in our existing inventory levels not being sufficient, and our business, financial condition and results of operations have been materially and adversely affected, as a result of a slowdown and suspension in our business. In the event that this slowdown and/or suspension carries on for a long period of time, this will, in all likelihood, continue to have a material adverse impact on our business. As a result of the current or future epidemics, we have been and may continue to be impacted by shutdowns, employee impacts from illness and other community response measures meant to prevent spread of the virus, all of which has and may continue to negatively impact our business, financial condition and results of operations. Further, if we are regularly unable to meet our obligations to deliver our products to distributors and/or the VA, they may decide to terminate or reduce their distribution arrangements with us and our business could be adversely affected. The extent to which COVID-19 will continue to impact our results will depend on future developments, which are highly uncertain and will include emerging information concerning the severity of COVID-19 and the actions taken by governments and private businesses to attempt to contain the virus.

Our future success depends on the continued service of management, engineering and sales personnel and our ability to identify, hire and retain additional personnel.

Our success depends, to a significant extent, upon the efforts and abilities of members of senior management. We have not entered into employment agreements with most of the key employees of our LogicMark subsidiary, which we believe presents a greater risk of losing some of these key employees, than if we had employment agreements with them. The loss of the services of one or more of our senior management or other key employees could adversely affect our business. There is intense competition for qualified employees in our industry, particularly for highly skilled design, applications, engineering and sales people. We may not be able to continue to attract and retain developers, managers, or other qualified personnel necessary for the development of our business or to replace qualified individuals who may leave us at any time in the future. Our anticipated growth is expected to place increased demands on our resources, and will likely require the addition of new management and engineering staff as well as the development of additional expertise by existing management employees. If we lose the services of or fail to recruit engineers or other technical and management personnel, our business could be harmed.

Our business, financial condition and results of operations may be adversely affected if we are unsuccessful in our current litigation with the certain stockholders of Fit Pay and Giesecke+Devrient Mobile Security America, Inc. (“GDMSAI”).

On February 24, 2020, Michael J. Orlando, one of our former directors and our former Chief Operating Officer, as shareholder representative (the “Shareholder Representative”), and the other stockholders of Fit Pay (collectively, the “Fit Pay Shareholders”), filed a lawsuit in the United States District Court for the Southern District of New York against the Company, CrowdOut Capital, LLC, and Garmin International, Inc. (the “Complaint”). See Orlando v. Nxt-ID, Inc. No. 20-cv-1604 (S.D.N.Y.). The Complaint alleges that the Company has breached certain contractual obligations under a merger agreement, dated May 23, 2017, between Fit Pay and the Company, regarding certain future, contingent earnout payments allegedly that could be owed to the Fit Pay Shareholders from future revenues. The Complaint seeks unspecified monetary damages from the defendants. While we believe that these claims are without merit and we plan to vigorously defend the action, there is no assurance that we will be successful in such defense. On May 12, 2020, the Company filed an answer and counterclaims alleging, among other things, fraud and breach of fiduciary duty of the Shareholder Representative as well as arguing that the Shareholder Representative should be estopped from pursuing these claims. The Company has moved for summary judgment to have the lawsuit dismissed. In March 2021, following our successful application to stay all discovery, the court granted CrowdOut’s and Garmin’s separate motions to dismiss. Orlando’s claim against the Company still remains and the Company’s motion for summary judgment is still pending.

In connection with the sale of Fit Pay, GDMSAI has identified a disagreement with the Company over calculation of dividends with respect to GDMSAI’s Series C Non-Convertible Voting Preferred Stock of the Company (the “Series C Preferred Stock”). On August 13, 2020, the Company was sued by GDMSAI seeking, among other things, \$440,000 of dividends that it believes are owed to it pursuant to the terms of the Series C Preferred Stock. The Company believes that GDMSAI’s claims are not correct and plans to vigorously defend the action. The Company has moved to have the case removed from Delaware to New York, where the Company claims the forum clause requires the claims to be heard. The Company has opposed GDMSAI’s motion for summary judgment. In the event that we are unsuccessful in the defense of these actions, we could be required to pay the Fit Pay Shareholders and GDMSAI substantial damages which would, in all likelihood, have a material adverse effect on our business, financial condition and results of operations. In March 2021, a Delaware Chancery court rejected our argument that the Fit Pay merger agreement requires litigation solely in New York and thereafter granted GDMSAI summary judgment on the merits, holding that relevant dividend language required a perpetually paid dividend once the \$50M threshold had been achieved. The Company plans to appeal. There are no assurances that our appeal will be successful and even if our appeal is successful that a New York court will agree with our interpretation of the manner in which dividends on the Series C Preferred are to be calculated.

The requirements of being a public company may strain our resources and divert management's attention.

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), the Dodd-Frank Wall Street Reform and Consumer Protection Act and other applicable securities rules and regulations. Compliance with these rules and regulations will increase our legal and financial compliance costs, make some activities more difficult, time-consuming, or costly, and increase demand on our systems and resources. The Exchange Act requires, among other things, that we file annual and current reports with the SEC with respect to our business and operating results.

As a result of disclosure of information in this Report and in filings required of a public company, our business and financial condition is more visible, which we believe may result in threatened or actual litigation, including by competitors and other third parties. If such claims are successful, our business and operating results could be harmed, and even if the claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert resources of our management and harm our business and operating results.

Periods of rapid growth and expansion could place a significant strain on our resources, including our employee base, which could negatively impact our operating results.

We may experience periods of rapid growth and expansion, which may place significant strain and demands on our management, our operational and financial resources, customer operations, research and development, marketing and sales, administrative, and other resources. To manage our possible future growth effectively, we will be required to continue to improve our management, operational and financial systems. Future growth would also require us to successfully hire, train, motivate and manage our employees. In addition, our continued growth and the evolution of our business plan will require significant additional management, technical and administrative resources. If we are unable to manage our growth successfully we may not be able to effectively manage the growth and evolution of our current business and our operating results could suffer.

We depend on contract manufacturers, and our production and products could be harmed if it is unable to meet our volume and quality requirements and alternative sources are not available.

We rely on contract manufacturers to provide manufacturing services for our products. If these services become unavailable, we would be required to identify and enter into an agreement with a new contract manufacturer or take the manufacturing in-house. The loss of our contract manufacturers could significantly disrupt production as well as increase the cost of production, thereby increasing the prices of our products. These changes could have a material adverse effect on our business and results of operations.

We are presently a small company with too limited resources and personnel to establish a comprehensive system of internal controls. If we fail to maintain an effective system of internal controls, we would not be able to accurately report our financial results on a timely basis or prevent fraud. As a result, current and potential stockholders could lose confidence in our financial reporting, which would harm our business and the trading price of our common stock.

Effective internal controls are necessary for us to provide reliable financial reports and effectively prevent fraud. If we cannot provide reliable financial reports or prevent fraud, our brand and operating results would be harmed. We may in the future discover areas of our internal controls that need improvement. For example, because of size and limited resources, our external auditors may determine that we lack the personnel and infrastructure necessary to properly carry out an independent audit function. Although we believe that we have adequate internal controls for a company with our size and resources, we are not certain that the measures that we have in place will ensure that we implement and maintain adequate controls over our financial processes and reporting in the future. Any failure to implement required new or improved controls, or difficulties encountered in their implementation, would harm our operating results or cause us to fail to meet our reporting obligations. Inferior internal controls would also cause investors to lose confidence in our reported financial information, which would have a negative effect on our company and the trading price of our common stock.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with U.S. generally accepted accounting principles. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis. As of December 31, 2020, we have identified certain matters that constituted material weaknesses in our internal controls over financial reporting. See Item 9A of this Report for further discussion on our internal controls. As a result, current and potential stockholders could lose confidence in our financial reporting, which would harm our business and the trading price of our common stock.

If we do not effectively manage changes in our business, these changes could place a significant strain on our management and operations.

Our ability to grow successfully requires an effective planning and management process. The expansion and growth of our business could place a significant strain on our management systems, infrastructure and other resources. To manage our growth successfully, we must continue to improve and expand our systems and infrastructure in a timely and efficient manner. Our controls, systems, procedures and resources may not be adequate to support a changing and growing company. If our management fails to respond effectively to changes and growth in our business, including acquisitions, this could have a material adverse effect on our business, financial condition, results of operations and future prospects.

We may not be able to access the equity or credit markets.

We face the risk that we may not be able to access various capital sources including investors, lenders, or suppliers. Failure to access the equity or credit markets from any of these sources could have a material adverse effect on our business, financial condition, results of operations, and future prospects.

Persistent global economic trends could adversely affect our business, liquidity and financial results.

Although improving, persistent global economic conditions, particularly the scarcity of capital available to smaller businesses, could adversely affect us, primarily through limiting our access to capital and disrupting our clients' businesses. In addition, continuation or worsening of general market conditions in economies important to our businesses may adversely affect our clients' level of spending and ability to obtain financing, leading to us being unable to generate the levels of sales that we require. Current and continued disruption of financial markets could have a material adverse effect on our business, financial condition, results of operations and future prospects.

We may seek or need to raise additional funds. Our ability to obtain financing for general corporate and commercial purposes or acquisitions depends on operating and financial performance, and is also subject to prevailing economic conditions and to financial, business and other factors beyond our control. The global credit markets and the financial services industry have recently experienced a period of unprecedented turmoil characterized by the bankruptcy, failure or sale of various financial institutions. An unprecedented level of intervention from the U.S. and other governments has been seen. As a result of such disruption, our ability to raise capital may be severely restricted and the cost of raising capital through such markets or privately may increase significantly at a time when we would like, or need, to do so. Either of these events could have an impact on our flexibility to fund our business operations, make capital expenditures, pursue additional expansion or acquisition opportunities, or make another discretionary use of cash and could adversely impact our financial results.

Although recent trends point to continuing improvements, there is still lingering volatility and uncertainty. Recently there has been greater volatility in the financial markets as a result of uncertainty caused by the outbreak of COVID-19, which originated in China and continues to spread, including in the United States and Europe. A change or disruption in the global financial markets for any reason, including COVID-19 or other epidemics, may cause consumers, businesses and governments to defer purchases in response to tighter credit, decreased cash availability and declining consumer confidence. Accordingly, demand for our products could decrease and differ materially from current expectations. Further, some of our customers may require substantial financing in order to fund their operations and make purchases from us. The inability of these customers to obtain sufficient credit to finance purchases of our products and meet their payment obligations to us or possible insolvencies of our customers could result in decreased customer demand, an impaired ability for us to collect on outstanding accounts receivable, significant delays in accounts receivable payments, and significant write-offs of accounts receivable, each of which could adversely impact our financial results.

Rising interest rates could adversely impact our business.

Changes in interest rates could have an adverse impact on our business by increasing our cost of capital. For example:

- rising interest rates would increase our cost of capital; and
- rising interest rates may negatively impact our ability to secure financing on favorable terms and may impact our ability to provide cost-effective financing to our end-customers or end-users, where applicable.

Rising interest rates could generally harm our business and financial condition.

Risks Related to Our Biometric Recognition Applications and Related Products

Our biometric products and technologies may not be accepted by the intended commercial consumers of our products, which could harm our future financial performance.

There can be no assurance that our biometric systems will achieve wide acceptance by commercial consumers of such security-based products, and/or market acceptance generally. The degree of market acceptance for products and services based on our technology will also depend upon a number of factors, including the receipt and timing of regulatory approvals, if any, and the establishment and demonstration of the ability of our proposed device to provide the level of security in an efficient manner and at a reasonable cost. Our failure to develop a commercial product to compete successfully with existing security technologies could delay, limit or prevent market acceptance. Moreover, the market for new biometric-based security systems is largely undeveloped, and we believe that the overall demand for mobile biometric-based security systems technology will depend significantly upon public perception of the need for such a level of security. There can be no assurance that the public will believe that our level of security is necessary or that the security industry will actively pursue our technology as a means to solve their security issues. Long-term market acceptance of our products and services will depend, in part, on the capabilities, operating features and price of our products and technologies as compared to those of other available products and services. As a result, there can be no assurance that currently available products, or products under development for commercialization, will be able to achieve market penetration, revenue growth or profitability.

Our biometric applications may become obsolete if we do not effectively respond to rapid technological change on a timely basis.

The biometric identification and personal identification industries are characterized by rapid technological change, frequent new product innovations, changes in customer requirements and expectations and evolving industry standards. If we are unable to keep pace with these changes, our business may be harmed. Products using new technologies, or emerging industry standards, could make our technologies less attractive. In addition, we may face unforeseen problems when developing our products, which could harm our business. Furthermore, our competitors may have access to technologies not available to us, which may enable them to produce products of greater interest to consumers or at a more competitive cost.

Our biometric applications are new and our business model is evolving. Because of the new and evolving nature of biometric technology, it is difficult to predict the size of this specialized market, the rate at which the market for our biometric applications will grow or be accepted, if at all, or whether other biometric technologies will render our applications less competitive or obsolete. If the market for our biometric applications fails to develop or grows slower than anticipated, we would be significantly and materially adversely affected.

If our products and services do not achieve market acceptance, we may never have significant revenues or any profits.

If we are unable to operate our business as contemplated by our business model or if the assumptions underlying our business model prove to be unfounded, we could fail to achieve our revenue and earnings goals within the time we have projected, or at all, which would have a detrimental effect on our business. As a result, the value of any investment in our Company could be significantly reduced or completely lost.

We may in the future experience competition from other biometric application developers.

Competition in the development of biometric recognition is expected to become more intense. Competitors range from university-based research and development graphics labs to development-stage companies and major domestic and international companies. Many of these entities have financial, technical, marketing, sales, distribution and other resources significantly greater than those that we have. There can be no assurance that we can continue to develop our biometric technologies or that present or future competitors will not develop technologies that render our biometric applications obsolete or less marketable or that we will be able to introduce new products and product enhancements that are competitive with other products marketed by industry participants.

We may fail to create new applications for our products and enter new markets, which would have an adverse effect on our operations, financial condition and prospects.

Our future success depends in part on our ability to develop and market our technology for applications other than those currently intended. If we fail in these goals, our business strategy and ability to generate revenues and cash flow would be significantly impaired. We intend to expend significant resources to develop new technology, but the successful development of new technology cannot be predicted and we cannot guarantee we will succeed in these goals.

Our products may have defects, which could damage our reputation, decrease market acceptance of our products, cause us to lose customers and revenue and result in costly litigation or liability.

Our products may contain defects for many reasons, including defective design or manufacture, defective material or software interoperability issues. Products as complex as those we offer, frequently develop or contain undetected defects or errors. Despite testing defects or errors may arise in our existing or new products, which could result in loss of revenue, market share, failure to achieve market acceptance, diversion of development resources, injury to our reputation, and increased service and maintenance cost. Defects or errors in our products and solutions might discourage customers from purchasing future products. Often, these defects are not detected until after the products have been shipped. If any of our products contain defects or perceived defects or have reliability, quality or compatibility problems or perceived problems, our reputation might be damaged significantly, we could lose or experience a delay in market acceptance of the affected product or products and might be unable to retain existing customers or attract new customers. In addition, these defects could interrupt or delay sales. In the event of an actual or perceived defect or other problem, we may need to invest significant capital, technical, managerial and other resources to investigate and correct the potential defect or problem and potentially divert these resources from other development efforts. If we are unable to provide a solution to the potential defect or problem that is acceptable to our customers, we may be required to incur substantial product recall, repair and replacement and even litigation costs. These costs could have a material adverse effect on our business and operating results.

We will provide warranties on certain product sales and allowances for estimated warranty costs are recorded during the period of sale. The determination of such allowances requires us to make estimates of product return rates and expected costs to repair or to replace the products under warranty. We will establish warranty reserves based on our best estimates of warranty costs for each product line combined with liability estimates based on the prior twelve months' sales activities. If actual return rates and/or repair and replacement costs differ significantly from our estimates, adjustments to recognize additional cost of sales may be required in future periods. In addition, because our customers rely on secure authentication and identification of cardholders to prevent unauthorized access to programs, PCs, networks, or facilities, a malfunction of or design defect in its products (or even a perceived defect) could result in legal or warranty claims against us for damages resulting from security breaches. If such claims are adversely decided against us, the potential liability could be substantial and have a material adverse effect on our business and operating results. Furthermore, the possible publicity associated with any such claim, whether or not decided against us, could adversely affect our reputation. In addition, a well-publicized security breach involving smart card-based or other security systems could adversely affect the market's perception of products like ours in general, or our products in particular, regardless of whether the breach is attributable to our products. Any of the foregoing events could cause demand for our products to decline, which would cause its business and operating results to suffer.

Risks Related to our Securities

The market price for our common stock is particularly volatile given our status as a relatively unknown company with a small and thinly traded public float, and lack of profits, which could lead to wide fluctuations in the price of our common stock.

The market for our common stock is characterized by significant price volatility when compared to the securities of larger, more established companies that trade on a national securities exchange and have large public floats, and we expect that the price of our common stock will continue to be more volatile than the securities of such larger, more established companies for the indefinite future. The volatility in the price of our common stock is attributable to a number of factors. First, as noted above, our common stock is, compared to the securities of such larger, more established companies, sporadically and thinly traded. The price of our common stock could, for example, decline precipitously in the event that a large number of shares of our common stock is sold on the market without commensurate demand. Secondly, we are a speculative or "risky" investment due to our lack of profits to date. As a consequence of this enhanced risk, more risk-adverse investors may, under the fear of losing all or most of their investment in the event of negative news or lack of progress, be more inclined to sell their shares of common stock on the market more quickly and at greater discounts than would be the case with the securities of a larger, more established company that trades on a national securities exchange and has a large public float. Many of these factors are beyond our control and may decrease the market price of our common stock regardless of our operating performance.

Because of volatility in the stock market in general, the market price of our common stock will also likely be volatile.

The stock market in general, and the market for stocks of healthcare technology companies in particular, has been highly volatile. As a result, the market price of our common stock is likely to be volatile, and investors in our common stock may experience a decrease, which could be substantial, in the value of their shares of common stock or the loss of their entire investment for a number of reasons, including reasons unrelated to our operating performance or prospects. The market price of our common stock could be subject to wide fluctuations in response to a broad and diverse range of factors, including those described elsewhere in this Report, including this "Risk Factors" section, and the following:

- recent price volatility and any known risks of investing in our common stock under these circumstances;
- the market price of our common stock prior to the recent price volatility;
- any recent change in financial condition or results of operations, such as in earnings, revenues or other measure of company value that is consistent with the recent change in the prices of our common stock; and
- risk factors addressing the recent extreme volatility in stock price, the effects of a potential "short squeeze" due to a sudden increase in demand for our common stock as a result of current investor exuberance associated with technology-related stocks, to the extent that the Company expects to conduct additional offerings in the future to fund its operations or provide liquidity, the dilutive impact of those offerings on investors that purchase such shares in those offerings at a significantly higher price.

The market price of our common stock has recently been and is still likely to be highly volatile and subject to wide fluctuations, and you may be unable to resell your shares of common stock at or above the price at which you acquired them.

The market price of our common stock may be highly volatile and could be subject to wide fluctuations in response to a number of factors that are beyond our control, including, but not limited to:

- variations in our revenues and operating expenses;
- actual or anticipated changes in the estimates of our operating results or changes in stock market analyst recommendations regarding our common stock, other comparable companies or our industry generally;
- market conditions in our industry, the industries of our customers and the economy as a whole;
- actual or expected changes in our growth rates or our competitors' growth rates;
- developments in the financial markets and worldwide or regional economies;
- announcements of innovations or new products or services by us or our competitors;
- announcements by the government relating to regulations that govern our industry;
- sales of our common stock or other securities by us or in the open market;
- changes in the market valuations of other comparable companies; and
- other events or factors, many of which are beyond our control, including those resulting from such events, or the prospect of such events, including war, terrorism and other international conflicts, public health issues including health epidemics or pandemics, such as the recent outbreak of COVID-19, and natural disasters such as fire, hurricanes, earthquakes, tornados or other adverse weather and climate conditions, whether occurring in the United States or elsewhere, could disrupt our operations, disrupt the operations of our suppliers or result in political or economic instability.

In addition, if the market for technology and/or healthcare stocks or the stock market in general experiences loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, financial condition or operating results. The trading price of our common stock might also decline in reaction to events that affect other companies in our industry, even if these events do not directly affect us. Each of these factors, among others, could harm the value of your investment in our common stock. In the past, following periods of volatility in the market, securities class-action litigation has often been instituted against companies. Such litigation, if instituted against us, could result in substantial costs and diversion of management's attention and resources, which could materially and adversely affect our business, operating results and financial condition.

We may acquire other technologies or finance strategic alliances by issuing our equity or equity-linked securities, which may result in additional dilution to our stockholders.

If we are not able to comply with the applicable continued listing requirements or standards of the Nasdaq Capital Market, our common stock could be delisted from such exchange.

Our common stock is currently listed on the Nasdaq Capital Market. In order to maintain that listing, we must satisfy minimum financial and other continued listing requirements and standards, including those regarding director independence and independent committee requirements, minimum stockholders' equity, minimum share price, and certain corporate governance requirements. There can be no assurances that we will be able to remain in compliance with the Nasdaq Stock Market LLC's ("Nasdaq") listing standards or if we do later fail to comply and subsequently regain compliance with Nasdaq's listing standards, that will be able to continue to comply with the applicable listing standards. If we are unable to maintain compliance with these Nasdaq requirements, our common stock will be delisted from the Nasdaq Capital Market.

Until recently, we had not been in compliance with Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Price Requirement") for the continued listing of our shares of common stock on the Nasdaq Capital Market. We received a letter from Nasdaq, dated January 4, 2021 (the "Nasdaq Letter"), notifying us that we had regained compliance with the Minimum Bid Price Requirement, as a result of the closing bid price of our common stock having closed above \$1.00 per share for at least ten consecutive trading days prior to February 1, 2021, and also imposing certain obligations on us during a monitoring period until July 5, 2021. In the event that we fail to comply with the obligations imposed on us in the Nasdaq Letter, our shares of common stock will be delisted from the Nasdaq Capital Market.

In the event that our common stock is delisted from the Nasdaq Capital Market, as a result of our failure to comply with any of the obligations imposed on us in the Nasdaq Letter, or due to our failure to continue to comply with any other requirement for continued listing on the Nasdaq Capital Market, and is not eligible for quotation on another market or exchange, trading of our common stock could be conducted in the over-the-counter market or on an electronic bulletin board established for unlisted securities such as the Pink Sheets or the OTC Bulletin Board. In such event, it could become more difficult to dispose of, or obtain accurate price quotations for, our common stock, and it would likely be more difficult to obtain coverage by securities analysts and the news media, which could cause the price of our common stock to decline further. Also, it may be difficult for us to raise additional capital if we are not listed on a national exchange.

In the event that our common stock is delisted from the Nasdaq Capital Market, U.S. broker-dealers may be discouraged from effecting transactions in shares of our common stock because they may be considered penny stocks and thus be subject to the penny stock rules.

The SEC has adopted a number of rules to regulate “penny stock” that restricts transactions involving stock which is deemed to be penny stock. Such rules include Rules 3a51-1, 15g-1, 15g-2, 15g-3, 15g-4, 15g-5, 15g-6, 15g-7, and 15g-9 under the Exchange Act. These rules may have the effect of reducing the liquidity of penny stocks. “Penny stocks” generally are equity securities with a price of less than \$5.00 per share (other than securities registered on certain national securities exchanges or quoted on the Nasdaq Capital Market if current price and volume information with respect to transactions in such securities is provided by the exchange or system). Our shares of common stock have in the past constituted, and may again in the future constitute, “penny stock” within the meaning of the rules. The additional sales practice and disclosure requirements imposed upon U.S. broker-dealers may discourage such broker-dealers from effecting transactions in shares of our common stock, which could severely limit the market liquidity of such shares of common stock and impede their sale in the secondary market.

A U.S. broker-dealer selling a penny stock to anyone other than an established customer or “accredited investor” (generally, an individual with a net worth in excess of \$1,000,000 or an annual income exceeding \$200,000, or \$300,000 together with his or her spouse) must make a special suitability determination for the purchaser and must receive the purchaser’s written consent to the transaction prior to sale, unless the broker-dealer or the transaction is otherwise exempt. In addition, the “penny stock” regulations require the U.S. broker-dealer to deliver, prior to any transaction involving a “penny stock”, a disclosure schedule prepared in accordance with SEC standards relating to the “penny stock” market, unless the broker-dealer or the transaction is otherwise exempt. A U.S. broker-dealer is also required to disclose commissions payable to the U.S. broker-dealer and the registered representative and current quotations for the securities. Finally, a U.S. broker-dealer is required to submit monthly statements disclosing recent price information with respect to the “penny stock” held in a customer’s account and information with respect to the limited market in “penny stocks”.

Stockholders should be aware that, according to the SEC, the market for “penny stocks” has suffered in recent years from patterns of fraud and abuse. Such patterns include: (i) control of the market for the security by one or a few broker-dealers that are often related to the promoter or issuer; (ii) manipulation of prices through prearranged matching of purchases and sales and false and misleading press releases; (iii) “boiler room” practices involving high-pressure sales tactics and unrealistic price projections by inexperienced sales persons; (iv) excessive and undisclosed bid-ask differentials and markups by selling broker-dealers; and (v) the wholesale dumping of the same securities by promoters and broker-dealers after prices have been manipulated to a desired level, resulting in investor losses. Our management is aware of the abuses that have occurred historically in the penny stock market. Although we do not expect to be in a position to dictate the behavior of the market or of broker-dealers who participate in the market, management will strive within the confines of practical limitations to prevent the described patterns from being established with respect to our securities.

Our stockholders may experience significant dilution.

Although certain exercise restrictions are placed upon the holders of our warrants, the issuance of material amounts of common stock by us would cause our existing stockholders to experience significant dilution in their investment in us. In addition, if we obtain additional financing involving the issuance of equity securities or securities convertible into equity securities, our existing stockholders' investment would be further diluted. Such dilution could cause the market price of our common stock to decline, which could impair our ability to raise additional financing.

We do not anticipate paying dividends in the foreseeable future; you should not buy our common stock if you expect dividends.

The payment of dividends on our common stock will depend on earnings, financial condition and other business and economic factors affecting us at such time as our board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if our stock price appreciates.

We currently intend to retain our future earnings to support operations and to finance expansion and, therefore, we do not anticipate paying any cash dividends on our common stock in the foreseeable future.

We could issue "blank check" preferred stock without stockholder approval with the effect of diluting then current stockholder interests and impairing their voting rights; and provisions in our charter documents could discourage a takeover that stockholders may consider favorable.

Our certificate of incorporation authorizes the issuance of up to 10,000,000 shares of "blank check" preferred stock with designations, rights and preferences as may be determined from time to time by our board of directors. Our board of directors is empowered, without stockholder approval, to issue a series of preferred stock with dividend, liquidation, conversion, voting or other rights which could dilute the interest of, or impair the voting power of, our common stockholders. The issuance of a series of preferred stock could be used as a method of discouraging, delaying or preventing a change in control of the Company. For example, it would be possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of the Company.

Financial Industry Regulatory Authority, Inc. ("FINRA") sales practice requirements may limit a stockholder's ability to buy and sell our common stock.

FINRA has adopted rules that require that in recommending an investment to a customer, a broker-dealer must have reasonable grounds for believing that the investment is suitable for that customer. Prior to recommending speculative low-priced securities to their non-institutional customers, broker-dealers must make reasonable efforts to obtain information about the customer's financial status, tax status, investment objectives and other information. Under interpretations of these rules, FINRA believes that there is a high probability that speculative low-priced securities will not be suitable for certain customers. FINRA requirements will likely make it more difficult for broker-dealers to recommend that their customers buy our common stock, which may have the effect of reducing the level of trading activity in our common stock. As a result, fewer broker-dealers may be willing to make a market in our common stock, reducing a stockholder's ability to resell shares of our common stock.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Properties

Our principal executive offices are located in Oxford, Connecticut. On September 12, 2014, the Company entered into a lease agreement for this office space. The lease term commenced on October 1, 2014 and the original lease term was for two (2) years. The Company is currently leasing this office space on a month-to-month basis with a monthly rent of \$1,925.

On October 16, 2013, the Company entered into a lease agreement for office space in Palm Bay, Florida. The term of the lease commenced on May 1, 2014 and was for three (3) years with a monthly rent of \$1,250 in the first year, increasing 3% annually thereafter. The Company is currently leasing this office space on a month-to-month basis with a monthly rent of \$1,987.

As a result of the LogicMark acquisition on July 25, 2016, we assumed two (2) facility leases. One of the leases was for office space located in Plymouth, Minnesota with a monthly rent of \$1,170. This lease agreement expired in February 2018. In addition, LogicMark subleased office and warehouse space located in Louisville, Kentucky. The subleasing agreement expired on August 31, 2017. On June 6, 2017, we entered into a new three-year lease agreement for the same office and warehouse space located in Louisville, Kentucky and this lease agreement expired in August 2020. On June 15, 2020, we entered into a new five-year and two-month lease agreement for a different office and warehouse space located in Louisville, Kentucky. The current monthly rent for the space is \$6,000 and this lease agreement expires in August 2025. In addition, LogicMark also entered into a subleasing agreement for 2,000 square feet of warehouse space in the new leased facility. LogicMark will receive \$1,000 per month for this space and the subleasing agreement expires on December 31, 2021.

Item 3. Legal Proceedings

On February 24, 2020, Michael J. Orlando, as shareholder representative (the "Shareholder Representative"), and the other stockholders of Fit Pay, Inc. (collectively, the "Fit Pay Shareholders"), filed a lawsuit in the United States District Court for the Southern District of New York against the Company, CrowdOut Capital, LLC, and Garmin International, Inc. (the "Complaint"). See *Orlando v. Nxt-ID, Inc.* No. 20-cv-1604 (S.D.N.Y.). The Complaint alleges that the Company has breached certain contractual obligations under a merger agreement, dated May 23, 2017, between Fit Pay, Inc. and the Company, regarding certain future, contingent earnout payments allegedly that could be owed to the Fit Pay Shareholders from future revenues. The Complaint seeks unspecified monetary damages from the defendants. The Company believes that these claims are without merit and plans to vigorously defend the action. On May 12, 2020, the Company filed an answer and counterclaims alleging, among other things, fraud and breach of fiduciary duty of the Shareholder Representative as well as arguing that the Shareholder Representative should be estopped from pursuing these claims. The Company has moved for summary judgment to have the lawsuit dismissed. In March 2021, following our successful application to stay all discovery, the court granted CrowdOut's and Garmin's separate motions to dismiss. Orlando's claim against the Company still remains and the Company's motion for summary judgment is still pending.

In connection with the sale of Fit-Pay, GDMSAI has identified a disagreement with the Company over calculation of dividends with respect to the Series C Preferred Stock. On August 13, 2020, the Company was sued by GDMSAI seeking, among other things, \$440,000 of dividends that it believes are owed to it pursuant to the terms of the Series C. The Company believes that GDMSAI's claims are not correct and plans to vigorously defend the action. The Company has moved to have the case removed from Delaware to New York, where the Company claims the forum clause requires the claims to be heard. The Company has opposed GDMSAI's motion for summary judgment. In March 2021, a Delaware Chancery court rejected our argument that the Fit Pay merger agreement requires litigation solely in New York and thereafter granted GDMSAI summary judgment on the merits, holding that relevant dividend language required a perpetually paid dividend once the \$50M threshold had been achieved. The Company plans to appeal. There are no assurances that our appeal will be successful and even if our appeal is successful that a New York court will agree with our interpretation of the manner in which dividends on the Series C Preferred are to be calculated. The Company is not yet able to evaluate the likelihood of an unfavorable outcome or estimate the amount or range of potential loss beyond the amount stated in the action.

From time to time, the Company may be involved in various claims and legal actions arising in the ordinary course of our business. Other than the above, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the executive officers of the Company or any of our subsidiaries, threatened against or affecting our company, or any of our subsidiaries in which an adverse decision could have a material adverse effect upon our business, operating results, or financial condition.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

Our common stock trades on the Nasdaq Capital Market under the symbol “NXTD.”

Holder

As of April 14, 2021, there were approximately 84 holders of record of our common stock. This number does not include shares of common stock held by brokerage clearing houses, depositories or others in unregistered form.

Dividends

We have never declared or paid dividends on our common stock, and our board of directors does not intend to declare or pay any dividends on our common stock in the foreseeable future. Our earnings are expected to be retained for use in expanding our business. The declaration and payment in the future of any cash or stock dividends on our common stock will be at the discretion of our board of directors and will depend upon a variety of factors, including our future earnings, capital requirements, financial condition and such other factors as our board of directors may consider to be relevant from time to time.

Securities Authorized For Issuance under Equity Compensation Plans

Reference is made to “Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters—Securities Authorized for Issuance under Equity Compensation Plans” for the information required by this item.

Recent Sales of Unregistered Securities

On July 14, 2020, the Company closed a registered direct offering (the “July Registered Direct Offering”) of (i) an aggregate of 3,778,513 shares (the “Shares”) of Common Stock; (ii) pre-funded warrants to purchase up to an aggregate of 734,965 shares of Common Stock (the “Pre-Funded Warrant Shares”) at an exercise price of \$0.01 per share, subject to customary adjustments thereunder (the “Pre-Funded Warrants”); (iii) warrants, with a term of five (5) years exercisable immediately upon issuance, to purchase an aggregate of up to 1,579,718 shares of Common Stock (the “Registered Warrant Shares”) at an exercise price of \$0.50 per share, subject to customary adjustments thereunder (the “Registered Warrants”); and (iv) warrants, with a term of five and one-half (5.5) years first exercisable six (6) months after issuance, to purchase an aggregate of up to 3,750,000 shares of Common Stock (the “Unregistered Warrant Shares”) at an exercise price of \$0.65 per share, subject to customary adjustments thereunder (the “Unregistered Warrants”), for gross proceeds of \$1,864,528, before deducting any offering expenses.

The Company entered into a securities purchase agreement on July 10, 2020 with two (2) accredited investors (“Investors”) providing for the issuance of the Shares, the Pre-Funded Warrants, the Registered Warrants and the Unregistered Warrants (the “Purchase Agreement”). The Shares, the Pre-Funded Warrants, the Pre-Funded Warrant Shares, the Registered Warrants and the Registered Warrant Shares were registered under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to a prospectus supplement to the Company’s currently effective registration statement on Form S-3 (File No. 333-228624), which was initially filed with the SEC on November 30, 2018 and was declared effective on December 12, 2018 (the “Shelf Registration Statement”). The Company filed the prospectus supplement to the Shelf Registration Statement with the SEC on July 13, 2020. Pursuant to the Purchase Agreement, the Unregistered Warrants and the Unregistered Warrant Shares were issued to the Investors in a concurrent private placement transaction pursuant to an exemption from the registration requirements of the Securities Act provided in Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

On December 16, 2020, the Company entered into a securities purchase agreement (the “December Purchase Agreement”) with two (2) accredited investors (the “December Investors”) providing for an aggregate investment of \$2,000,000 by the Investors for the issuance by the Company to them of (i) 1,515,151 shares of Series D Convertible Preferred Stock, par value \$0.0001 per share, of the Company (the “Series D Preferred Stock”) convertible into an aggregate of up to 3,030,303 shares of Common Stock that are issuable from time to time upon conversion of such shares of Series D Preferred Stock (the “Conversion Shares”); (ii) warrants, with a term of five (5) years exercisable immediately upon issuance, to purchase an aggregate of up to 1,000,000 shares of Common Stock (the “December Registered Warrant Shares”) at an exercise price of \$0.49 per share, subject to customary adjustments thereunder (the “December Registered Warrants”); and (iii) warrants, with a term of five and one-half (5.5) years first exercisable six (6) months after issuance, to purchase an aggregate of up to 5,060,606 shares of Common Stock (the “December Unregistered Warrant Shares” and collectively with the December Registered Warrant Shares, the “December Warrant Shares”) at an exercise price of \$0.49 per share, subject to customary adjustments thereunder (the “December Unregistered Warrants” and collectively with the December Registered Warrants, the “December Warrants”). Pursuant to the December Purchase Agreement, the December Unregistered Warrants and the December Unregistered Warrant Shares were issued to the December Investors in a concurrent private placement transaction pursuant to an exemption from the registration requirements of the Securities Act provided in Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

With respect to the availability of an exemption from registration, relating to the sale of (i) the Unregistered Warrants and the Unregistered Warrant Shares in the July Registered Direct Offering and (ii) the December Unregistered Warrants and the December Unregistered Warrant Shares, we made these determinations based on the representations of each investor which included, in pertinent part, that each such investor was either (a) an “accredited investor” within the meaning of Rule 501 of Regulation D or (b) a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act and upon such further representations from each investor that (i) such investor acquired the securities for his, her or its own account for investment and not for the account of any other person and not with a view to or for distribution, assignment or resale in connection with any distribution within the meaning of the Securities Act, (ii) such investor agreed not to sell or otherwise transfer the purchased securities unless they are registered under the Securities Act and any applicable state securities laws, or an exemption or exemptions from such registration are available, (iii) such investor had knowledge and experience in financial and business matters such that he, she or it was capable of evaluating the merits and risks of an investment in us, (iv) such investor had access to all of our documents, records, and books pertaining to the investment and was provided the opportunity to ask questions and receive answers regarding the terms and conditions of the offering and to obtain any additional information which we possessed or were able to acquire without unreasonable effort and expense, and (v) such investor had no need for the liquidity in its investment in us and could afford the complete loss of such investment. In addition, there was no general solicitation or advertising for securities issued in reliance upon these exemptions.

Item 6. [Reserved]

Item 7. Management Discussion and Analysis of Financial Condition and Results of Operations.

Recent Developments of the Company

Partial Waiver of PPP Loan

On March 19, 2021, the Company received notification from the SBA that LogicMark’s obligation to repay its PPP loan in the amount of \$301,460 plus accrued interest has been waived. The Company has also submitted a waiver application regarding its PPP Loan balance of \$45,000; however the Company has not yet received notification from the SBA that its obligation to repay has been waived.

Second Amendment to Credit Agreement

On February 8, 2021, the Company’s wholly-owned subsidiary, LogicMark, LLC (“LogicMark”), entered into a second amendment (the “Second Amendment”) to the senior Secured Credit Agreement, dated as of May 3, 2019, as amended (the “Credit Agreement”), with each financial institution from time to time party thereto as lender (the “Lenders”), and a senior secured lender, as administrative agent and collateral agent for the Lenders (the “Agent”). Pursuant to the Second Amendment, LogicMark made a \$5,000,000 voluntary prepayment (the “Prepayment”) on its \$16,500,000 aggregate principal amount term loan originally made by the Lenders to LogicMark pursuant to the Credit Agreement (the “Term Loan”) and the Agent agreed to accept (i) LogicMark’s payment of a prepayment premium in the amount of \$125,000, which is equal to 2.5% of the Prepayment, rather than 5% of the Prepayment as required by the Credit Agreement, and (ii) an extension of the maturity date of the Term Loan to May 22, 2023. As a result of the Prepayment, LogicMark’s resulting loan balance on the Term Loan is approximately \$5,752,127.

December 2020 and February 2021 Registered Direct Offerings; Elimination of Series D Preferred Stock

On December 18, 2020, pursuant to the December Purchase Agreement, we closed the December Offering of 1,515,151 shares of Series D Preferred Stock, the December Registered Direct Warrants and unregistered common stock purchase warrants of the Company exercisable for up to an aggregate of 5,060,606 shares of Common Stock, including the December Warrant, on December 18, 2020. The Company received gross proceeds of approximately \$2,000,000, before deducting offering expenses, and is using the net proceeds from the December Offering to fund further production and distribution of the Company’s new 4G product, finalize testing and the initial production run of the Company’s new WiFi Notify product, restructure the Company’s website to promote direct to consumer sales of its products, and for working capital and other general corporate purposes. In addition, investors subsequently converted all of their shares of Series D Preferred Stock into an aggregate of 3,030,303 shares of Common Stock and no shares of Series D Preferred Stock were issued and outstanding as a result of such conversion. As previously disclosed on our Current Report on Form 8-K, filed with the SEC on February 3, 2021, the Company filed a certificate with the Secretary of State of the State of Delaware on February 1, 2021 eliminating and canceling all designations, rights, preferences and limitations of the Series D Preferred Stock, and all shares of Series D Preferred Stock resumed the status of authorized but unissued shares of preferred stock of the Company.

On February 3, 2021, pursuant to the January Purchase Agreement, we closed the February Offering of 1,476,016 shares of Series E Preferred Stock, the February Registered Direct Warrants and the February Warrants on February 2, 2021. The Company received gross proceeds of approximately \$4,000,000, before deducting offering expenses, and intends to use the net proceeds from the February Offering for working capital and liability reduction purposes. As of the date of this Report, all shares of Series E Preferred Stock issued in connection with the February Offering have been converted into an aggregate of 2,952,032 shares of Common Stock.

Warrant Exercise Agreement

On January 8, 2021, we entered into a Warrant Amendment and Exercise Agreement (the “Amendment Agreement”) with one of the investors which holds a common stock purchase warrant, dated April 4, 2019, previously issued by the Company to such investor exercisable for up to 2,469,136 shares of Common Stock (the “Original Warrant”). In consideration for each exercise of the Original Warrant that occurs within 45 calendar days of the date of the Amendment Agreement, in addition to the issuance of the shares of Common Stock issued to such investor upon such exercise, the Company agreed to deliver to such investor a new common stock purchase warrant exercisable for up to the number of shares of Common Stock that such investor would receive upon exercise of the Original Warrant (the “New Warrant”), which New Warrant would have an exercise price of \$1.525 per share, which is equal to the average closing price of the Common Stock on the Nasdaq Capital Market for the five trading days immediately preceding the date of the Amendment Agreement. The Amendment Agreement contains customary representations, warranties and covenants by each of the Company and such investor.

Pursuant to the Amendment Agreement, as a result of such investor's full exercise of the Original Warrant for 2,469,136 shares of Common Stock, we issued such investor a New Warrant exercisable for up to 2,469,136 shares of Common Stock at \$1.525 per share. The New Warrant is exercisable at any time until the original expiration date of the Original Warrant, which is April 4, 2024. The exercise price and number of shares issuable upon exercise of the New Warrant are subject to traditional adjustment for stock splits, combinations, recapitalization events and certain dilutive issuances. The New Warrant is required to be exercised for cash; however, if during the term of the New Warrant there is not an effective registration statement under the Securities Act covering the resale of the shares of Common Stock issuable upon exercise of the New Warrant, then the New Warrant may be exercised on a cashless (net exercise) basis pursuant to the formula provided in the New Warrant. The Company intends to use the proceeds of such investor's exercise of the Original Warrant for product development, working capital and liability reduction purposes.

Regaining Compliance with Nasdaq Listing Requirements

As previously disclosed on our Current Report on Form 8-K, filed with the SEC on May 24, 2019, we received written notice from the staff of the Listing Qualifications Department of The Nasdaq Stock Market LLC ("Nasdaq") indicating that we were not in compliance with Nasdaq Listing Rule 5550(a)(2) because the closing bid price of our Common Stock had closed below \$1.00 per share for the previous 30 consecutive business days (the "Minimum Bid Price Requirement") and had 180 calendar days from the date therein to regain compliance, which was extended due to the global market impact caused by COVID-19 to August 3, 2020. We subsequently received a further extension from Nasdaq requiring us to evidence a closing bid price of our Common Stock above \$1.00 per share for at least ten consecutive trading days by February 1, 2021.

As previously disclosed on our Current Report on Form 8-K, filed with the SEC on January 5, 2021, as a result of the closing bid price of our Common Stock having closed above \$1.00 per share for at least ten consecutive trading days prior to February 1, 2021, we received a letter from Nasdaq Stock, dated January 4, 2021 (the "Nasdaq Letter"), confirming that we have regained compliance with the Minimum Bid Price Requirement and are in compliance with other applicable requirements as required for listing on Nasdaq and this matter has closed. Pursuant to the Nasdaq Letter, Nasdaq's Hearing's Panel (the "Panel") has imposed a monitoring period on us until July 5, 2021 (the "Monitoring Period"), pursuant to which we are required to notify the Panel in writing in the event that the closing bid price of our Common Stock falls below \$1.00 on any trading day, and in the event we are not in compliance with any other applicable listing requirement. In the event that the closing bid price of our Common Stock is under \$1.00 for 30 consecutive trading days at any point during the Monitoring Period, the Panel will notify us that it will conduct a hearing with regards to such deficiency, after which we will have the opportunity to respond to the Panel. Our shares of Common Stock may, thereafter, be delisted from the Nasdaq Capital Market.

There can be no assurance that we will be able to comply with all of the obligations placed on us pursuant to the Nasdaq Letter or that even if we do that we will be able to continue to comply with Nasdaq's listing standards in the future, including the Minimum Bid Price Requirement, and if we fail to achieve compliance with all applicable Nasdaq listing requirements, our Common Stock may be delisted from the Nasdaq Capital Market.

Results of Operations

Year ended December 31, 2020 compared with the year ended December 31, 2019.

Revenue. Our revenues for the year ended December 31, 2020 were \$11,442,803, compared to \$17,137,301 for the year ended December 31, 2019. The decrease in our revenues the year ended December 31, 2020 as compared to the year ended December 31, 2019 is primarily attributable to LogicMark's decreased sales volume resulting primarily from the COVID-19 pandemic.

Cost of Revenue and Gross Profit. Our gross profit for the year ended December 31, 2020 was \$8,200,729, compared to a gross profit of \$12,768,806 for the year ended December 31, 2019. The decrease in our gross profit for the year ended December 31, 2020 as compared to the year ended December 31, 2019 is primarily attributable to LogicMark's decreased sales volume resulting primarily from the COVID-19 pandemic.

Operating Expenses. Operating expenses for the year ended December 31, 2020 totaled \$8,786,807 and consisted of research and development expenses of \$1,108,934, selling and marketing expenses of \$2,396,922 and general and administrative expenses of \$5,280,951. For the year ended December 31, 2020, the research and development expenses related primarily to salaries and consulting services of \$988,214. Selling and marketing expenses consisted primarily of salaries and consulting services of \$489,106, amortization of intangibles of \$761,815, freight charges of \$524,481, merchant processing fees of \$242,185, and sales commissions of \$237,378. General and administrative expenses for the year ended December 31, 2020 consisted of salaries and consulting services of \$848,340, accrued management and employee incentives of \$200,000, other public company expenses of \$644,013 and legal, audit and accounting fees of \$2,020,823. Also included is \$320,000 in cash and non-cash stock compensation to board members.

Operating expenses for the year ended December 31, 2019 totaled \$10,191,015 and consisted of research and development expenses of \$1,208,536, selling and marketing expenses of \$3,279,317 and general and administrative expenses of \$5,703,162. For the year ended December 31, 2019, the research and development expenses related primarily to salaries and consulting services of \$848,596. Selling and marketing expenses consisted primarily of salaries and consulting services of \$734,752, amortization of intangibles of \$761,815, freight charges of \$658,889, merchant processing fees of \$415,447, and sales commissions of \$296,619. General and administrative expenses for the year ended December 31, 2019 consisted of salaries and consulting services of \$1,673,676, accrued management and employee incentives of \$284,785, and legal, audit and accounting fees of \$776,767. Also included is \$240,205 in non-cash stock compensation to vendors, employees and board members.

Our operating expenses for the year ended December 31, 2020 were approximately \$1,400,000 lower as compared to our operating expenses for the year ended December 31, 2019. The lower operating expenses for the year ended December 31, 2020 versus the year ended December 31, 2019 is primarily attributable to the significant cost reductions and cost containment efforts implemented by the Company in 2019 and 2020. Excluding the significant legal fees and other public company expenses that we incurred in 2020 as a result of the two pending lawsuits and our proxy solicitation efforts; our operating expenses for the year ended December 31, 2020 would have been lower by approximately by \$3,000,000 as compared to the year ended December 31, 2019.

Operating (Loss) Profit. The operating loss for the year ended December 31, 2020 was \$586,078, compared with an operating profit for the year ended December 31, 2019 of \$2,577,791. The significant unfavorable change in operating profit for the year ended December 31, 2020 as compared to the year ended December 31, 2019 is primarily attributable to the lower gross profit resulting primarily from LogicMark's decreased sales volume resulting from the COVID-19 pandemic offset in part by lower operating expenses attributable to the significant cost reductions and cost containment efforts in 2020 as compared to 2019.

Provision for Income Taxes: The provision for income taxes for the year ended December 31, 2020 totaled a tax expense of \$24,886, or (0.88)% of the loss before income taxes, which differed from the tax benefit at the 21% statutory rate of \$596,421 primarily due to changes in the valuation allowance. The provision for income taxes for the year ended December 31, 2019 totaled a tax benefit of \$332,571, or 12.31% of the loss before income taxes, which differed from the tax benefit at the 21% statutory rate of \$567,208 primarily due to state income taxes and book to tax differences on the loss on sale of Fit Pay, offset by changes in the valuation allowance.

Loss from Operations. The net loss from operations for the year ended December 31, 2020 was \$2,864,984, compared to \$2,368,418 for the year ended December 31, 2019. The net loss from operations for the year ended December 31, 2020 was primarily attributable to an operating loss of \$586,078, interest expense of \$2,254,020 and income tax expense of \$24,886.

Liquidity and Capital Resources

Sources of Liquidity

We generated an operating loss of \$586,078 and a net loss from operations of \$2,864,984 for the year ended December 31, 2020. As of December 31, 2020, we had cash and stockholders' equity of \$4,387,416 and \$9,159,209, respectively. At December 31, 2020, our operations had a working capital deficiency of \$578,797. During the year ended December 31, 2020, the Company received net proceeds of \$5,144,387 from the issuance of common stock and warrants, the issuance of Series D Preferred Stock and warrants and the exercise of common stock purchase warrants.

In addition, we also further reduced our operating expenses by approximately \$1.4 million on an annual basis. These additional cost reduction efforts will significantly enhance our cash flow as we move forward into 2021.

Given our cash position at December 31, 2020 and our projected cash flow from operations, we believe that we will have sufficient capital to sustain operations for a period of one year following the date of this filing. We may also raise funds through equity or debt offerings to accelerate the execution of our long-term strategic plan to develop and commercialize our core products and to fulfill our product development commitments.

As of December 31, 2020, the Company had cash of \$4,387,416.

Cash Flows

Cash and Working Capital

We have incurred net losses from operations of \$2,864,984 and \$2,368,418 for the years ended December 31, 2020 and 2019, respectively. As of December 31, 2020, the Company had cash and stockholders' equity of \$4,387,416 and \$9,159,209, respectively. At December 31, 2020, the Company's operations had a working capital deficiency of \$578,797. During the year ended December 31, 2020, the Company received net proceeds of \$5,144,387 from the issuance of common stock and warrants, the issuance of Series D Preferred Stock and warrants and the exercise of common stock purchase warrants.

Cash (Used in) Provided by Operating Activities

Our primary ongoing uses of operating cash relate to payments to subcontractors and vendors for research and development, salaries and related expenses and professional fees. Our vendors and subcontractors generally provide us with normal trade payment terms. During the year ended December 31, 2020, net cash used in operating activities amounted to \$412,959, which comprised a net loss of \$2,864,984, positive adjustments to reconcile net loss to net cash used in operating activities of \$1,643,323 and changes in operating assets and liabilities of positive \$808,702. During the year ended December 31, 2019, net cash provided by operating activities amounted to \$2,240,122, which comprised a net loss of \$2,368,418, positive adjustments to reconcile net loss to net cash used in operating activities of \$4,210,738 and changes in operating assets and liabilities of positive \$397,802.

Cash Provided by Investing Activities

During the year ended December 31, 2020, we did not have net cash used in investing activities. During the year ended December 31, 2019, net cash provided by investing activities amounted to \$2,750,314 and was primarily related to the net proceeds received from the sale of our discontinued operations of \$2,955,170 which was offset in part by earnout payments to certain shareholders of Fit Pay totaling \$181,065 and the purchase of equipment of \$23,791.

Cash Provided by (Used in) Financing Activities

During the year ended December 31, 2020, net cash provided by financing activities totaled \$3,213,125 and was related to proceeds received in connection with the issuance of common stock and warrants of \$1,864,528, proceeds received in connection with the issuance of Series D Preferred Stock of \$2,000,000, proceeds received from the exercise of common stock purchase warrants of \$1,279,859 and loan proceeds of \$346,390 received under the PPP under the CARES Act. The total proceeds received was partially offset by our term loan repayments of \$2,212,500 and fees paid in connection with equity offerings totaling \$65,152. During the year ended December 31, 2019, net cash used in financing activities totaled \$2,001,429 and was primarily related to the pay down of \$16,000,000 in term loan facility with Sagard Holdings Manager, LP, pay downs in both the short and long-term debt totaling \$638,881, scheduled term loan repayments of \$1,203,125 and fees paid in connection with equity offerings totaling \$55,546. In addition, we also prepaid \$1,988,498 of the term loan facility with a portion of the net proceeds received from the sale of our discontinued operations. These financing disbursements were funded in part with net proceeds received of \$1,299,042 from the sale of stock from our January 2019 at-the-market offering, \$1,915,000 from the sale of stock in connection with a registered direct public offering and \$14,670,579 in net proceeds received from the refinancing with CrowdOut Capital, which closed on May 3, 2019.

Potential Impacts of COVID-19 on Our Business and Operations

The COVID-19 pandemic represents a fluid situation that presents a wide range of potential impacts of varying durations for different global geographies, including locations where we have offices, employees, customers, vendors and other suppliers and business partners.

Like most US-based businesses, the COVID-19 pandemic and efforts to mitigate the same began to have impacts on our business in March 2020. By that time, much of our first fiscal quarter was completed. During the period April 1, 2020 through December 31, 2020, we have observed decreases in demand from certain customers, primarily our VA hospitals.

Given the fact our products are sold through a variety of distribution channels, including through hospitals, we expect our sales will experience more volatility as a result of the changing and less predictable operational needs of many customers as a result of the COVID-19 pandemic. We are aware that many companies, including many of our suppliers and customers, are reporting or predicting negative impacts from COVID-19 on future operating results. Although we observed significant declines in demand for our products from certain customers during the nine months ended December 31, 2020, we believe that COVID-19 had a significant impact on the demand for our products. We also cannot be certain how demand may shift over time as the impacts of the COVID-19 pandemic may go through several phases of varying severity and duration.

In light of broader macro-economic risks and already known impacts on certain industries that use our products and services, we have taken and are taking targeted steps to lower our operating expenses because of the COVID-19 pandemic. We continue to monitor the impacts of COVID-19 on our operations closely and this situation could change based on a significant number of factors that are not entirely within our control and are discussed in this and other sections of this Report. We do not expect there to be material changes to our assets on our balance sheet or our ability to timely account for those assets. Further, in connection with the preparation of this Report and the financial statements contained herein, we reviewed the potential impacts of the COVID-19 pandemic on goodwill and intangible assets and have determined there to be no material impact at this time. We have also reviewed the potential impacts on future risks to the business as it relates to collections, returns and other business-related items.

To date, travel restrictions and border closures have not materially impacted our ability to obtain inventory or manufacture or deliver products or services to customers. However, if such restrictions become more severe, they could negatively impact those activities in a way that would harm our business over the long term. Travel restrictions impacting people can restrain our ability to assist our customers and distributors as well as impact our ability to develop new distribution channels, but at present we do not expect these restrictions on personal travel to be material to our business operations or financial results. We have taken steps to restrain and monitor our operating expenses and therefore we do not expect any such impacts to materially change the relationship between costs and revenues.

Like most companies, we have taken a range of actions with respect to how we operate to assure we comply with government restrictions and guidelines as well as best practices to protect the health and well-being of our employees and our ability to continue operating our business effectively. To date, we have been able to operate our business effectively using these measures and to maintain internal controls as documented and posted. We also have not experienced challenges in maintaining business continuity and do not expect to incur material expenditures to do so. However, the impacts of COVID-19 and efforts to mitigate the same have remained unpredictable and it remains possible that challenges may arise in the future.

The actions we have taken so far during the pandemic include, but are not limited to:

- Requiring all employees who can work from home to work from home;
- Increasing our IT networking capability to best assure employees can work effectively outside the office;
- For employees who must perform essential functions in one of our offices:
 - Having employees maintain a distance of at least six feet from other employees whenever possible;
 - Having employees work in dedicated shifts to lower the risk all employees who perform similar tasks might become infected by COVID-19;
 - Having employees stay segregated from other employees in the office with whom they require no interaction; and
 - Requiring employees to wear masks while they are in the office whenever possible.

On each of May 6 and May 8, 2020, we and LogicMark, LLC, our wholly-owned subsidiary, received loans (the “Loans”) from Bank of America, NA in the aggregate amount of \$346,390, pursuant to the PPP under the CARES Act. Under the terms of the PPP, PPP loans and accrued interest are forgivable after twenty-four weeks as long as the borrower uses the loan proceeds for eligible purposes, including payroll, benefits, rent and utilities, and maintains its payroll levels. The amount of loan forgiveness will be reduced if the borrower terminates employees or reduces salaries during the eight-week period. As of December 31, 2020, we have used the entirety of the loan proceeds for purposes consistent with the PPP and have not taken any actions that we believe will reduce the amount eligible for forgiveness. As such, the Company believes that the entire amount of the PPP loans will be eligible for forgiveness. However, to the extent any portion of the loan is determined to be ineligible for forgiveness, such unforgiven portion of the loan is payable over 2-5 years at an interest rate of 1%, with a deferral of payments for the first six months.

Our revenue for the three months ended December 31, 2020 declined significantly year over year due to the conditions noted. In April 2020, we implemented a COVID-19 mitigation plan designed to further reduce our operating expenses. Actions taken to date include work hour and salary reductions for senior management. These cost reductions are in addition to the significant restructuring actions we initiated in the fourth quarter of 2019. Based on our current cash position, our projected cash flow from operations and our cost reduction and cost containment efforts to date, we believe that we will have sufficient capital to sustain operations for a period of one year following the date of this filing. If business interruptions resulting from COVID-19 were to be prolonged or expanded in scope, our business, financial condition, results of operations and cash flows would be negatively impacted. We will continue to actively monitor this situation and will implement actions necessary to maintain business continuity.

Business Outlook

Our future financial performance depends, in large part, on conditions in the markets that we serve and on conditions in the U.S. During the year ended December 31, 2020, the impact of the COVID-19 pandemic significantly affected our results of operations as we experienced meaningful reductions in customer demand for our products and services. During the year ended December 31, 2020, the Company continued to identify and assess risks and modify operating plans following guidance from national, state and local governmental and health authorities. During the year ended December 31, 2020, although we continued to experience minimal supply chain disruption, customer demand was noticeably weaker. In addition, during the year ended December 31, 2020, we took several proactive measures to protect the Company’s balance sheet and strengthen its liquidity position, including: making additional cost reductions through executive wage rollbacks, discretionary spending reductions, corporate travel suspension, and service provider and other expense reductions as well as leveraging government work programs and tax deferrals and extensions to the extent they do not incur interest rate fees or penalties.

The COVID-19 pandemic and its effects on the economic environment remain extremely fluid and it is difficult to predict with certainty what unforeseen circumstances may develop as we progress through the remainder of the year. As a result, we will continue to proceed cautiously by managing our cost structure and cash flows. In addition, we are rethinking our strategic plans to best position our company to adapt to these changing conditions and to continue to serve our customers and community.

COVID-19 Considerations

The Company's priorities during the COVID-19 pandemic are protecting the health and safety of our employees and rethinking and reevaluating our operational and strategic plans to overcome the current challenges. In the year ended December 31, 2020, the COVID-19 pandemic had a material net impact on our consolidated operating results. In the future, the pandemic may cause continued or prolonged reduced demand for our products or services if, for example, the pandemic results in a recessionary economic environment to the markets that we serve; however since the products and services that we offer are essential to the daily lives of our current and future customers, we believe that over the long term, there will continue to be strong demand for our products and services as we rethink our distribution paradigm in the post-COVID-19 environment.

Our ability to operate without significant negative operational impact from the COVID-19 pandemic will in part depend on our ability to protect our employees and our supply chain. The Company has endeavored to follow the recommended actions of government and health authorities to protect our employees, with particular measures in place for those working in our customer facilities. For the twelve months ended December 31, 2020, we maintained the consistency of our operations during the onset of the COVID-19 pandemic. We will continue to innovate in managing our business. However, the uncertainty resulting from the pandemic could result in an unforeseen disruption to our workforce and supply chain as well as impact the purchasing decisions by some of our larger customers.

During 2020, the pandemic has not materially impacted the Company's liquidity position as of such date, however, during the year ended December 31, 2020, we failed to generate operating cash flow as we had in the first quarter of 2020 prior to the COVID-19 pandemic. We currently expect to maintain access to the capital markets should the effects of the pandemic on our operations continue. We have not observed any material impairments of our assets or a significant change in the fair value of our assets due to the COVID-19 pandemic.

Impairment of Goodwill and Indefinite-Lived Intangible Assets

The Company conducts an annual impairment review of goodwill and indefinite-lived intangible assets each year, unless events occur which trigger the need for an interim impairment review. During the first quarter of 2020, the Company considered the economic impact of the COVID-19 pandemic; however because we were in the early stages of the pandemic, we elected not to undertake a formal review of our assets for impairment purposes.

During the third quarter of 2020, the Company, as part of its annual evaluation of goodwill, considered the economic impact of the COVID-19 pandemic on the Company's operations and determined there was no triggering event, particularly inasmuch as the Company's sales began to recover during the second half of the third quarter of 2020. The Company continues to monitor the impact of the pandemic on its business and anticipates continuing to review guidance issued by the Securities and Exchange Commission (the "SEC") as well as governing audit bodies to guide its future reviews and posture.

Impact of Inflation

We believe that our business has not been affected to a significant degree by inflationary trends during the past three (3) years. However, inflation is still a factor in the worldwide economy and may increase the cost of purchasing products from our contract manufacturers in Asia, as well as the cost of certain raw materials, component parts and labor used in the production of our products. It also may increase our operating expenses, manufacturing overhead expenses and the cost to acquire or replace fixed assets. We have generally been able to maintain or improve our profit margins through productivity and efficiency improvements, cost reduction programs and to a lesser extent, price increases, and we expect to be able to do the same during 2021. As such, we do not believe that inflation will have a significant impact on our business during 2021.

Financings

December 2020 Offerings

On December 18, 2020, the Company closed a registered direct offering pursuant to which the Company issued (i) an aggregate of 1,515,151 shares of Series D Preferred Stock, convertible into an aggregate of up to 3,030,303 shares of common stock, (ii) common stock purchase warrants to purchase up to an aggregate of 1,000,000 shares of common stock at an exercise price of \$0.49 per share, subject to customary adjustments thereunder, which were exercisable immediately upon issuance and have a term of five years, and (iii) common stock purchase warrants to purchase up to an aggregate of 5,060,606 shares of common stock at an exercise price of \$0.49 per share with a term of five and one-half (5.5) years first exercisable six (6) months after issuance, subject to customary adjustments thereunder, for gross proceeds of \$2,000,000, before deducting any offering expenses. The Company is using the net proceeds from this offering for working capital, new product initiatives and other general corporate purposes. On December 21, 2020, 1,515,152 shares of Series D Preferred Stock were converted into 3,030,304 shares of common stock.

Modification to the Secured Term Loan

On November 16, 2020, the Company and CrowdOut Capital LLC, as administrative agent, entered into the first amendment to the senior secured term loan. In connection with the first amendment, CrowdOut Capital LLC, as administrative agent, agreed to modify the financial ratios contained in the senior secured term retroactively and prospectively. Based on the senior secured term loan, as amended, the Company was in compliance with such covenants at December 31, 2020.

July 2020 Offerings

On July 14, 2020, the Company closed a registered direct offering of (i) an aggregate of 3,778,513 shares of the Company's common stock, par value \$0.0001 per share; (ii) pre-funded warrants to purchase up to an aggregate of 734,965 shares of Common Stock at an exercise price of \$0.01 per share, subject to customary adjustments thereunder; (iii) registered warrants, with a term of five (5) years exercisable immediately upon issuance, to purchase an aggregate of up to 1,579,718 shares of Common Stock (at an exercise price of \$0.50 per share, subject to customary adjustments thereunder; and (iv) unregistered warrants, with a term of five and one-half (5.5) years first exercisable six (6) months after issuance, to purchase an aggregate of up to 3,750,000 shares of Common Stock at an exercise price of \$0.65 per share, subject to customary adjustments thereunder, for gross proceeds of \$1,864,528, before deducting any offering expenses. The Company will continue to use the net proceeds from this Offering for working capital, new product initiatives and other general corporate purposes.

On July 28, 2020, the Company received proceeds of \$7,350 in connection with the exercise of 734,965 pre-funded warrants to purchase common stock at an exercise price of \$0.01 per share.

Off Balance Sheet Arrangements

We do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not have any undisclosed borrowings or debt, and we have not entered into any synthetic leases. We are, therefore, not materially exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.

Critical Accounting Policies

The following discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in conformity with accounting principles generally accepted in the U.S. Certain accounting policies and estimates are particularly important to the understanding of our financial position and results of operations and require the application of significant judgment by our management or can be materially affected by changes from period to period in economic factors or conditions that are outside of our control. As a result, they are subject to an inherent degree of uncertainty. In applying these policies, our management uses their judgment to determine the appropriate assumptions to be used in the determination of certain estimates. Those estimates are based on our historical operations, our future business plans and projected financial results, our observance of trends in the industry and information available from other outside sources, as appropriate. Please see Note 3 to our consolidated financial statements for a more complete description of our significant accounting policies.

Basis of Presentation. The Company's consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S.

Revenue Recognition

The Company's revenues consist of product sales to either end customers or to distributors. The Company's revenues are derived from contracts with customers, which are in most cases customer purchase orders. For each contract, the promise to transfer the control of the products, each of which is individually distinct, is considered to be the identified performance obligation. As part of the consideration promised in each contract, the Company evaluates the customer's credit risk. Our contracts do not have any financing components, as payment terms are generally due net 30 days after delivery. The Company's products are almost always sold at fixed prices. In determining the transaction price, we evaluate whether the price is subject to any refunds, due to product returns or adjustments due to volume discounts, rebates or price concessions to determine the net consideration we expect to be entitled to. The Company's sales are recognized at a point-in-time under the core principle of recognizing revenue when control transfers to the customer, which generally occurs when the Company ships or delivers the product from its fulfillment center to our customers, when our customers accepts and has legal title of the goods, and the Company has a present right to payment for such goods. Based on the respective contract terms, most of our contracts revenues are recognized either (i) upon shipment based on free on board ("FOB") shipping point, or (ii) when the product arrives at its destination. For the years ended December 31, 2020 and 2019, none of our sales were recognized over time.

Warranty Costs. The Company's product is sold with a one-year warranty against defects in materials and workmanship under normal use. The Company accrues for the estimated costs associated with the one-year Wocket® warranty at the time revenue associated with the sale is recorded, and periodically updates its estimated warranty cost based on actual experience. Estimating warranty costs requires significant judgment. To date, warranty claims have been inconsequential and the Company estimates any such claims against sales made to date will be immaterial. Accordingly, no accrual for warranty costs has been recorded at December 31, 2020 and 2019.

Inventory. The Company performs regular reviews of inventory quantities on hand and evaluates the realizable value of its inventories. The Company will adjust the carrying value of the inventory as necessary with the estimated valuation reserves for excess, obsolete, and slow-moving inventory by comparing the individual inventory parts to forecasted product demand or production requirements. The inventory is valued at the lower of cost or net realizable value with cost determined using the first-in, first-out method.

Convertible Instruments. The Company applies the accounting standards for derivatives and hedging and for distinguishing liabilities from equity when accounting for hybrid contracts that feature conversion options. The accounting standards require companies to bifurcate conversion options from their host instruments and account for them as free standing derivative financial instruments according to certain criteria. The criteria includes circumstances in which (i) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (ii) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (iii) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument. The derivative is subsequently marked to market at each reporting date based on current fair value, with the changes in fair value reported in the results of operations.

Conversion options that contain variable settlement features such as provisions to adjust the conversion price upon subsequent issuances of equity or equity linked securities at exercise prices more favorable than that featured in the hybrid contract generally result in their bifurcation from the host instrument.

The Company accounts for convertible debt instruments when the Company has determined that the embedded conversion options should not be bifurcated from their host instruments in accordance with ASC 470-20 "Debt with Conversion and Other Options". The Company records, when necessary, discounts to convertible notes for the intrinsic value of conversion options embedded in debt instruments based upon the differences between the fair value of the underlying Common Stock at the commitment date of the note transaction and the effective conversion price embedded in the note. Debt discounts under these arrangements are amortized over the term of the related debt.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

We are not required to provide the information required by this Item 7A as we are a smaller reporting company.

Item 8. Financial Statements and Supplementary Data.

The Company's consolidated financial statements, notes to the consolidated financial statements and the respective reports of the Company's independent registered accountants required to be filed in response to this Item 8 begin on page F-1 of this Report.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures**Evaluation of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we are required to perform an evaluation of our disclosure controls and procedures, as such term is defined in Rule 13a-15(e) under the Exchange Act, as of December 31, 2020. Management has not completed such evaluation and, as such, has concluded that our disclosure controls and procedures were not effective to provide reasonable assurance that information required to be disclosed by us in reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures. As a result of the material weakness in internal controls over financial reporting described below, we concluded that our disclosure controls and procedures as of December 31, 2020 were not effective.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we are required to conduct an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2020, based on the criteria set forth in the report entitled Internal Control-Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission (2013), known as COSO. Management has not completed an evaluation under the criteria set forth in Internal Control-Integrated Framework, and as such our management concluded that our internal control over financial reporting was not effective as of December 31, 2020.

During the closing procedures associated with its 2020 audit, management determined the cause of an employee theft event involving a non-material amount of money for the fiscal year ended December 31, 2020 was due to a material weakness in its controls and procedures, specifically as a result of the lack of segregation of duties due to the limited number of employees performing certain administrative functions. In order to remediate the material weakness and further strengthen the controls, management initiated or enhanced certain receivables handling procedures by strictly controlling access to incoming mail and physical checks received by the Company.

As of December 31, 2020, we have identified certain matters that constituted a material weakness in our internal controls over financial reporting. Specifically, we have difficulty in accounting for complex accounting transactions due to an insufficient number of accounting personnel with experience in that area, limited segregation of duties within our accounting and financial reporting functions, and have not completed an effective assessment of the Company's internal controls over financial reporting based on the 2013 COSO framework. Management has concluded that, during the period covered by this Report, our internal controls and procedures were not effective.

This Report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm as we are neither an accelerated filer nor a large accelerated filer and are not required to provide the report.

Limitations of the Effectiveness of Internal Control

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of simple errors. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Changes in Internal Control over Financial Reporting

There were no changes in the Company's internal control over financial reporting in the Company's fourth quarter of the fiscal year ended December 31, 2020 covered by this Report that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Our executive officers and directors and their ages and positions are as follows:

Name	Age	Position	Date First Elected or Appointed
Vincent S. Miceli	63	Chairman, Chief Executive Officer, Chief Financial Officer and Director	September 29, 2014
David Tunnell (1)	55	Vice President and Chief Technology Officer	June 25, 2012
Major General David R. Gust, USA, Ret	78	Director	June 25, 2012
Michael J. D'Almada-Remedios, PhD	58	Director	September 26, 2013
Daniel P. Sharkey	64	Director	June 23, 2014
Robert A. Curtis, Pharm.D.	66	Director	July 25, 2018

(1) Mr. Tunnell's employment with the Company, including his position as Vice President and Chief Technology Officer, was terminated effective as of April 12, 2021.

Vincent S. Miceli, Chief Executive Officer, Chief Financial Officer, President and Director

Vincent S. Miceli, has served as President, Chief Executive Officer and a director of the Company since September 17, 2019, as a Vice President and Chief Financial Officer of the Company since September 29, 2014 and as Chairman of the Board since March 31, 2020. Mr. Miceli has over 30 years of experience in executive, financial and operational management for companies based primarily in the United States. Prior to joining the Company, Mr. Miceli was Vice-President and Chief Financial Officer/Treasurer of Panolam Industries International, Inc., a privately held company which primarily designs, manufactures, and distributes decorative and industrial laminates, from May 2006 to mid-December 2013. Prior to that, Mr. Miceli was the Chief Financial Officer and Corporate Controller of Opticare Health Systems, Inc., a company that provides integrated eye care services from 2004 to 2006. Prior to 2004, Mr. Miceli held senior accounting positions at Amphenol Corporation and United Technologies, Inc. Mr. Miceli holds a BS degree in accounting from Quinnipiac College, an MBA, with a concentration in Finance, from the University of Hartford and he is an affiliate member of both the AICPA and Connecticut Society of Certified Public Accountants.

Mr. Miceli brings a wealth of public company experience and knowledge of the business of the Company, having served as its Chief Financial Officer for the previous five years. He also brings an operator's perspective to the Board, which is an important contribution.

Major General David R. Gust, USA, Director

Major General David R. Gust, USA, Ret., has served as a director of the Company since June 25, 2012. General Gust presently does consulting work for his own company, David R. Gust & Associates, LLC. Between April 2007 and May 2009, General Gust was the President of USfalcon, a privately-held company working with the U.S. Defense sector, primarily in information technology. Previously, General Gust had served as the Manager for Federal Telecommunications for Bechtel National, Inc. from November 2004 to March 2007. Prior to that, he was the President and Chief Executive Officer of Technical and Management Services Corporation from 2000 to 2004. General Gust retired from the United States Army in 2000 after completing a career of 34 years of service.

His General Officer assignments included the Program Executive Officer, Communications Systems (PEO-Comm Systems), Program Executive Officer, Intelligence, Electronic Warfare and Sensors (PEO-IEW&S) and at Army Materiel Command, as Deputy Chief of Staff for Research, Development and Acquisition (DCSRDA).

His final assignment at the Army Materiel Command included serving as the Chairman of the Source Selection Advisory Council for the Tactical Unmanned Aerial Vehicle procurement and supervising preparation of the acquisition procurement package for the Stryker combat vehicle. General Gust received his B.S. in Electrical Engineering from the University of Denver and Master's Degrees in Systems Management and National Security and Strategy from the University of Southern California and the United States Naval War College, respectively.

General Gust brings to our board of directors valuable business expertise, particularly expertise in defense and homeland security market segments. Due to his significant experience as a director of publicly held companies and his substantial experience gained as a member of the US Armed Services. He has also served as an Outside Director on two other boards of directors. His contributions to the Company are due to his significant experience as a former CEO, Company President and director of publicly held companies and his substantial experience gained as a member of the US Armed Services.

Michael J. d'Almada-Remedios, PhD, Director

Michael J. D'Almada-Remedios, PhD, has served as a director of the Company since September 26, 2013. Dr. D'Almada-Remedios' background includes a successful track record for product innovation and development, outsourcing, global platform integration, massive-scale/hyper-growth operations, and building/developing teams from 50 to over 500 people. His key accomplishments at each company consistently show impressive gains in sales, profitability and global expansion into new markets.

Dr. D'Almada-Remedios has served as the Chief Technology Officer at Onriva and Alinor Inc. travel and Fin Tech marketplaces since 2020. From 2018 to 2020 he was the President of On Demand iCars, Inc, and Limos.com, a leading global professional transportation network company. From 2014 to 2018 he was the Chief Executive Officer of Flye Inc., a Fin Tech and IoT subsidiary of World Ventures Holdings, LLC, where he was also the Chief Technology Officer. In 2014, Dr. D'Almada-Remedios was the Chief Technology Officer of Swarm-Mobile, a software company. Between January 2011 and September 2013, Dr. D'Almada-Remedios was the Chief Information Officer for Arbonne International, a billion-dollar global cosmetics company. From February 2009 to December 2010, he was a Vice-President at Expedia, Inc. and was responsible for all technologies, product development and technical operations for hotels.com. Prior to February 2009, Dr. D'Almada-Remedios was the Chief Technology Officer for Realtor.com and Shopping.com, a subsidiary of eBay, Inc. At eBay he was a member of the eBay Inc. Technology Board for eBay, PayPal and Skype.

Earlier in his career, he was Global Chief Information Officer for the Travelocity group of companies and President and Chief Operating Officer of Bluelight.com, a subsidiary of Kmart. Dr. D'Almada-Remedios began his career as Vice President and Manager, Systems Integration & Development at Wells Fargo Bank, Consumer Banking Group.

Dr. D'Almada-Remedios has a PhD in Computer Control and Fluid Dynamics from the University of Nottingham in England and a B.Sc. in Physics and Computer Science from Kings College, University of London in England.

Dr. D'Almada-Remedios brings to our board of directors valuable business experience, particularly expertise in eCommerce technology and hyper growth companies.

Daniel P. Sharkey, Director

Daniel P. Sharkey has served as a director of the Company since June 23, 2014. Mr. Sharkey's background includes 36 years of broad experience with finance and business development for technology companies. His key accomplishments in his prior engagements focused on expanding technology companies into new marketplaces and plotting and implementing successful, long-term growth strategies. Between 2007 and 2014, Mr. Sharkey was Executive Vice President of Business Development for ATMI, a publicly traded semiconductor company. Mr. Sharkey originally joined ATMI as Chief Financial Officer in 1990. ATMI was purchased by Entegris in 2014.

From 1987 to 1990, before joining ATMI, Mr. Sharkey was Vice President of Finance for Adage, a publicly traded computer graphics manufacturer. From 1983 to 1987, Mr. Sharkey served as Corporate Controller for CGX Corporation, a venture capital backed, privately held, computer graphics manufacturer that merged with Adage in 1987. Mr. Sharkey was a Certified Public Accountant for KPMG from 1978 to 1983.

Mr. Sharkey earned a Bachelor of Arts degree in Economics and Accounting from the College of the Holy Cross in Worcester, Massachusetts. Mr. Sharkey brings valuable experience in finance and administration to our board of directors and serves as our financial expert.

Robert A. Curtis, Pharm.D., Director

Robert A. Curtis, Pharm.D., has served as a director of the Company since July 25, 2018. Dr. Curtis is a 35-year veteran in the biosciences industry. Dr. Curtis currently serves as a consultant to emerging technology companies. He recently served as the Executive Chairman and Director of the Trudeau Institute in Saranac Lake, New York and prior to that position he was Chief Executive Officer (CEO) of the Regional Technology Development Corporation, a non-profit organization in Woods Hole, Massachusetts, where he was responsible for identifying and commercializing technology from the Marine Biological Laboratory and the Woods Hole Oceanographic Institute. Dr. Curtis has been a founder and CEO of several companies, including HistoRx, Inc., a tissue proteomics company, Cape Aquaculture Technologies, Inc. which developed enhanced non-genetically modified fish, Lion Pharmaceuticals/Phoenix Drug Discovery LLC, a novel business model to develop and commercialize university-based technology from some of the leading biomedical institutions in the world. He assisted in the founding of Environmental Operating Solutions, Inc., which applied denitrification technology to wastewater with the company being sold in 2017. He was a co-founder of and CEO of CombiChem, Inc., which was purchased by Dupont Pharmaceuticals, and served as founding President and CEO of MetaMorphix, Inc., a joint venture between Genetics Institute, Inc. and The Johns Hopkins School of Medicine. Prior to these entrepreneurial endeavors, Dr. Curtis held senior management positions at Pharmacopeia, Inc., Cambridge Neuroscience, Inc., and Pfizer, Inc. He also served as Assistant Professor of Pharmacy Practice at the University of Illinois Medical Center in Chicago. He currently serves on the board or as an advisor to a number of private entrepreneurial companies and has served as judge for the annual MIT \$100K Business Plan Entrepreneurial Award. He is Chairman of Fundraising for the Falmouth Commodores of the Cape Cod Baseball League. Dr. Curtis holds a BS in Pharmacy from the Massachusetts College of Pharmacy, a Pharm.D. from the University of Missouri, and an MBA from Columbia University.

Dr. Curtis' significant experience in the biosciences, healthcare, and technology sector as well as his operational background gives him the qualifications and skills necessary to serve as a director of our Company.

Board Committees

Our board of directors currently has the following committees:

Audit Committee – Daniel Sharkey⁽¹⁾, Robert A. Curtis and David R. Gust

Compensation Committee – David R. Gust*, Daniel Sharkey, Robert A. Curtis

Corporate Governance and Nomination Committee – Robert A. Curtis*, David R. Gust, Daniel Sharkey

* — Indicates Committee Chair

(1) — Indicates Committee Financial Expert

Audit Committee

Our audit committee oversees our corporate accounting and financial reporting process. Among other matters, our audit committee:

- evaluates the independent registered public accounting firm's qualifications, independence and performance;
- determines the engagement of the independent registered public accounting firm;
- reviews and approves the scope of the annual audit and the audit fee;
- discusses with management and the independent registered public accounting firm the results of the annual audit and the review of our quarterly financial statements;
- approves the retention of the independent registered public accounting firm to perform any proposed permissible non-audit services;
- reviews our critical accounting policies and estimates; and
- reviews the audit committee charter and the committee's performance on an annual basis.

Our audit committee operates under a written charter adopted by our board of directors that satisfies the applicable standards of Nasdaq.

Our board of directors has determined that Mr. Sharkey is an Audit Committee Financial Expert as defined by the SEC rules and has the requisite financial sophistication as defined by Nasdaq rules and regulations.

Compensation Committee

Our compensation committee reviews and recommends policies relating to the compensation and benefits of our officers and employees. Our compensation committee reviews and approves corporate goals and objectives relevant to the compensation of our chief executive officer and other executive officers, evaluates the performance of these officers in light of those goals and objectives, and makes recommendations to our board of directors regarding compensation of these officers based on such evaluations. Our compensation committee administers the issuance of stock options and other awards under our stock plans. Our compensation committee reviews and evaluates, at least annually, the performance of our compensation committee. Our compensation committee operates under a written charter adopted by our board of directors that satisfies the applicable standards of Nasdaq.

Corporate Governance and Nomination Committee

Our corporate governance and nomination committee is responsible for, among other objectives, making recommendations to our board of directors regarding candidates for directorships; overseeing the evaluation of our board of directors; reviewing developments in corporate governance practices; developing a set of corporate governance guidelines; and reviewing and recommending changes to the charters of our other board committees. In addition, the corporate governance and nomination committee is responsible for overseeing our corporate governance guidelines and reporting and making recommendations to the board concerning corporate governance matters.

Involvement in Certain Legal Proceedings

To the best of our knowledge, none of our current directors or executive officers has, during the past ten years:

- been convicted in a criminal proceeding or been subject to a pending criminal proceeding (excluding traffic violations and other minor offenses);
- had any bankruptcy petition filed by or against the business or property of the person, or of any partnership, corporation or business association of which he was a general partner or executive officer, either at the time of the bankruptcy filing or within two years prior to that time;
- been subject to any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction or federal or state authority, permanently or temporarily enjoining, barring, suspending or otherwise limiting, his involvement in any type of business, securities, futures, commodities, investment, banking, savings and loan, or insurance activities, or to be associated with persons engaged in any such activity;
- been found by a court of competent jurisdiction in a civil action or by the SEC or the Commodity Futures Trading Commission to have violated a federal or state securities or commodities law, and the judgment has not been reversed, suspended, or vacated;
- been the subject of, or a party to, any federal or state judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated (not including any settlement of a civil proceeding among private litigants), relating to an alleged violation of any federal or state securities or commodities law or regulation, any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order, or any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity; or
- been the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member.

Except as set forth in our discussion below in “Certain Relationships and Related Transactions,” none of our directors or executive officers has been involved in any transactions with us or any of our directors, executive officers, affiliates or associates which are required to be disclosed pursuant to the rules and regulations of the SEC.

Family Relationships

There are no relationships between any of the officers or directors of the Company.

Director Nomination Procedures

There have been no material changes to the procedures by which security holders may recommend nominees to our board of directors.

Code of Ethics

Our board of directors has adopted a Code of Business Ethics and Conduct (the “Code of Conduct”) which constitutes a “code of ethics” as defined by applicable SEC rules. We require all employees, directors and officers, including our principal executive officer and principal financial officer to adhere to the Code of Conduct in addressing legal and ethical issues encountered in conducting their work. The Code of Conduct requires that these individuals avoid conflicts of interest, comply with all laws and other legal requirements, conduct business in an honest and ethical manner and otherwise act with integrity and in our best interest. The Code of Conduct contains additional provisions that apply specifically to our Chief Executive Officer, Chief Financial Officer and other finance department personnel with respect to full and accurate reporting. The Code of Conduct is available on our website at www.nxt-id.com. We will post any amendments to the Code of Conduct, as well as any waivers that are required to be disclosed by the rules of the SEC on such website. The information contained on or that may be obtained from our website is not, and shall not be deemed to be a part of this Report.

Delinquent Section 16(a) Reports

Under the securities laws of the United States, our directors, executive (and certain other) officers, and any persons holding ten percent or more of our Common Stock must report on their ownership of the Common Stock and any changes in that ownership to the SEC. Specific due dates for these reports have been established. During the fiscal year ended December 31, 2020, we believe the following reports listed in the table below were required to be filed by such persons pursuant to Section 16(a) and were not filed on a timely basis:

Name	Form	Description
Daniel P. Sharkey	4	One (1) transaction was not reported on a timely basis (upon the acquisition of shares of common stock that were received as compensation for the reporting person's service as a member of the Board of Directors).
Robert A. Curtis	4	One (1) transaction was not reported on a timely basis (upon the acquisition of shares of common stock that were received as compensation for the reporting person's service as a member of the Board of Directors).
David R. Gust	4	One (1) transaction was not reported on a timely basis (upon the acquisition of shares of common stock that were received as compensation for the reporting person's service as a member of the Board of Directors).
Michael J. D'Almada-Remedios	4	One (1) transaction was not reported on a timely basis (upon the acquisition of shares of common stock that were received as compensation for the reporting person's service as a member of the Board of Directors).

Item 11. Executive Compensation.

Summary Compensation Table for Fiscal Years 2020 and 2019

The following table sets forth all plan and non-plan compensation for the last two completed fiscal years paid to all individuals who served as the Company's principal executive officer or acted in a similar capacity and the Company's two other most highly compensated executive officers who were serving as executive officers at the end of the last completed fiscal year, as required by Item 402(m)(2) of Regulation S-K of the Securities Act. We refer to all of these individuals collectively as our "named executive officers."

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)(5)	Option Awards (\$)	Nonequity	Nonqualified	All	Total (\$)
						Incentive Plan Compensation (\$)	Deferred Compensation Earnings (\$)	Other Compensation (\$)(6)	
Gino M. Pereira, (1) Chief Executive Officer	2020	-	-	-	-	-	-	-	-
	2019	345,968	40,000	100,000	-	-	-	25,682	511,650
Vincent S. Miceli Chief Financial Officer (2)	2020	365,000	50,000	75,000	-	-	-	33,767	523,767
	2019	329,391	30,000	75,000	-	-	-	30,190	464,581
Michael J. Orlando, Chief Operating Officer (3)	2020	-	-	-	-	-	-	-	-
	2019	242,083	-	-	-	-	-	-	242,083
Stanley E. Washington Chief Revenue Officer (4)	2020	-	-	-	-	-	-	-	-
	2019	104,167	-	-	-	-	-	-	104,167

(1) Mr. Pereira resigned as an officer of the Company effective September 13, 2019.

(2) Mr. Miceli was appointed President and Chief Executive Officer of the Company upon Mr. Pereira's resignation.

(3) Mr. Orlando resigned as an executive officer of the Company effective September 10, 2019.

(4) Mr. Washington became an employee of the Company effective January 1, 2018 and he resigned as an officer of the Company effective May 31, 2019.

(5) The 2018 stock awards for Mr. Pereira, Mr. Miceli and Mr. Orlando vest over a three (3) year period from the date of grant. The 2019 stock awards for Mr. Pereira and Mr. Miceli vest over a two (2) year period from the date of grant. The unvested portion of the 2018 and 2019 stock awards for Mr. Pereira and Mr. Orlando were forfeited effective with their respective departure dates.

(6) Other compensation includes primarily employer-paid health insurance.

Employment Agreements

On January 8, 2021, we entered into an employment agreement (the “Employment Agreement”) with Vincent S. Miceli, our Chief Executive Officer and Chief Financial Officer, which became effective as of January 1, 2021 and continues through and until December 31, 2021 (the “Initial Term”). After the Initial Term, if Mr. Miceli has achieved the objectives for 2021 as reasonably set by the Board and Mr. Miceli, the term of the Employment Agreement automatically renews for an additional term through December 31, 2022, and any number of additional periods, upon terms mutually agreed to by us and Mr. Miceli (each a “Renewal Term”).

Pursuant to the Employment Agreement, Mr. Miceli will continue to receive an annual base salary of \$365,000, and in the event that the employment term is extended for any Renewal Term(s), Mr. Miceli is eligible to receive a cash bonus in an amount and on such terms as determined by the Board in its sole discretion. The Employment Agreement also provides that Mr. Miceli will receive a grant of 400,000 shares of Common Stock under our 2013 Long-Term Stock Incentive Plan (“LTIP”) or our 2017 Stock Incentive Plan (“2017 SIP”).

The Employment Agreement contains standard terms relating to termination of employment for cause, good reason, as well as standard provisions relating to Mr. Miceli’s rights receive unpaid salary through the date of termination, unpaid expenses, and accrued but unused vacation time in accordance with Company policy and all other payment, benefits or fringe benefits to which Mr. Miceli shall be entitled under the terms of any applicable compensation arrangement or benefit, equity or fringe benefit plan program or grant in the Employment Agreement.

A brief description of the LTIP and the 2017 SIP is contained in Note 10 of the Notes to the Consolidated Financial Statements.

Outstanding Equity Awards at 2020 Fiscal Year End

The following table provides information relating to the vested and unvested option and stock awards held by our named executive officers as of December 31, 2020. Each award to each named executive officer is shown separately, with a footnote describing the award’s vesting schedule.

Name	Option Awards					Stock Awards			
	Number of Securities Underlying Unexercised Options (# Exercisable)	Number of Securities Underlying Unexercised Option (# Unexercisable)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units Or Other Rights That Have Not Vested (\$)
Gino Pereira (1)	-	-	-	-	-	-	\$ -	-	\$ -
Vincent S. Miceli (2)	-	-	-	-	-	-	\$ -	100,000	\$ 160,000
Michael J. Orlando (3)	-	-	-	-	-	-	\$ -	-	\$ -
Stanley E. Washington (4)	-	-	-	-	-	-	\$ -	-	\$ -

- (1) Effective September 13, 2019, Mr. Pereira resigned as Chief Executive Officer and a director of the Company. Mr. Pereira’s unvested shares as of September 13, 2019 were forfeited upon his resignation.
- (2) The unvested stock awards will vest ratably in 2021 and 2022.
- (3) Effective September 10, 2019, Mr. Orlando resigned as Chief Operating Officer of the Company. Mr. Orlando’s unvested shares as of September 10, 2019 were forfeited upon his resignation.
- (4) All unvested stock awards vested prior to Mr. Washington’s resignation as on employee of the Company on May 31, 2019.

A brief description of the LTIP and the 2017 SIP, pursuant to which such awards were granted, is contained in Note 8 of the Notes to the Consolidated Financial Statements.

Director Compensation for Fiscal Year 2020

During 2020, each of our non-employee directors received \$30,000 in cash and \$40,000 in stock options for serving on our board of directors. Such compensation was paid in quarterly installments. The following table reflects all compensation awarded to and earned by the Company's directors for the fiscal year ended December 31, 2020. The fourth and final installment of the cash portion of compensation for 2020 was paid to our directors on January 4, 2021.

Name	Fees Earned (\$)	Stock Awards (\$)	Stock Option Awards (\$)(1)(2)(3)	Non-Equity Incentive Plan Compensation (\$)	Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)(5)	Total (\$)
Major General David R. Gust, USA, Ret. (1)	40,000	-	40,000	-	-	-	80,000
Michael J. D'Almada-Remedios, PhD (2)	40,000	-	40,000	-	-	-	80,000
Daniel P. Sharkey (3)	40,000	-	40,000	-	-	414	80,414
Robert A. Curtis, Pharm.D. (4)	40,000	-	40,000	-	-	193	80,193

- (1) Mr. Gust received \$40,000 in stock options to purchase 83,818 shares of common stock at an average price of approximately \$0.48 per share.
- (2) Dr. D'Almada-Remedios received \$40,000 in stock options to purchase 83,818 shares of common stock at an average price of approximately \$0.48 per share.
- (3) Mr. Sharkey received \$40,000 in stock options to purchase 83,818 shares of common stock at an average price of approximately \$0.48 per share.
- (4) Dr. Curtis received \$40,000 in stock options to purchase 83,818 shares of common stock at an average price of approximately \$0.48 per share.
- (5) The Company reimbursed Mr. Sharkey and Dr. Curtis for travel-related expenses.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The following table sets forth certain information regarding the beneficial ownership of our capital stock as of April 14, 2021 by (a) each person, or group of affiliated persons, who is known to us to own beneficially 5% or more of our outstanding equity securities; (b) each of our directors; (c) each of our named executive officers; and (d) all of our named executive officers and directors as a group. Except as otherwise indicated in the footnotes below, we believe, based on the information provided to us, that all persons listed below have sole voting power and investment power with respect to their shares of common stock or other equity securities that they beneficially own, subject to community property laws where applicable.

For purposes of this table, a person or group of persons is deemed to have “beneficial ownership” of any shares of common stock or other equity securities of the Company that such person has the right to acquire within sixty (60) days of April 14, 2021. For purposes of computing the percentage of outstanding shares of our common stock or other equity securities of the Company held by each person or group of persons named above, any shares that such person or persons has the right to acquire within sixty (60) days of April 14, 2021 is deemed to be outstanding, but is not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. The inclusion herein of any shares of common stock or other equity securities of the Company listed as beneficially owned does not constitute an admission of beneficial ownership. Unless otherwise identified, the address of our directors and executive officers is c/o Nxt-ID, Inc., 288 Christian Street, Hangar C 2nd Floor, Oxford, CT 06478.

Name and Address of Beneficial Owner	Shares Beneficially Owned				% Total Voting Power (2)
	Common Stock		Series C Preferred Stock		
	Shares	% (1)	Shares	%	
Non-Director or Officer 5% Stockholders:					
Giesecke+Devrient Mobile Security America, Inc. (3)	584,795	1.93	2,000	100	1.93(4)
Alpha Capital Anstalt (5)	4,682,510	8.78	—	—	4.39
Anson Investments Master Fund LP (6)	6,177,080	9.99	—	—	
Directors and Executive Officers:					
Vincent S. Miceli President, Chief Executive Officer, Chief Financial Officer and Director	577,517	1.08	—	—	1.08
David Tunnell (7) Chief Technology Officer	764,582	1.43	—	—	1.43
Major General David R. Gust, USA, Ret. Director (8)	350,341	*	—	—	*
Michael J. D’Almada-Remedios, PhD Director (9)	355,709	*	—	—	*
Daniel P. Sharkey Director (10)	345,329	*	—	—	*
Robert A. Curtis, Pharm.D. Director (11)	260,238	*	—	—	*
Directors and Executive Officers as a Group (6 persons)	2,653,716	4.95	—	—	4.95

* Less than 1%

- Based on 53,311,898 shares of common stock issued and outstanding as of April 14, 2021. Shares of common stock subject to options or warrants currently exercisable or exercisable within sixty (60) days are deemed outstanding for purposes of computing the percentage of the person holding such options or warrants, but are not deemed outstanding for purposes of computing the percentage of any other person.
- Percentage of total voting power represents voting power with respect to all shares of our common stock and Series C Preferred Stock, which have the same voting rights as our shares of common stock. The holders of our shares of common stock and our Series C Preferred Stock are each entitled to one vote per share.
- The address of Giesecke+Devrient Mobile Security America, Inc. (“G&D”) is 45925 Horseshoe Drive, Dulles, VA 20166.
- G&D is the sole holder of our Series C Preferred Stock and thus has 100% of the voting power of our outstanding shares of Series C Preferred Stock, which have the same voting rights as our shares of common stock (one vote per share). G&D’s percentage of total voting power, which includes both our common stock and Series C Preferred Stock, is 1.93 %.
- Beneficial ownership includes 2,337,744 shares of Common Stock and additional warrants exercisable into 2,344,766 shares of Common Stock, which warrants are subject to, as applicable, certain beneficial ownership limitations, which provide that a holder of such warrants will not have the right to exercise any portion thereof if such holder, together with its affiliates, would beneficially own in excess of 4.99% or 9.99%, as applicable, of the number of shares of Common Stock outstanding immediately after giving effect to such exercise, provided that upon at least 61 days’ prior notice to us, such holder may increase or decrease such limitation up to a maximum of 9.99% of the number of shares of Common Stock outstanding. The principal business address of Alpha Capital Anstalt is c/o Lettstrasse 32, FL-9490 Vaduz, Furstentums, Liechtenstein.
- Beneficial ownership includes warrants exercisable into 6,177,080 shares of Common Stock, which warrants are subject to, as applicable, certain beneficial ownership limitations, which provide that a holder of such warrants will not have the right to exercise any portion thereof if such holder, together with its affiliates, would beneficially own in excess of 4.99% or 9.99%, as applicable, of the number of shares of Common Stock outstanding immediately after giving effect to such exercise, provided that upon at least 61 days’ prior notice to us, such holder may increase or decrease such limitation up to a maximum of 9.99% of the number of shares of Common Stock outstanding. Anson Advisors Inc. (“AAI”) and Anson Funds Management LP (“AFM”, and together with AAI, “Anson”) are the co-investment advisers of Anson Investments Master Fund LP (“AIMF”). Anson holds voting and dispositive power over the securities held by AIMF. Bruce Winson is the managing member of Anson Management GP LLC, which is the general partner of AFM. Moez Kassam and Amin Nathoo are directors of AAI. Mr. Winson, Mr. Kassam and Mr. Nathoo each disclaim beneficial

ownership of these securities except to the extent of their pecuniary interest therein. The principal business address of the AIMF is Walkers Corporate Limited, Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008, Cayman Islands.

- (7) Mr. Tunnell's employment with the Company, including his position as Vice President and Chief Technology Officer, was terminated effective as of April 12, 2021.
- (8) Includes stock options to purchase 83,818 shares of Common Stock at an average exercise price of \$0.48 per share.
- (9) Includes stock options to purchase 83,818 shares of Common Stock at an average exercise price of \$0.48 per share.
- (10) Includes stock options to purchase 83,818 shares of Common Stock at an average exercise price of \$0.48 per share.
- (11) Includes stock options to purchase 83,818 shares of Common Stock at an average exercise price of \$0.48 per share.

Securities Authorized for Issuance under Equity Compensation Plans

Equity Compensation Plan Information as of December 31, 2020

Plan Category	Number of Securities to Be Issued upon Exercise of Outstanding Options, Warrants and Rights	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance under the Plan (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders (1)	-	\$ -	1,201,715
Equity compensation plans approved by security holders (2)	-	-	4,061,997
Equity compensation plans not approved by security holders	-	-	-
Total	-	\$ -	5,263,712

- (1) Represents the shares of common stock authorized for issuance under the LTIP, which was approved by the Company's stockholders on January 4, 2013. The maximum aggregate number of shares of common stock that may be issued under the LTIP, including stock options, stock awards, such as stock issued to our board of directors for serving on our board of directors, and stock appreciation rights, is limited to 10% of the shares of common stock outstanding on the first trading day of any fiscal year, or 1,201,715 shares of common stock for the fiscal year ending December 31, 2020.
- (2) Represents the shares of common stock authorized for issuance under the 2017 SIP, which was approved by the Company's stockholders on August 24, 2017. The maximum aggregate number of shares of common stock that may be issued under the 2017 SIP (including shares underlying options) is limited to 10% of the shares of common stock outstanding on the first trading day of any fiscal year, or 4,061,997 shares of common stock for the fiscal year ending December 31, 2020.
- (3) As of January 1, 2021.

Item 13. Certain Relationships and Related Transactions, and Director Independence

Transactions with Related Parties

Except compensation arrangements, since the past two fiscal years, there have been no transactions, whether directly or indirectly, between us and any of our officers, directors, beneficial owners of more than 5% of our outstanding Common Stock or their family members that exceeded the lesser of (i) \$120,000 or (ii) one percent (1%) of the average of our total assets at year end.

Our Audit Committee considers and approves or disapproves any related person transaction as required by Nasdaq regulations. Our Audit Committee only approves those related party transactions that are on terms comparable to, or more beneficial to us than, those that could be obtained in arm's length dealings with an unrelated third party.

Director Independence

As we are listed on the Nasdaq Capital Market, our determination of independence of directors is made using the definition of "independent director" contained in Rule 5605(a)(2) of the Marketplace Rules of Nasdaq (the "Nasdaq Rules"). Our board of directors affirmatively determined that Major General David R. Gust, Daniel P. Sharkey and Dr. Robert A. Curtis are "independent" directors, as that term is defined in the Nasdaq Rules.

Item 14. Principal Accounting Fees and Services.

Audit Fees

The Company engaged Marcum LLP as the Company's independent registered public accounting firm. The aggregate audit fees billed for professional services rendered for the review of our condensed consolidated financial statements for the first, second and third quarters ended March 31, 2020, June 30, 2020 and September 30, 2020, as well as the fees to be billed for the audit of our annual consolidated financial statements for the year ended December 31, 2020, are expected to be approximately \$165,000. The aggregate fees billed by Marcum LLP for 2019 audit services rendered, including the audit of our annual consolidated financial statements for the year ended December 31, 2019, the review of our 2019 interim condensed consolidated financial statements and professional services related to registration statements and proposed financing arrangements, were \$234,145.

Audit Related Fees

There were no fees for audit related services for the years ended December 31, 2020 and 2019.

Tax Fees

For the Company's fiscal years ended December 31, 2020 and 2019, Marcum LLP did not provide any professional services for tax compliance, tax advice, and tax planning.

All Other Fees

The Company did not incur any other fees related to services rendered by our principal accountants for the fiscal years ended December 31, 2020 and 2019.

Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Auditors

Our audit committee pre-approves all audit and non-audit services provided by the independent auditors prior to the engagement of the independent auditors with respect to such services. The chairman of our audit committee has been delegated the authority by such committee to pre-approve interim services by the independent auditors other than the annual audit. The chairman of our audit committee must report all such pre-approvals to the entire audit committee at the next committee meeting.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) The following documents are filed as part of this Report:

(1) Financial Statements:

The audited consolidated balance sheets of the Company as of December 31, 2020 and December 31, 2019, the related consolidated statements of operations, changes in stockholders' equity and cash flows for the years then ended, the footnotes thereto, and the respective report of Marcum LLP, an independent registered public accounting firm, are filed herewith.

(2) Financial Schedules:

None.

Financial statement schedules have been omitted because they are either not applicable or the required information is included in the consolidated financial statements or notes hereto.

(3) Exhibits:

The exhibits listed in the accompanying index to exhibits are filed or incorporated by reference as part of this Report.

(b) The following are exhibits to this Report and, if incorporated by reference, we have indicated the document previously filed with the SEC in which the exhibit was included.

Certain of the agreements filed as exhibits to this Report contain representations and warranties by the parties to the agreements that have been made solely for the benefit of such parties. These representations and warranties:

- may have been qualified by disclosures that were made to the other parties in connection with the negotiation of the agreements, which disclosures are not necessarily reflected in the agreements;
- may apply standards of materiality that differ from those of a reasonable investor; and
- were made only as of specified dates contained in the agreements and are subject to subsequent developments and changed circumstances.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date that these representations and warranties were made or at any other time. Investors should not rely on them as statements of fact.

Exhibit No.	Description of Exhibit
2.1	Agreement and Plan of Merger by and among Nxt-ID, Inc., Fit Merger Sub, Inc., Fit Pay, Inc. and Michael Orlando (18)
3.1(i)	Certificate of Incorporation, as amended (1)
3.1(i)(a)	Certificate of Amendment to Certificate of Incorporation (14)
3.1(i)(b)	Certificate of Designations of Series A Convertible Preferred Stock (10)
3.1(i)(c)	Amendment of Certificate of Designations of Series A Convertible Preferred Stock (12)
3.1(i)(d)	Second Certificate of Amendment of Designations of Series A Convertible Preferred Stock (13)
3.1(i)(e)	Certificate of Designations for Series B Convertible Preferred Stock (13)
3.1(i)(f)	Certificate of Designations for Series C Non-Convertible Preferred Stock (18)
3.1(i)(g)	Certificate of Designations for Series D Convertible Preferred Stock (28)
3.1(i)(h)	Amended and Restated Certificate of Designations for Series D Convertible Preferred Stock (28)
3.1(i)(i)	Form of Elimination of Amended and Restated Certificate of Designations for Series D Convertible Preferred Stock (29)
3.1(i)(j)	Certificate of Designations for Series E Convertible Preferred Stock (29)
3.1(ii)	By-laws (1)
4.1	Form of Warrant for January 2014 Offering (2)
4.2	Form of Agent Warrant for January 2014 Offering (2)
4.3	Form of Warrant for June 2014 and August 2014 Offerings (5)
4.4	Form of Warrant for September 2014 Offering (6)
4.5	Form of Underwriter Warrant for September 2014 Offering (6)
4.6	Form of Class A Warrant (7)
4.7	Form of Class B Warrant (7)
4.8	Form of Warrant for July 2015 Private Placement (8)
4.9	Form of Warrant for December 2015 Agreement with WorldVentures Holdings, LLC (9)
4.10	Form of Warrant for May 2016 Interest Purchase Agreement with LogicMark, LLC (11)
4.11	Form of Warrant for July 2016 Private Placement (13)
4.12	Form of Seller's Note for July 2016 LogicMark, LLC Acquisition (13)
4.13	Form of Warrant for November 2016 Agreement with LogicMark, LLC (16)
4.14	Form of November 2016 Exchange Note (16)
4.15	Form of Pre-Funded Warrant for July 2017 Public Offering (19)
4.16	Form of Purchase Warrant for July 2017 Private Placement (19)
4.17	Form of July 2017 Exchange Note (20)
4.18	Form of Warrant for July 2017 Exchange (20)
4.19	Form of Warrant for November 2017 Private Placement (21)
4.20	Form of Warrant to Sagard Credit Partners, LP (24)
4.21	Form of September 2018 New Warrant (26)
4.22	Form of Warrant Amendment and Exercise Agreement (26)
4.23	Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934 (27)
4.24	Form of Pre-Funded Warrant for July 2020 Private Placement (31)
4.25	Form of Registered Warrant for July 2020 Private Placement (31)
4.26	Form of Unregistered Warrant for July 2020 Private Placement (31)
4.27	Form of Registered Warrant for December 2020 Private Placement (28)
4.28	Form of Unregistered Warrant for December 2020 Private Placement (28)
4.29	Form of New Warrant (34)
4.30	Form of Series E Convertible Preferred Stock Certificate (29)
4.31	Form of Registered Warrant for February 2021 Private Placement (29)
4.32	Form of Unregistered Warrant for February 2021 Private Placement (29)
10.1†	2013 Long Term Incentive Plan (1)
10.2†	Forms of Agreement Under 2013 Long Term Incentive Plan (1)
10.3†	2017 Stock Incentive Plan (25)
10.4†	Employment Agreement Between Nxt-ID and Gino Pereira (3)
10.5†	Employment Agreement Between Nxt-ID and Michael J. Orlando (23)
10.6	License Agreement between 3D-ID, LLC and Genex Technologies (1)
10.7	Purchase Agreement between 3D-ID, LLC and Nxt-ID, Inc. (1)

Exhibit No.	Description of Exhibit
10.8††	Manufacturing agreement with Identita Technologies, Inc., dated January 18, 2013 (4)
10.9	Form of Warrant Purchase Agreement for July 2015 Private Placement (8)
10.10	Form of Securities Purchase Agreement for December 2015 Agreement with WorldVentures Holdings, LLC (9)
10.11	Form of Interest Purchase Agreement for May 2016 Agreement with LogicMark, LLC (11)
10.12	Form of First Amendment to Interest Purchase Agreement for May 2016 Agreement with LogicMark, LLC (12)
10.13	Form of Security Agreement for July 2016 Agreement with LogicMark, LLC (13)
10.14	Form of Loan and Security Agreement for July 2016 Agreement with ExWorks Capital Fund I, L.P. (13)
10.15	Form of Subordination Agreement for July 2016 Agreement with LogicMark, LLC (13)
10.16	Form of Securities Purchase Agreement for July 2016 Agreement with LogicMark, LLC (13)
10.17	Form of Registration Rights Agreement for July 2016 Agreement with LogicMark, LLC (13)
10.18	Form of Forbearance Agreement between Nxt-ID and LogicMark Investment Partners, LLC (15)
10.19	Form of Exchange Agreement for November 2016 Agreement with LogicMark, LLC (16)
10.20	Form of Intercreditor Agreement for November 2016 Agreement with LogicMark, LLC (16)
10.21	First Amendment to Forbearance Agreement for November 2016 Agreement with LogicMark, LLC (16)
10.22	Form of Letter Agreement with July 2016 Investors (17)
10.23	Form of Placement Agency Agreement for July 2017 Offering (19)
10.24	Form of Securities Purchase Agreement for July 2017 Offering (19)
10.25	Form of July 2017 Exchange Agreement (20)
10.26	Form of July 2017 Assignment and Assumption Agreement (20)
10.27	Form of Placement Agency Agreement for November 2017 Offering (21)
10.28	Form of Securities Purchase Agreement for November 2017 Offering (21)
10.29	Form of Placement Agency Agreement for December 2017 Offering (22)
10.30	Form of Securities Purchase Agreement for December 2017 Offering (22)
10.31	Senior Secured Credit Agreement, dated May 24, 2018, with Sagard Holdings Manager, LP (24)
10.32	Security Agreement, dated May 24, 2018, with Sagard Holdings Manager, LP (24)
10.33	Intellectual Property Security Agreement, dated May 24, 2018, with Sagard Holdings Manager, LP (24)
10.34	Pledge Agreement, dated May 24, 2018, with Sagard Holdings Manager, LP (24)
10.35	Guaranty, dated May 24, 2018, with Sagard Holdings Manager, LP (24)
10.36	Paycheck Protection Program Promissory Note and Agreement, dated May 1, 2020, by and between Bank of America, NA and LogicMark, LLC (30)
10.37	Paycheck Protection Program Promissory Note and Agreement, dated May 1, 2020, by and between Bank of America, NA and Nxt-ID, Inc. (30)
10.38	Form of Securities Purchase Agreement for July 2020 Offering (31)
10.39	LogicMark Senior Secured Credit Agreement, dated May 3, 2019, (32)
10.40	LogicMark, LLC Security Agreement, dated May 3, 2019 (32)
10.41	LogicMark, LLC Securities Pledge Agreement, dated May 3, 2019 (32)
10.42	LogicMark, LLC Intellectual Property Security Agreement, dated May 3, 2019 (32)
10.43	Guaranty, dated May 3, 2019 (32)
10.44	First Amendment to Senior Secured Credit Agreement, dated as of November 16, 2020 (33)
10.45	Form of Securities Purchase Agreement for December 2020 Offering (28)
10.46	Form of Warrant Amendment and Exercise Agreement, dated January 8, 2021 (34)
10.47†	Employment Agreement by and between the Company and Vincent S. Miceli, dated as of January 8, 2021 (35)
10.48	Form of Securities Purchase Agreement for February 2021 Offering (29)
10.49	Second Amendment to Senior Secured Credit Agreement, dated as of February 8, 2021 (36)
10.50*	Lease Agreement by and between LogicMark LLC and Moorman Properties, LLC
14.1	Code of Ethics (3)
21.1	List of Subsidiaries (27)
23.1*	Consent of Marcum LLP

Exhibit No.	Description of Exhibit
31.1*	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Schema
101.CAL	XBRL Taxonomy Calculation Linkbase
101.DEF	XBRL Taxonomy Definition Linkbase
101.LAB	XBRL Taxonomy Label Linkbase
101.PRE	XBRL Taxonomy Presentation Linkbase

In accordance with SEC Release 33-8238, Exhibits 32.1 and 32.2 are being furnished and not filed.

* Filed or furnished herewith, as applicable.

† Management contract or compensatory plan or arrangement.

†† Confidential treatment has been received for schedules A, C, and D to the agreement.

- (1) Filed as an Exhibit to the Company's Registration Statement on Form S-1 (File No. 333-184673) with the SEC on January 31, 2013.
- (2) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on January 17, 2014.
- (3) Filed as an Exhibit to the Company's Annual Report on Form 10-K with the SEC on February 25, 2014.
- (4) Filed as an Exhibit to the Company's Registration Statement on Form S-1/A (File No. 333-184673) with the SEC on March 25, 2013.
- (5) Filed as an Exhibit to the Company's Registration Statement on Form S-1 (File No. 333-197845) with the SEC on August 5, 2014.
- (6) Filed as Exhibit to the Company's Registration Statement on Form S-1 (File No. 333-197845) with the SEC on August 14, 2014.
- (7) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on April 24, 2015.
- (8) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on July 30, 2015.
- (9) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on January 4, 2016.
- (10) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on April 12, 2016.
- (11) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on May 20, 2016.
- (12) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on July 7, 2016.
- (13) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on July 27, 2016.
- (14) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on September 12, 2016.
- (15) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on September 26, 2016.
- (16) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on November 30, 2016.
- (17) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on February 10, 2017.
- (18) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on May 30, 2017.
- (19) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on July 10, 2017.
- (20) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on July 20, 2017.
- (21) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on November 9, 2017.
- (22) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on December 21, 2017.
- (23) Filed as an Exhibit to the Company's Annual Report on Form 10-K with the SEC on April 2, 2018.
- (24) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on May 30, 2018.
- (25) Filed as an Exhibit to the Company's Registration Statement on Form S-1 (File No. 333-226116) with the SEC on July 10, 2018.
- (26) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on September 20, 2018.
- (27) Filed as an Exhibit to the Company's Annual Report on Form 10-K with the SEC on March 30, 2020.
- (28) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on December 18, 2020.
- (29) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on February 1, 2021.
- (30) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on May 12, 2020.
- (31) Filed as an Exhibit to the Company's Current Report on Form 8-K/A with the SEC on July 13, 2020.
- (32) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on May 15, 2019.
- (33) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on November 16, 2020.
- (34) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on January 8, 2021.
- (35) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on January 14, 2021.
- (36) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on February 8, 2021.

Item 16. Form 10-K Summary

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Nxt-ID, Inc.

Date: April 15, 2021

By: /s/ Vincent S. Miceli
Vincent S. Miceli
President, Chief Executive Officer and
Chief Financial Officer
(Principal Executive Officer, Principal
Financial Officer and
Principal Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Date: April 15, 2021

By: /s/ Vincent S. Miceli
Vincent S. Miceli
President, Chief Executive Officer,
Chief Financial Officer and Director
(Principal Executive Officer,
Principal Financial Officer and
Principal Accounting Officer)

Date: April 15, 2021

By: /s/ Major General David R. Gust, USA, Ret.
Major General David R. Gust, USA, Ret.
Director

Date: April 15, 2021

By: /s/ Michael J. D'Almada- Remedios, PhD
Michael J. D'Almada-Remedios, PhD
Director

Date: April 15, 2021

By: /s/ Daniel P. Sharkey
Daniel P. Sharkey
Director

Date: April 15, 2021

By: /s/ Robert A. Curtis, Pharm D.
Robert A. Curtis, Pharm D.
Director

Nxt-ID, Inc. and Subsidiaries
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Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors of
Nxt-ID, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Nxt-ID, Inc. (the “Company”) as of December 31, 2020 and 2019, the related consolidated statements of operations, changes in stockholders’ equity and cash flows for each of the two years in the period ended December 31, 2020, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. We determined that there are no critical audit matters.

/s/ Marcum LLP

Marcum LLP

We have served as the Company’s auditor since 2016.

New York, NY
April 15, 2021

Nxt-ID, Inc. and Subsidiaries
CONSOLIDATED BALANCE SHEETS

Assets	December 31, 2020	December 31, 2019
Current Assets		
Cash	\$ 4,387,416	\$ 1,587,250
Restricted cash	150,130	150,130
Accounts receivable, net	133,719	38,526
Inventory, net	767,351	1,303,279
Prepaid expenses and other current assets	455,553	285,495
Total Current Assets	<u>5,894,169</u>	<u>3,364,680</u>
Property and equipment:		
Equipment	183,044	183,044
Furniture and fixtures	98,839	98,839
Tooling and molds	644,462	644,462
	<u>926,345</u>	<u>926,345</u>
Accumulated depreciation	(897,137)	(831,290)
Property and equipment, net	29,208	95,055
Right-of-use assets	306,786	108,508
Goodwill	15,479,662	15,479,662
Other intangible assets, net of amortization of \$3,366,105 and \$2,604,290, respectively	5,238,462	6,000,277
Total Assets	<u>\$ 26,948,287</u>	<u>\$ 25,048,182</u>
Liabilities, Series C Preferred Stock and Stockholders' Equity		
Current Liabilities		
Accounts payable	\$ 2,748,814	\$ 2,118,476
Accrued expenses	1,315,262	1,492,111
Short-term debt	346,390	-
Term loan facility - current	2,062,500	2,062,500
Total Current Liabilities	<u>6,472,966</u>	<u>5,673,087</u>
Term loan facility, net of debt discount of \$137,855 and \$244,070, respectively, and deferred debt issuance costs of \$713,119 and \$1,262,565, respectively	8,182,403	9,739,242
Other long-term liabilities	1,326,409	1,113,965
Total Liabilities	<u>15,981,778</u>	<u>16,526,294</u>
Commitments and Contingencies		
Series C Preferred Stock		
Series C Preferred Stock, par value \$0.0001 per share: 2,000 shares designated; 2,000 shares issued and outstanding as of December 31, 2020 and 2019, respectively	1,807,300	1,807,300
Stockholders' Equity		
Preferred Stock, par value \$0.0001 per share: 10,000,000 shares authorized		
Series A Preferred Stock, par value \$0.0001 per share: 3,125,000 shares designated; 0 shares issued and outstanding as of December 31, 2020 and 2019, respectively	-	-
Series B Preferred Stock, par value \$0.0001 per share: 4,500,000 shares designated; 0 shares issued and outstanding as of December 31, 2020 and 2019, respectively	-	-
Series D Preferred Stock, par value \$0.0001 per share: 1,515,151 shares designated; 0 shares issued and outstanding as of December 31, 2020 and 2019, respectively	-	-
Common Stock, par value \$0.0001 per share: 100,000,000 shares authorized; 40,619,974 and 30,048,854 shares issued and outstanding as of December 31, 2020 and 2019, respectively	4,062	3,005
Additional paid-in capital	74,583,144	68,515,674
Accumulated deficit	(65,427,997)	(61,804,091)
Total Stockholders' Equity	<u>9,159,209</u>	<u>6,714,588</u>
Total Liabilities, Series C Preferred Stock and Stockholders' Equity	<u>\$ 26,948,287</u>	<u>\$ 25,048,182</u>

The accompanying notes are an integral part of these consolidated financial statements.

Nxt-ID, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF OPERATIONS

	For the Years Ended December 31,	
	2020	2019
Revenues	\$ 11,442,803	\$ 17,137,301
Costs of goods sold	3,242,074	4,368,495
Gross Profit	<u>8,200,729</u>	<u>12,768,806</u>
Operating Expenses		
General and administrative	5,280,951	5,703,162
Selling and marketing	2,396,922	3,279,317
Research and development	1,108,934	1,208,536
Total Operating Expenses	<u>8,786,807</u>	<u>10,191,015</u>
Operating (Loss) Income	<u>(586,078)</u>	<u>2,577,791</u>
Other Income and (Expense)		
Interest expense	(2,254,020)	(3,020,012)
Change in fair value of contingent consideration	-	85,111
Loss on extinguishment of debt	-	(2,343,879)
Total Other Expense, Net	<u>(2,254,020)</u>	<u>(5,278,780)</u>
Loss before Income Taxes	(2,840,098)	(2,700,989)
Income Tax (Expense) Benefit	<u>(24,886)</u>	<u>332,571</u>
Loss from Continuing Operations	(2,864,984)	(2,368,418)
Discontinued Operations Net of Taxes:		
Loss from Discontinued Operations	-	(3,432,270)
Loss on sale of Discontinued Operations	-	(5,988,767)
Loss from Discontinued Operations	<u>-</u>	<u>(9,421,037)</u>
Net Loss	(2,864,984)	(11,789,455)
Preferred stock dividends, including deemed dividend on redeemable Series D convertible preferred stock	<u>(858,922)</u>	<u>(150,000)</u>
Net Loss applicable to Common Stockholders	<u>\$ (3,723,906)</u>	<u>\$ (11,939,455)</u>
Loss Per Share from Continuing Operations – Basic and Diluted	\$ (0.11)	\$ (0.09)
Loss Per Share from Discontinued Operations – Basic and Diluted	\$ -	\$ (0.33)
Net Loss Per Share - Basic and Diluted	<u>\$ (0.11)</u>	<u>\$ (0.42)</u>
Weighted Average Number of Common Shares Outstanding - Basic and Diluted	<u>32,589,539</u>	<u>28,717,499</u>

The accompanying notes are an integral part of these consolidated financial statements.

Nxt-ID, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
FOR THE YEARS ENDED DECEMBER 31, 2020 AND 2019

	<u>Preferred Stock</u>		<u>Common Stock</u>		<u>Additional</u>	<u>Accumulated</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>	<u>Capital</u>	<u>Deficit</u>	
Balance - January 1, 2019	-	\$ -	25,228,072	\$ 2,523	\$64,748,871	\$ (50,014,636)	\$ 14,736,758
Issuance of common stock for services			948,603	95	614,395	-	614,490
Issuance of common stock under the at-the-market program for cash, net of fees			1,113,827	111	1,298,931	-	1,299,042
Issuance of common stock and warrants for cash, net of fees			2,469,136	247	1,914,753	-	1,915,000
Shares issued in connection with the management incentive plan for 2017 and 2018			289,216	29	216,238	-	216,267
Fees incurred in connection with equity offerings			-	-	(127,514)	-	(127,514)
Net loss			-	-	-	(11,789,455)	(11,789,455)
Preferred stock dividend					(150,000)		(150,000)
Balance - December 31, 2019	-	-	30,048,854	3,005	68,515,674	(61,804,091)	6,714,588
Issuance of stock options for services			-	-	160,000	-	160,000
Issuance of Series D preferred stock, net	1,515,152	2,000,000	-	-	-	-	2,000,000
Conversion of Series D preferred stock to common stock	(1,515,152)	(2,000,000)	3,030,304	303	1,999,697	-	-
Deemed dividend related to beneficial conversion feature of Series D preferred stock			-	-	758,922	(758,922)	-
Issuance of common stock and warrants for cash			4,513,478	451	1,864,077	-	1,864,528
Exercise of common stock purchase warrants for cash			2,579,718	258	1,279,601	-	1,279,859
Shares issued in connection with the management incentive plan for 2017, 2018 and 2019			447,620	45	200,749	-	200,794
Fees incurred in connection with equity offerings			-	-	(95,576)	-	(95,576)
Net loss			-	-	-	(2,864,984)	(2,864,984)
Preferred stock dividends			-	-	(100,000)	-	(100,000)
Balance - December 31, 2020	-	\$ -	40,619,974	\$ 4,062	\$74,583,144	\$ (65,427,997)	\$ 9,159,209

The accompanying notes are an integral part of these consolidated financial statements.

Nxt-ID, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF CASH FLOWS

	For the Years Ended	
	December 31,	
	2020	2019
Cash Flows from Operating Activities		
Net loss	\$ (2,864,984)	\$ (11,789,455)
Loss from discontinued operations	-	(3,432,270)
Loss on sale of discontinued operations	-	(5,988,767)
Loss from continuing operations	(2,864,984)	(2,368,418)
Adjustments to reconcile net loss to net cash used in operating activities of continuing operations:		
Depreciation	65,847	74,092
Stock based compensation	160,000	607,705
Amortization of debt discount	106,215	217,362
Amortization of intangible assets	761,815	761,815
Change in fair value of contingent consideration	-	(85,111)
Loss on extinguishment of debt	-	2,343,879
Amortization of deferred debt issuance costs	549,446	656,393
Deferred taxes	-	(365,397)
Changes in operating assets and liabilities:		
Accounts receivable	(95,193)	208,497
Inventory	535,928	(432,766)
Prepaid expenses and other current assets	(170,058)	68,454
Accounts payable	658,245	787,379
Accrued expenses	(120,220)	(233,762)
Total Adjustments	2,452,025	4,608,540
Net Cash (Used in) Provided by Operating Activities of Continuing Operations	(412,959)	2,240,122
Cash flows from Investing Activities		
Pay down of contingent consideration	-	(181,065)
Net proceeds received from sale of discontinued operations	-	2,955,170
Purchase of equipment	-	(23,791)
Net Cash Provided by Investing Activities of Continuing Operations	-	2,750,314
Cash flows from Financing Activities		
Proceeds from exercise of common stock warrants	1,279,859	-
Pay down of short-term debt	-	(638,881)
Proceeds received in connection with issuance of common stock and warrants, net	1,864,528	3,214,042
Repayment of term debt with Sagard Capital	-	(16,000,000)
Proceeds received in connection with issuance of Series D preferred stock, net	2,000,000	-
Term loan borrowings, net of deferred debt issue costs	-	14,670,579
Term loan repayment	(2,212,500)	(3,191,623)
Proceeds from PPP loan	346,390	-
Fees paid in connection with equity offerings	(65,152)	(55,546)
Net Cash Provided by (Used in) Financing Activities of Continuing Operations	3,213,125	(2,001,429)
Net Increase in Cash and Restricted Cash from Continuing Operations	2,800,166	2,989,007
Cash Flows from Discontinued Operations:		
Cash used by operating activities of discontinued operations	-	(2,844,419)
Cash used in investing activities of discontinued operations	-	(21,849)
Net Cash Used by Discontinued Operations	-	(2,866,268)
Net Increase (Decrease) in Cash and Restricted Cash	2,800,166	122,739
Cash and Restricted Cash - Beginning of Year	1,737,380	1,614,641
Cash and Restricted Cash - End of Year	\$ 4,537,546	\$ 1,737,380
Supplemental Disclosures of Cash Flow Information:		
Cash paid during the periods for:		
Interest	\$ 1,619,151	\$ 2,013,618
Taxes	\$ 10,014	\$ 11,359
Non-cash investing and financing activities:		
Accrued fees incurred in connection with equity offerings	\$ 30,424	\$ 71,968
Common stock issued in connection with management incentive plans	\$ 200,794	\$ 216,267
Issuance of common stock in connection with conversion of Series D preferred stock	\$ 2,000,000	\$ -
Accrued Series C preferred stock dividends	\$ 25,000	\$ 25,000

The accompanying notes are an integral part of these consolidated financial statements.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 - ORGANIZATION AND PRINCIPAL BUSINESS ACTIVITIES

Nxt-ID, Inc. (“Nxt-ID” or the “Company”) was incorporated in the State of Delaware on February 8, 2012. The Company is a security technology company and operates its business in one segment – hardware and software security systems and applications. The Company is engaged in the development of proprietary products and solutions that serve multiple end markets, including the security, healthcare, financial technology and the Internet of Things (“IoT”) markets. The Company evaluates the performance of its business on, among other things, profit and loss from operations. With extensive experience in access control, biometric and behavior-metric identity verification, security and privacy, encryption and data protection, payments, miniaturization, and sensor technologies, the Company develops and markets solutions for payment, IoT and healthcare applications.

The Company’s wholly-owned subsidiary, LogicMark, manufactures and distributes non-monitored and monitored personal emergency response systems sold through the United States Department of Veterans Affairs, healthcare durable medical equipment dealers and distributors and monitored security dealers and distributors.

Between 2017 and 2019, the Company also operated a payment credential management business through its Fit-Pay subsidiary. With the approval of the Company’s board of directors, and upon similar terms and conditions to those set forth in that loan agreement, the Company entered into a non-binding letter of intent for a potential sale of its Fit Pay subsidiary, excluding certain assets on August 6, 2019. In connection with the letter of intent, the purchaser advanced \$500,000 of non-interest bearing working capital for Fit Pay. On September 9, 2019, the Company completed the sale of its Fit Pay subsidiary to Garmin International, Inc. for \$3.32 million in cash (See Note 4).

NOTE 2 - LIQUIDITY AND MANAGEMENT PLANS

The Company generated an operating loss of \$586,078 and a net loss of \$2,864,984 for the year ended December 31, 2020. As of December 31, 2020, the Company had cash and stockholders’ equity of \$4,387,416 and \$9,159,209, respectively. At December 31, 2020, the Company had a working capital deficiency of \$578,797. During the year ended December 31, 2020, the Company received net proceeds of \$5,144,387 from the issuance of common stock and warrants, the issuance of Series D preferred stock and warrants and the exercise of common stock purchase warrants.

Given the Company’s cash position at December 31, 2020 and its projected cash flow from operations, the Company believes that it will have sufficient capital to sustain operations for a period of one year following the date of this filing. The Company may also raise funds through equity or debt offerings to accelerate the execution of its long-term strategic plan to develop and commercialize its core products and to fulfill its product development commitments.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

USE OF ESTIMATES IN THE FINANCIAL STATEMENTS

The preparation of consolidated financial statements in conformity with generally accepted accounting principles in the United States (“U.S. GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. The Company’s management evaluates these significant estimates and assumptions, including those related to the fair value of acquired assets and liabilities, stock based compensation, income taxes, allowance for doubtful accounts, long-lived assets, and inventories, and other matters that affect the consolidated financial statements and disclosures. Actual results could differ from those estimates.

PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of Nxt-ID and its wholly-owned subsidiaries. Intercompany balances and transactions have been eliminated in consolidation.

CASH

The Company considers all highly liquid securities with an original maturity date of three months or less when purchased to be cash equivalents. Due to their short-term nature, cash equivalents are carried at cost, which approximates fair value. At December 31, 2020 and 2019, the Company had no cash equivalents.

RESTRICTED CASH

At December 31, 2020 and 2019, the Company had restricted cash of \$150,130 and \$150,130, respectively. Restricted cash includes amounts held back by the Company’s third party credit card processor for potential customer refunds, claims and disputes. Cash and restricted cash, as presented on the consolidated statements of cash flows, consists of \$4,387,416 and \$150,130 as of December 31, 2020, respectively, and \$1,587,250 and \$150,130 as of December 31, 2019.

CONCENTRATIONS OF CREDIT RISK

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash. The Company maintains its cash balances in large well-established financial institutions located in the United States. At times, the Company’s cash balances may be uninsured or in deposit accounts that exceed the Federal Deposit Insurance Corporation (“FDIC”) insurance limits.

REVENUE RECOGNITION

The Company’s revenues consist of product sales to either end customers or to distributors. The Company’s revenues are derived from contracts with customers, which are in most cases customer purchase orders. For each contract, the promise to transfer the control of the products, each of which is individually distinct, is considered to be the identified performance obligation. As part of the consideration promised in each contract, the Company evaluates the customer’s credit risk. Our contracts do not have any financing components, as payment terms are generally due net 30 days after delivery. The Company’s products are almost always sold at fixed prices. In determining the transaction price, we evaluate whether the price is subject to any refunds, due to product returns or adjustments due to volume discounts, rebates or price concessions to determine the net consideration we expect to be entitled to. The Company’s sales are recognized at a point-in-time under the core principle of recognizing revenue when control transfers to the customer, which generally occurs when the Company ships or delivers the product from its fulfillment center to our customers, when our customer accepts and has legal title of the goods, and the Company has a present right to payment for such goods. Based on the respective contract terms, most of our contracts revenues are recognized either (i) upon shipment based on free on board (“FOB”) shipping point, or (ii) when the product arrives at its destination. For the years ended December 31, 2020 and 2019, none of our sales were recognized over time.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Sales to Distributors and Resellers

Sales to certain distributors and resellers are made under terms allowing limited rights of return of the Company's products held in their inventory or upon sale to their end customers. The Company maintains a reserve for unprocessed and estimated future price adjustments claims and returns as a refund liability. The reserve is recorded as a reduction to revenue in the same period that the related revenue is recorded and is calculated based on an analysis of historical claims and returns over a period of time to appropriately account for current pricing and business trends. Similarly, sales returns and allowances are recorded based on historical return rates, as a reduction to revenue with a corresponding reduction to cost of sales for the estimated cost of inventory that is expected to be returned. These reserves were not material upon the adoption of Topic 606 on January 1, 2018, nor were they material in the consolidated balance sheet at December 31, 2020 and 2019.

SHIPPING AND HANDLING

Amounts billed to customers for shipping and handling are included in revenues. The related freight charges incurred by the Company are included in selling and marketing expenses and were \$524,481 and \$658,889, respectively, for the years ended December 31, 2020 and 2019.

ACCOUNTS RECEIVABLE

For the years ended December 31, 2020 and 2019, the Company's revenues primarily included shipments of the LogicMark products. The terms and conditions of these sales provide certain customers with trade credit terms. In addition, these sales were made to the retailers with no rights of return and are subject to the normal warranties offered to the ultimate consumer for product defects.

Accounts receivable is stated at net realizable value. The Company regularly reviews accounts receivable balances and adjusts the receivable reserves as necessary whenever events or circumstances indicate the carrying value may not be recoverable. At December 31, 2020 and 2019, the Company had an allowance for doubtful accounts of \$126,733 and \$126,733, respectively.

INVENTORY

The Company measures inventory at the lower of cost or net realizable value, defined as estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation.

The Company performs regular reviews of inventory quantities on hand and evaluates the realizable value of its inventories. The Company adjusts the carrying value of the inventory as necessary with estimated valuation reserves for excess, obsolete, and slow-moving inventory by comparing the individual inventory parts to forecasted product demand or production requirements. The inventory is valued at the lower of cost or net realizable value with cost determined using the first-in, first-out method. As of December 31, 2020, inventory was comprised of \$199,523 in raw materials and \$567,828 in finished goods on hand. As of December 31, 2019 inventory was comprised of \$167,357 in raw materials and \$1,135,922 in finished goods on hand. The Company is required to prepay for certain inventory with certain vendors until credit terms can be established. As of December 31, 2020 and 2019, \$332,475 and \$201,496, respectively, of prepayments made for inventory is included in prepaid expenses and other current assets on the consolidated balance sheet.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

LONG-LIVED ASSETS

Long-lived assets, such as property and equipment, and other intangibles are evaluated for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. When indicators exist, the Company tests for the impairment of the definite-lived assets based on the undiscounted future cash flow the assets are expected to generate over their remaining useful lives, compared to the carrying value of the assets. If the carrying amount of the assets is determined not to be recoverable, a write-down to fair value is recorded. Management estimates future cash flows using assumptions about expected future operating performance. Management's estimates of future cash flows may differ from actual cash flow due to, among other things, technological changes, economic conditions or changes to the Company's business operations.

PROPERTY AND EQUIPMENT

Property and equipment consisting of furniture, fixtures and tooling is stated at cost. The costs of additions and improvements are generally capitalized and expenditures for repairs and maintenance are expensed in the period incurred. When items of property and equipment are sold or retired, the related costs and accumulated depreciation are removed from the accounts and any gain or loss is included in income. Depreciation of property and equipment is provided utilizing the straight-line method over the estimated useful life of the respective asset as follows:

Equipment	5 years
Furniture and fixtures	3 to 5 years
Tooling and molds	2 to 3 years

GOODWILL

Authoritative accounting guidance allows the Company to first assess qualitative factors to determine whether it is necessary to perform the more detailed two-step quantitative goodwill impairment test. The Company performs the quantitative test if its qualitative assessment determined it is more likely than not that a reporting unit's fair value is less than its carrying amount. The Company may elect to bypass the qualitative assessment and proceed directly to the quantitative test for any reporting units or assets. The quantitative goodwill impairment test, if necessary, is a two-step process. The first step is to identify the existence of a potential impairment by comparing the fair value of a reporting unit (the estimated fair value of a reporting unit is calculated using a discounted cash flow model) with its carrying amount, including goodwill. If the fair value of a reporting unit exceeds its carrying amount, the reporting unit's goodwill is considered not to be impaired and performance of the second step of the quantitative goodwill impairment test is unnecessary. However, if the carrying amount of a reporting unit exceeds its fair value, the second step of the quantitative goodwill impairment test is performed to measure the amount of impairment loss to be recorded, if any. The second step of the quantitative goodwill impairment test compares the implied fair value of the reporting unit's goodwill with the carrying amount of that goodwill. If the carrying amount of the reporting unit's goodwill exceeds its implied fair value, an impairment loss is recognized in an amount equal to that excess. The implied fair value of goodwill is determined using the same approach as employed when determining the amount of goodwill that would be recognized in a business combination. That is, the fair value of the reporting unit is allocated to all of its assets and liabilities as if the reporting unit had been acquired in a business combination and the fair value was the purchase price paid to acquire the reporting unit.

As part of the annual evaluation of the LogicMark related goodwill, the Company utilized the option to first assess qualitative factors, which include but are not limited to, economic, market and industry conditions, as well as the financial performance of LogicMark. In accordance with applicable guidance, an entity is not required to calculate the fair value of a reporting unit if, after assessing these qualitative factors, the Company determines that it is more likely than not that its reporting unit's fair value is greater than its carrying amount. During the year ended December 31, 2020, the Company determined that it was more likely than not that the fair value of LogicMark exceeded its respective carrying amount and therefore, a quantitative assessment was not required.

The goodwill associated with the Company's acquisition of Fit Pay was \$9,119,709 and was included as part of the Company's discontinued operations. On September 9, 2019, the Company sold its discontinued operations and the goodwill associated with Fit Pay was written off and is included as part of the loss on sale of discontinued operations (See Note 4).

OTHER INTANGIBLE ASSETS

The Company's intangible assets are related to the acquisition of LogicMark and are included in other intangible assets in the Company's consolidated balance sheet at December 31, 2020 and 2019.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

OTHER INTANGIBLE ASSETS (CONTINUED)

At December 31, 2020, the other intangible assets relating to the acquisition of LogicMark are comprised of patents of \$2,445,709; trademarks of \$978,494; and customer relationships of \$1,814,259. At December 31, 2019, the other intangible assets relating to the acquisition of LogicMark are comprised of patents of \$2,818,434; trademarks of \$1,041,370; and customer relationships of \$2,140,473. The Company will continue amortizing these intangible assets using the straight line method over their estimated useful lives which for the patents, trademarks and customer relationships are 11 years; 20 years; and 10 years, respectively. During the years ended December 31, 2020 and 2019, the Company had amortization expense of \$761,815 and \$761,815, respectively, related to the LogicMark intangible assets.

Amortization expense estimated for each of the next five fiscal years, 2021 through 2025, is expected to be approximately \$762,000 per year.

CONVERTIBLE INSTRUMENTS

The Company applies the accounting standards for derivatives and hedging and for distinguishing liabilities from equity when accounting for hybrid contracts that feature conversion options. The accounting standards require companies to bifurcate conversion options from their host instruments and account for them as free standing derivative financial instruments according to certain criteria. The criteria include circumstances in which (i) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (ii) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (iii) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument. The derivative is subsequently marked to market at each reporting date based on current fair value, with the changes in fair value reported in the results of operations.

Conversion options that contain variable settlement features such as provisions to adjust the conversion price upon subsequent issuances of equity or equity linked securities at exercise prices more favorable than that featured in the hybrid contract generally result in their bifurcation from the host instrument.

The Company records, when necessary, discounts to convertible notes for the intrinsic value of conversion options embedded in debt instruments based upon the differences between the fair value of the underlying common stock at the commitment date of the note transaction and the effective conversion price embedded in the note. The debt discounts under these arrangements are amortized over the earlier of (i) the term of the related debt using the straight line method which approximates the interest rate method or (ii) conversion of the debt. The amortization of debt discount is included as a component of interest expense included in other income and expenses in the accompanying consolidated statements of operations. See Note 7.

DERIVATIVE FINANCIAL INSTRUMENTS

The Company does not use derivative instruments to hedge exposures to cash flow, market or foreign currency risks. The Company evaluates all of its financial instruments to determine if such instruments are derivatives or contain features that qualify as embedded derivatives. For derivative financial instruments that are accounted for as liabilities, the derivative instrument is initially recorded at its fair value and is then re-valued at each reporting date, with changes in the fair value reported in the consolidated statements of operations. For stock-based derivative financial instruments, the Company uses the Black-Scholes or binomial option valuation model to value the derivative instruments at inception and on subsequent valuation dates. The Company accounts for conversion features that are embedded within the Company's convertible notes payable that do not have fixed settlement provisions as a separate derivative instrument. In addition, warrants issued by the Company that do not have fixed settlement provisions are also treated as derivative instruments. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is evaluated at the end of each reporting period. Derivative instrument liabilities are classified in the balance sheet as current or non-current based on whether or not net-cash settlement of the derivative instrument could be required within 12 months of the balance sheet date.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

INCOME TAXES

The Company uses the asset and liability method of accounting for income taxes. Income tax expense is recognized for the amount of: (i) taxes payable or refundable for the current year and (ii) deferred tax consequences of temporary differences resulting from matters that have been recognized in an entity's financial statements or tax returns. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the year in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the results of operations in the period that includes the enactment date. A valuation allowance is provided to reduce the deferred tax assets reported if based on the weight of the available positive and negative evidence, it is more likely than not some portion or all of the deferred tax assets will not be realized.

ASC Topic 740-10-30 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements and prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. ASC Topic 740-10-40 provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Company will classify as income tax expense any interest and penalties. The Company has no material uncertain tax positions for any of the reporting periods presented. Generally, the tax authorities may examine tax returns for three years from the date of filing. The Company has filed all of its tax returns for all prior periods through December 31, 2019.

STOCK-BASED COMPENSATION

The Company accounts for share-based awards exchanged for employee services at the estimated grant date fair value of the award. The Company accounts for equity instruments issued to non-employees at their fair value on the measurement date. The measurement of stock-based compensation is subject to periodic adjustment as the underlying equity instrument vests or becomes non-forfeitable. Non-employee stock-based compensation charges are amortized over the vesting period or as earned. Stock-based compensation is recorded in the same component of operating expenses as if it were paid in cash. The Company generally issues new shares of common stock to satisfy conversion and warrant exercises.

NET LOSS PER SHARE

Basic loss per share was computed using the weighted average number of common shares outstanding. Diluted loss per share includes the effect of diluted common stock equivalents. Potentially dilutive securities from the exercise of stock options to purchase 335,272 shares of common stock and warrants to purchase 15,690,077 shares of common stock as of December 31, 2020 were excluded from the computation of diluted net loss per share because the effect of their inclusion would have been anti-dilutive. As of December 31, 2019, potentially dilutive securities from the exercise of warrants to purchase 6,973,221 shares of common stock were excluded from the computation of diluted net loss per share because the effect of their inclusion would have been anti-dilutive.

RESEARCH AND DEVELOPMENT

Research and development costs consist of expenditures incurred during the course of planned research and investigation aimed at the discovery of new knowledge, which will be useful in developing new products or processes. The Company expenses all research and development costs as incurred.

RECENT ACCOUNTING PRONOUNCEMENTS

Recent accounting standards that have been issued or proposed by FASB or other standards-setting bodies that do not require adoption until a future date are not expected to have a material impact on the Company's consolidated financial statements upon adoption.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 4 - DISCONTINUED OPERATIONS

On September 9, 2019 the Company entered into a stock purchase agreement (the “Purchase Agreement”), by and between Garmin International, Inc., a Kansas corporation (“Garmin”), the Company and Fit Pay, a Delaware corporation and wholly owned subsidiary of the Company, pursuant to which the Company sold and transferred all of the issued and outstanding shares of capital stock of Fit Pay, which consisted of 1,000 shares of common stock, par value \$0.0001 per share, of Fit Pay (the “Shares”), to Garmin (the “Sale”). As previously disclosed, the Company conducted its payments business through Fit Pay, and Fit Pay provided technology, platform and tokenization services to Garmin to power Garmin Pay™, a contactless payment feature included on smartwatches manufactured by Garmin. In consideration for the Shares, Garmin paid the Company an aggregate amount of approximately \$3.32 million in cash (the “Purchase Price”). A portion of the proceeds received by the Company pursuant to the Purchase Agreement were used to pay in full a promissory note issued by the Company to one of its directors, as well as to pay down the promissory note that had been issued pursuant to the Credit Agreement (the “Promissory Note”). Garmin previously paid the Company \$500,000 of the Purchase Price as an advance on August 7, 2019, and paid the remainder of the Purchase Price at the closing of the Sale. The Company recorded a loss on the sale of its discontinued operations of \$5,988,767. The loss on sale of discontinued operations for the year ended December 31, 2019 is comprised of the following:

Total sales price	\$ 3,323,198
Net book value of discontinued operations ⁽¹⁾	126,062
Write-off of goodwill related to acquisition of Fit Pay	(9,119,709)
Write-off of unamortized other intangibles related to acquisition of Fit Pay	(2,674,607)
Write-off of remaining contingent consideration	2,611,169
Transaction fees incurred	(254,880)
Loss on sale of discontinued operations	<u>\$ (5,988,767)</u>

(1) The net book value of discontinued operations at September 8, 2019 included cash of \$113,148.

Also in connection with the Purchase Agreement, the Company entered into a Manufacturing and Distribution Agreement, dated as of September 9, 2019 (the “Manufacturing Agreement”), with Garmin Switzerland GmbH, a Swiss corporation (“Garmin Switzerland”), pursuant to which Garmin Switzerland agreed to grant the Company a non-exclusive right to manufacture, distribute and sell Garmin Switzerland’s proprietary smart wallet (the “Product”) to certain customers in the U.S. designated by Garmin Switzerland on a royalty-free basis (the “License”), unless otherwise agreed to by the parties thereto. The Company was also granted a right to sub-license the Product pursuant to the Manufacturing Agreement. The Company has been granted the License for an initial term of three years, which term automatically renews for additional one-year periods unless either party provides the other with at least ninety days written notice of its election not to renew such term. The Manufacturing Agreement may be terminated by either party if (i) a party breaches any material provision of such agreement, which breach is not cured within thirty calendar days after receipt of written notice of such breach, (ii) upon written notice, a party petitions for reorganization or to be adjudicated to be bankrupt, or if a receiver is appointed for substantially all of either party’s business, or a party makes a general assignment for the benefit of such party’s creditors, or if any involuntary bankruptcy petition is brought against such party and has not been discharged within sixty calendar days of the date the petition is brought, or (iii) in the event of a change of control (as defined in the Manufacturing Agreement).

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 4 - DISCONTINUED OPERATIONS (CONTINUED)

The following table represents the financial results of the discontinued operations for the years ended December 31, 2020 and 2019:

	For the Years Ended December 31, 2019
Net sales	\$ 625,771
Cost of sales	194,856
Gross profit (loss)	430,915
Operating expenses	3,859,222
Interest expense	3,963
Income tax expense (benefit)	-
Loss from discontinued operations	<u>\$ (3,432,270)</u>

NOTE 5 - ACCRUED EXPENSES

Accrued expenses consist of the following:

	December 31,	
	2020	2019
Salaries, payroll taxes and vacation	\$ 130,093	\$ 92,334
Consulting fees	-	53,563
Merchant bank fees	19,754	26,589
State income taxes	38,672	23,800
Professional fees	226,794	119,016
Management incentives	500,419	758,907
Interest expense	128,187	148,980
Lease liability	54,476	68,576
Dividends – Series C Preferred Stock	25,000	22,182
Other	191,867	178,164
Totals	<u>\$ 1,315,262</u>	<u>\$ 1,492,111</u>

NOTE 6 - FAIR VALUE MEASUREMENTS

Fair value of financial instruments is defined as an exit price, which is the price that would be received upon sale of an asset or paid upon transfer of a liability in an orderly transaction between market participants at the measurement date. The degree of judgment utilized in measuring the fair value of assets and liabilities generally correlates to the level of pricing observability. Financial assets and liabilities with readily available, actively quoted prices or for which fair value can be measured from actively quoted prices in active markets generally have more pricing observability and require less judgment in measuring fair value. Conversely, financial assets and liabilities that are rarely traded or not quoted have less price observability and are generally measured at fair value using valuation models that require more judgment. These valuation techniques involve some level of management estimation and judgment, the degree of which is dependent on the price transparency of the asset, liability or market and the nature of the asset or liability. The Company has categorized its financial assets and liabilities measured at fair value into a three-level hierarchy.

Valuation Hierarchy

ASC 820, "Fair Value Measurements and Disclosures," establishes a valuation hierarchy for disclosure of the inputs to valuation used to measure fair value. This hierarchy prioritizes the inputs into three broad levels as follows. Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities. Level 2 inputs are quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument. Level 3 inputs are unobservable inputs based on the Company's own assumptions used to measure assets and liabilities at fair value. A financial asset or liability's classification within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 6 - FAIR VALUE MEASUREMENTS (CONTINUED)

The Company did not have any liabilities carried at fair value measured on a recurring basis as of December 31, 2020 and 2019.

The carrying amounts of cash and accounts payable approximate their fair value due to their short maturities. The Company's other financial instruments include its convertible notes payable obligations. The carrying value of these instruments approximate fair value, as they bear terms and conditions comparable to market, for obligations with similar terms and maturities. The Company measures the fair value of financial assets and liabilities based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The Company maximizes the use of observable inputs and minimizes the use of unobservable inputs when measuring fair value.

Level 3 Valuation Techniques

Level 3 financial liabilities consist of the conversion feature liability and common stock purchase warrants for which there are no current markets for these securities such that the determination of fair value requires significant judgment or estimation. Changes in fair value measurements categorized within Level 3 of the fair value hierarchy are analyzed each period based on changes in estimates or assumptions and recorded as appropriate. A significant decrease in the volatility or a significant decrease in the Company's stock price, in isolation, would result in a significantly lower fair value measurement.

During the years ended December 31, 2020 and 2019, there were no transfers in or out of Level 3 from other levels in the fair value hierarchy.

NOTE 7 - DEBT REFINANCING

On May 24, 2018, LogicMark, a wholly owned subsidiary of Nxt-ID, entered into a Senior Secured Credit Agreement (the "Credit Agreement") with the lenders thereto and Sagard Holdings Manager LP, as administrative agent and collateral agent for the lenders party to the Credit Agreement (collectively, the "Lender"), whereby the Lender extended a term loan (the "Term Loan") to LogicMark in the principal amount of \$16,000,000. The original maturity date of the Term Loan was May 24, 2023. The Term Loan Facility with Sagard Holdings Manager LP was repaid on May 3, 2019 with Term Loan proceeds received from CrowdOut Capital LLC (see below). The outstanding principal amount of the Term Loan bears interest at a rate of LIBOR, adjusted monthly, plus 9.5% per annum. The Company incurred \$1,253,970 in deferred debt issue costs related to the Term Loan. During the year ended December 31, 2019, the Company amortized \$86,969 of the deferred debt issue costs which is included in interest expense in the consolidated statement of operations.

On May 24, 2018, the Company recorded a debt discount of \$705,541. The debt discount was attributable to the aggregate fair value on the issuance date of both Sagard Warrants. The debt discount was amortized using the effective interest method over the five-year term of the Term Loan. During the year ended December 31, 2019 the Company recorded \$48,932 of debt discount amortization related to the Sagard Warrants. The debt discount amortization is included as part of interest expense in the consolidated statements of operations.

On May 3, 2019, LogicMark completed the closing of a \$16,500,000 senior secured term loan with the lenders thereto and CrowdOut Capital LLC, as administrative agent. The Company used the proceeds from the term loan to repay LogicMark's existing term loan facility with Sagard Holdings Manager LP and to pay other costs related to the refinancing. The maturity date of the term loan with CrowdOut Capital LLC is May 3, 2022 and required the Company to make minimum principal payments over the three-year term amortized over 96 months. On February 8, 2021, the Company and CrowdOut Capital LLC agreed to an extension of the maturity date of the Term Loan to May 22, 2023. See Note 11. Since the inception of the refinancing, the Company has made scheduled principal repayments and term loan prepayments totaling \$3,415,625 through December 31, 2020. In addition, the Company prepaid an additional \$1,988,498 of the term loan with CrowdOut Capital LLC in September 2019 with a portion of the proceeds received from the sale of discontinued operations. The outstanding principal amount of the Term Loan bears interest at a rate of LIBOR, adjusted monthly, plus 11.0% per annum (approximately 13.0% as of December 31, 2020). The Company incurred \$412,500 in original issue discount for closing related fees charged by the Lender. During the years ended December 31, 2020 and December 31, 2019, the Company amortized \$106,215 and \$168,430, respectively of the original issue discount which is included in interest expense in the consolidated statement of operations. At December 31, 2020 the unamortized balance of the original issue discount was \$137,855. The Company also incurred \$1,831,989 in deferred debt issue costs related to the Term Loan. The deferred debt issue costs include an exit fee of \$1,072,500 which is equivalent to 6.5% of the term loan amount borrowed from CrowdOut Capital. The exit fee is due to CrowdOut Capital upon the earlier of final repayment of the term loan facility or the maturity date. The liability for the exit fee is included as part of other long-term liabilities in the Company's consolidated balance sheet. During the years ended December 31, 2020 and December 31, 2019, the Company amortized \$549,446 and \$569,424, respectively of the deferred debt issue costs which is included in interest expense in the consolidated statements of operations. At December 31, 2020 the unamortized balance of deferred debt issue costs was \$713,119.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 7 - DEBT REFINANCING (CONTINUED)

Debt Maturity

The maturity of the Company's term debt is as follows:

2021	\$ 2,062,500
2022	9,033,377
Total term debt	<u>\$ 11,095,877</u>

In connection with the Term Loan refinancing on May 3, 2019, the Company incurred a loss on extinguishment of debt of \$2,343,879 which included the write off of unamortized deferred debt issuance costs and note discount of \$1,015,311 and \$571,260, respectively resulting from the May 24, 2018 Term Loan facility with Sagard Holdings Manager LP and a yield maintenance premium, a prepayment penalty and legal fees due to Sagard Holdings Manager LP, totaling \$757,308.

On November 16, 2020, the Company and CrowdOut Capital LLC, as administrative agent, entered into the first amendment to the senior secured term loan. In connection with the first amendment, CrowdOut Capital LLC, as administrative agent, agreed to modify the financial ratios contained in the senior secured term retroactively and prospectively. Based on the senior secured term loan, as amended, the Company was in compliance with such covenants at December 31, 2020.

Paycheck Protection Program

On each of May 6 and May 8, 2020, Nxt-ID Inc. and LogicMark, LLC, a wholly owned subsidiary of the Company (the "Borrowers"), respectively, received loans (the "Loans") from Bank of America, NA in the aggregate amount of \$346,390, pursuant to the Paycheck Protection Program (the "PPP") under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act, which was enacted on March 27, 2020.

The Loans, which are in the form of PPP promissory notes and agreements, dated May 1, 2020 (the "Note Agreements"), mature on May 6 and May 8, 2022, respectively, and bear interest at a rate of 1.00% fixed per annum, payable monthly commencing on November 6 and November 8, 2020, respectively. The Loans may be prepaid by the Borrowers at any time prior to maturity with no prepayment penalties. The Borrowers used the proceeds from the Loans for payroll, payroll taxes, and group healthcare benefits. Under the terms of the Note Agreements, certain amounts of the Loans may be forgiven if they are used for qualifying expenses, as described in the Note Agreements.

The Company has applied for forgiveness of the Loans and as such has treated the Loans as other short-term debt on the Company's consolidated balance sheet. See Note 11 for update on Loans.

NOTE 8 - STOCKHOLDERS' EQUITY

December 2020 Offerings

On December 18, 2020, the Company closed a registered direct offering pursuant to which the Company issued (i) an aggregate of 1,515,151 shares of Series D preferred stock, convertible into an aggregate of up to 3,030,304 shares of common stock, (ii) common stock purchase warrants to purchase up to an aggregate of 1,000,000 shares of common stock at an exercise price of \$0.49 per share, subject to customary adjustments thereunder, which were exercisable immediately upon issuance and have a term of five years, and (iii) common stock purchase warrants to purchase up to an aggregate of 5,060,606 shares of common stock at an exercise price of \$0.49 per share with a term of five and one-half (5.5) years first exercisable six (6) months after issuance, subject to customary adjustments thereunder, for gross proceeds of \$2,000,000, before deducting any offering expenses. The Company will use the net proceeds from this offering for working capital, new product initiatives and other general corporate purposes. On December 21, 2020, 1,515,151 shares of Series D preferred stock were converted into 3,030,304 shares of common stock. During the year ended December 31, 2020, the Company recorded a deemed dividend of \$758,922 from the beneficial conversion feature associated with the issuance of the Series D convertible preferred stock and warrants.

July 2020 Offerings

On July 14, 2020, the Company closed a registered direct offering of (i) an aggregate of 3,778,513 shares of the Company's common stock, par value \$0.0001 per share; (ii) pre-funded warrants to purchase up to an aggregate of 734,965 shares of Common Stock at an exercise price of \$0.01 per share, subject to customary adjustments thereunder; (iii) registered warrants, with a term of five (5) years exercisable immediately upon issuance, to purchase an aggregate of up to 1,579,718 shares of Common Stock (at an exercise price of \$0.50 per share, subject to customary adjustments thereunder; and (iv) unregistered warrants, with a term of five and one-half (5.5) years first exercisable six (6) months after issuance, to purchase an aggregate of up to 3,750,000 shares of Common Stock at an exercise price of \$0.65 per share, subject to customary adjustments thereunder, for gross proceeds of \$1,864,528, before deducting any offering expenses. The Company will continue to use the net proceeds from this Offering for working capital, new product initiatives and other general corporate purposes.

On July 28, 2020, the Company received proceeds of \$7,350 in connection with the exercise of 734,965 pre-funded warrants to purchase common stock at an exercise price of \$0.01.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 8 - STOCKHOLDERS' EQUITY (CONTINUED)

January 2019 At-the-Market Offering

On January 8, 2019, the Company entered into a sales agreement with A.G.P./Alliance Global Partners ("A.G.P.") for an at-the-market offering, pursuant to which the Company could sell, at its option, shares of its common stock, par value \$0.0001 per share, having an aggregate offering price of up to \$15 million to or through A.G.P., as sales agent. The Company was obligated to pay A.G.P. commissions for its services in acting as the Company's sales agent in the sale of its common stock pursuant to the sales agreement. A.G.P. was entitled to compensation at a fixed commission rate of 3.0% of the gross proceeds from the sale of the Company's common stock on the Company's behalf pursuant to the sales agreement. The Company also agreed to reimburse A.G.P. for its reasonable out-of-pocket expenses, including the fees and disbursements of counsel to A.G.P., incurred in connection with the offering, in an amount not to exceed \$35,000. During the year ended December 31, 2019, the Company received \$1,299,042 in net proceeds from the sale of 1,113,827 shares of its common stock under the sales agreement with A.G.P. On April 2, 2019, the Company entered into a Securities Purchase agreement with an investor in connection with a registered direct public offering of 2,469,136 shares of the Company's common stock. The shares of common stock were offered at a price of \$0.81 per share and the Company received \$1,915,000 in net proceeds from the sale. The Company also issued to the investor for no additional consideration common stock purchase warrants to purchase 2,469,136 shares of common stock. The warrants are exercisable upon issuance at an exercise price of \$1.05 and expire on the fifth (5th) anniversary of the initial exercise date. The sales agreement with A.G.P. was terminated on October 10, 2019.

2013 Long-Term Stock Incentive Plan

On January 4, 2013, a majority of the Company's stockholders approved by written consent the Company's 2013 Long-Term Stock Incentive Plan ("LTIP"). The maximum aggregate number of shares of common stock that may be issued under the LTIP, including stock awards, stock issued to directors for serving on the Company's board of directors, and stock appreciation rights, is limited to 10% of the shares of common stock outstanding on the first business or trading day of any fiscal year, which is 592,223 shares of common stock at January 1, 2021.

During the year ended December 31, 2020, the Company issued an aggregate of 335,272 stock options to purchase shares of common stock under the LTIP to four (4) non-employee directors for serving on the Company's board. The weighted average exercise price of these stock options is approximately \$0.48 and the stock options were fully vested at the issuance date. The aggregate fair value of the shares issued to the directors was \$160,000.

2017 Stock Incentive Plan

On August 24, 2017, a majority of the Company's stockholders approved at the 2017 Annual Stockholders' Meeting the 2017 Stock Incentive Plan ("2017 SIP"). The aggregate maximum number of shares of common stock (including shares underlying options) that may be issued under the 2017 SIP pursuant to awards of restricted shares or options will be limited to 10% of the outstanding shares of common stock, which calculation shall be made on the first (1st) business day of each new fiscal year; provided that for fiscal year 2017, 1,500,000 shares of common stock may be delivered to participants under the 2017 SIP. Thereafter, the 10% provision shall govern the 2017 SIP. The number of shares of common stock that are the subject of awards under the 2017 SIP which are forfeited or terminated, are settled in cash in lieu of shares of common stock or are settled in a manner such that all or some of such shares covered by an award are not issued to a participant or are exchanged for awards that do not involve shares of common stock will again immediately become available to be issued pursuant to awards granted under the 2017 SIP. If shares of common stock are withheld from payment of an award to satisfy tax obligations with respect to the award, those shares of common stock will be treated as shares that have been issued under the 2017 SIP and will not again be available for issuance under the 2017 SIP.

In addition, during the year ended December 31, 2020, the Company issued 447,620 shares of common stock with an aggregate fair value of \$200,794 to certain employees related to the Company's 2017, 2018 and 2019 management incentive plan.

During the years ended December 31, 2020 and 2019, the Company accrued \$200,000 and \$200,000, respectively of management and employee bonus expense.

During the year ended December 31, 2019, the Company issued 372,078 shares of common stock with a fair value of \$254,490 to non-employees for services rendered.

In addition, during the year ended December 31, 2019, the Company issued 289,216 shares of common stock with an aggregate fair value of \$216,267 to certain non-executive employees related to the Company's 2017 and 2018 management incentive plan.

Series C Preferred Stock

In May 2017, the Company authorized a new Series C Preferred Stock. The terms of the Series C Preferred Stock are as follows:

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 8 - STOCKHOLDERS' EQUITY (CONTINUED)

Dividends on Series C Preferred Stock

Holders of Series C Preferred Stock are entitled to receive 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 are payable in cash. For the years ended December 31, 2020 and 2019, the Company recorded Series C Preferred Stock dividends of \$100,000 and \$150,000, respectively.

Redemption Provisions of Series C Preferred Stock

The Series C Preferred Stock may be redeemed by the Company at the Company's option 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. 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 shall be immediately redeemed and repaid from 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 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 fifty percent (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 are 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.

Classification

A redeemable equity security is to be classified as temporary equity if it is conditionally redeemable upon the occurrence of an event that is not solely within the control of the issuer upon the determination that such events are probable, the equity security would be classified as a liability. Given the Series C Preferred Stock contains a fundamental change provision, the security is considered conditionally redeemable. Therefore, the Company classified the Series C Preferred Stock as temporary equity in the consolidated balance sheets at December 31, 2020 and 2019 until such time that events occur that indicate otherwise.

On June 11, 2019, the Company made a retroactive dividend payment adjustment of \$50,000 to the Series C Preferred Stockholders pursuant to the terms and conditions set forth in the Certificate of Designations, Preferences and Rights of the Series C Non-Convertible Voting Preferred Stock.

Warrants

The following table summarizes the Company's warrants outstanding and exercisable at December 31, 2020 and 2019:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Life In Years	Aggregate Intrinsic Value
Outstanding at January 1, 2019	5,090,352	\$ 5.42	3.32	\$ 6,672,902
Issued	2,469,136	1.05	5.00	-
Exercised	-	-	-	-
Cancelled	(586,267)	17.87	-	-
Outstanding and Exercisable at December 31, 2019	6,973,221	\$ 2.83	3.53	\$ -
Issued	11,390,324	.54	5.00	-
Exercised(1)	(2,579,718)	.50	-	-
Cancelled	(93,750)	40.10	-	-
Outstanding and Exercisable at December 31, 2020	15,690,077	\$ 1.33	4.10	\$ 10,850,158

(1) During the year ended December 31, 2020, the Company received proceeds of \$1,279,859 in connection with the exercise of warrants into 2,579,718 shares of Common Stock at an average exercise price of approximately \$0.50 per share.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 9 - INCOME TAXES

As of December 31, 2020, the Company had US federal and state net operating loss (“NOLs”) carryovers of \$43,520,967 and \$24,126,647 respectively. Federal and state NOL’s generated through December 31, 2017 are available to offset future taxable income, which expire beginning in 2033. Federal NOL’s generated for years starting after December 31, 2018 are available to offset future taxable income indefinitely. State NOL’s generated for years starting after December 31, 2018 that are available to offset future taxable income indefinitely vary by state. The Company has Federal Capital loss carryovers of \$11,779,190 at December 31, 2020, which expire in 2024. The Company also has state Capital loss carryovers of \$4,621,480 at December 31, 2020, which begin to expire in 2024, and have no carryback period. In addition, the Company had tax credit carryforwards of \$205,028 at December 31, 2020 that will be available to reduce future tax liabilities. The tax credit carryforwards will begin to expire beginning in 2033.

In accordance with Section 382 of the Internal Revenue Code, deductibility of the Company’s NOLs may be subject to an annual limitation in the event of a change of control. The Company has not determined whether a change of control has occurred as of December 31, 2020 with respect to the Nxt-ID NOLs and therefore no limitation under Section 382 has been computed. Management will review for such limitations before any of the Nxt-ID NOLs are utilized against future taxable income.

The Company has no material uncertain tax positions for any of the reporting periods presented. No interest or penalty expense was recorded during the year or has been accrued as of December 31, 2019 or 2020. The Company does not expect any material changes to any uncertain tax positions in the next twelve months. The Company has filed all of its tax returns for all prior periods through December 31, 2019 and intends to timely file the income tax returns for the period ending December 31, 2020. As a result, the Company’s net operating loss carryovers will now be available to offset any future taxable income.

The Company is subject to taxation in the United States and various states. As of December 31, 2020, the Company’s tax years post 2016 are subject to examination by the tax authorities. With few exceptions, as of December 31, 2020 the Company is no longer subject to U.S. federal or state examinations by tax authorities for years before December 31, 2017. The Company has not been examined or received notice of pending examination by the federal or any state and local tax authority. To the extent a tax authority examines an open tax year and makes an assessment, the results from operations could be affected through additional tax liabilities or adjustments to the amount of NOL carryforward or tax basis of other components of deferred tax.

The income tax (benefit) provision consists of the following:

	December 31,	
	2020	2019
Current income tax provision		
Federal	\$ -	\$ -
State	24,886	32,826
	24,886	32,826
Deferred income tax (benefit)		
Federal	(682,378)	(3,589,359)
State	67,828	(542,836)
Change in valuation allowance	614,550	3,766,798
	-	(365,397)
Total income tax provision (benefit)	\$ 24,886	\$ (332,571)

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 9 - INCOME TAXES (CONTINUED)

A reconciliation of the effective income tax rate and the statutory federal income tax rate from continuing operations is as follows:

	December 31,	
	2020	2019
U.S. federal statutory rate	21.00%	21.00%
State income tax rate, net of federal benefit	(2.63)	7.83
Other permanent differences	2.39	(4.59)
Loss on sale of Fit Pay	-	45.02
Less: valuation allowance	(21.64)	(56.95)
Provision for income taxes	<u>(0.88)%</u>	<u>(12.31)%</u>

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences representing net future deductible amounts become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income and tax planning strategies in making this assessment. After consideration of all of the information available, Management believes that significant uncertainty exists with respect to future realization of all of the deferred tax assets and has therefore established a full valuation allowance. For the periods ended December 31, 2019 and December 31, 2020, sufficient net operating losses with indefinite carryforward periods have been generated, such that the deferred tax liabilities related to indefinite lived intangibles now represent a source of future taxable income with respect to the utilization of these deferred tax assets.

The tax effects of temporary differences that give rise to deferred tax assets and liabilities are presented below:

	December 31,	
	2020	2019
Deferred tax assets:		
Net operating loss carryforward	\$ 10,290,985	\$ 9,362,936
Tax credits	205,028	205,028
Lease liabilities	68,596	25,768
Accruals and reserves	213,627	278,648
Capital loss carryforwards	2,619,921	2,820,405
Tangible and intangible assets	336,067	325,754
Charitable donations	2,836	5,874
Total deferred tax assets before valuation allowance:	<u>13,737,060</u>	<u>13,024,413</u>
Valuation allowance	(12,744,883)	(12,212,147)
Deferred tax assets, net of valuation allowance	<u>992,177</u>	<u>812,266</u>
Deferred tax liabilities:		
Right-of-use assets	\$ (68,240)	(25,409)
Tangible and intangible assets	(923,937)	\$ (786,857)
Total deferred tax liabilities	<u>\$ (992,177)</u>	<u>\$ (812,266)</u>
Net deferred tax liability	<u>\$ -</u>	<u>\$ -</u>

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 10 - COMMITMENTS AND CONTINGENCIES

LEGAL MATTERS

On February 24, 2020, Michael J. Orlando, as shareholder representative (the “Shareholder Representative”), and the other stockholders of Fit Pay, Inc. (collectively, the “Fit Pay Shareholders”), filed a lawsuit in the United States District Court for the Southern District of New York against the Company, CrowdOut Capital, LLC, and Garmin International, Inc. (the “Complaint”). See *Orlando v. Nxt-ID, Inc.* No. 20-cv-1604 (S.D.N.Y.). The Complaint alleges that the Company has breached certain contractual obligations under a merger agreement, dated May 23, 2017, between Fit Pay, Inc. and the Company, regarding certain future, contingent earnout payments allegedly that could be owed to the Fit Pay Shareholders from future revenues. The Complaint seeks unspecified monetary damages from the defendants. The Company believes that these claims are without merit and plans to vigorously defend the action. On May 12, 2020, the Company filed an answer and counterclaims alleging, among other things, fraud and breach of fiduciary duty of the Shareholder Representative as well as arguing that the Shareholder Representative should be estopped from pursuing these claims. The Company has moved for summary judgment to have the lawsuit dismissed. The Company has been able to successfully stay discovery pending the court’s ruling on motions to dismiss by Garmin International, Inc. and CrowdOut Capital, LLC. In March 2021, following our successful application to stay all discovery, the court granted CrowdOut’s and Garmin’s separate motions to dismiss. Orlando’s claim against the Company still remains and the Company’s motion for summary judgment is still pending.

In connection with the sale of Fit-Pay, Inc., Giesecke+Devrient Mobile Security America, Inc. (“GDMSAI”) has identified a disagreement with the Company over calculation of dividends with respect to GDMSAI’s Series C Non-Convertible Voting Preferred Stock (the “Series C”) of the Company. On August 13, 2020, the Company was sued by GDMSAI seeking, among other things, \$440,000 of dividends that it believes are owed to it pursuant to the terms of the Series C. The Company believes that GDMSAI’s claims are not correct and plans to vigorously defend the action. The Company has moved to have the case removed from Delaware to New York, where the Company claims the forum clause requires the claims to be heard. The Company has opposed GDMSAI’s motion for summary judgment. In March 2021, a Delaware Chancery court rejected our argument that the Fit Pay merger agreement requires litigation solely in New York and thereafter granted GDMSAI summary judgment on the merits, holding that relevant dividend language required a perpetually paid dividend once the \$50M threshold had been achieved. The Company plans to appeal. There are no assurances that our appeal will be successful and even if our appeal is successful that a New York court will agree with our interpretation of the manner in which dividends on the Series C Preferred are to be calculated.

From time to time, the Company may be involved in various claims and legal actions arising in the ordinary course of our business. Other than the above, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the executive officers of the Company or any of our subsidiaries, threatened against or affecting our company, or any of our subsidiaries in which an adverse decision could have a material adverse effect upon our business, operating results, or financial condition.

COMMITMENTS

The Company leases office space and a fulfillment center in the U.S., which are classified as operating leases expiring at various dates. The Company determines if an arrangement qualifies as a lease at the lease inception. Operating lease liabilities are recorded based on the present value of the future lease payments over the lease term, assessed as of the commencement date. The Company’s real estate leases, which are for office space and a fulfillment center, generally have a lease term between 3 and 5 years. The Company also leases a copier with a lease term of 5 years. The Company’s leases are comprised of fixed lease payments and also include executory costs such as common area maintenance, as well as property insurance and property taxes. The Company has elected to account for the lease and non-lease components as a single lease component for its real estate leases. Lease payments, which may include lease components and non-lease components, are included in the measurement of the Company’s lease liabilities to the extent that such payments are either fixed amounts or variable amounts based on a rate or index (fixed in substance) as stipulated in the lease contract. Any actual costs in excess of such amounts are expensed as incurred as variable lease cost.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 10 - COMMITMENTS AND CONTINGENCIES (CONTINUED)

The Company's lease agreements generally do not specify an implicit borrowing rate, and as such, the Company utilizes its incremental borrowing rate by lease term, in order to calculate the present value of the future lease payments. The discount rate represents a risk-adjusted rate on a secured basis, and is the rate at which the Company would borrow funds to satisfy the scheduled lease liability payment streams commensurate with the lease term. On January 1, 2019, the discount rate used on existing leases at adoption was determined based on the remaining lease term using available data as of that date. The Company's lease agreement for its warehouse space located in Louisville, Kentucky expired on August 31, 2020. As a result, the Company entered into a new five-year lease agreement in June 2020 for new warehouse space also located in Louisville, Kentucky. The monthly rent which commenced in September 2020 is \$6,000 per month and increases approximately 3% annually thereafter. The ROU asset value added as a result of this new lease agreement was \$279,024. The Company's ROU asset and lease liability accounts reflect the inclusion of this new lease agreement on the Company's consolidated balance sheet as of December 31, 2020.

Certain of the Company's lease agreements, primarily related to real estate, include options for the Company to either renew (extend) or early terminate the lease. Leases with renewal options allow the Company to extend the lease term typically between 1 and 3 years. Renewal options are reviewed at lease commencement to determine if such options are reasonably certain of being exercised, which could impact the lease term. When determining if a renewal option is reasonably certain of being exercised, the Company considers several factors, including but not limited to, significance of leasehold improvements incurred on the property, whether the asset is difficult to replace, or specific characteristics unique to the particular lease that would make it reasonably certain that the Company would exercise such option. In most cases, the Company has concluded that renewal and early termination options are not reasonably certain of being exercised by the Company (and thus not included in the Company's ROU asset and lease liability) unless there is an economic, financial or business reason to do so.

For the year ended December 31, 2020, total operating lease cost was \$147,841 and is recorded in cost of sales and selling, general and administrative expenses, dependent on the nature of the leased asset. The operating lease cost is recognized on a straight-line basis over the lease term. The following summarizes (i) the future minimum undiscounted lease payments under non-cancelable lease for each of the next four years and thereafter, incorporating the practical expedient to account for lease and non-lease components as a single lease component for our existing real estate leases, (ii) a reconciliation of the undiscounted lease payments to the present value of the lease liabilities recognized, and (iii) the lease-related account balances on the Company's consolidated balance sheet, as of December 31, 2020:

Year Ending December 31,

2021	\$ 90,986
2022	93,385
2023	89,724
2024	80,000
2025	54,400
Total future minimum lease payments	\$ 408,495
Less imputed interest	(100,110)
Total present value of future minimum lease payments	\$ 308,385

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 10 - COMMITMENTS AND CONTINGENCIES (CONTINUED)

As of December 31, 2020

Operating lease right-of-use assets	\$	306,786
Other accrued expenses	\$	54,476
Other long-term liabilities	\$	253,909
	\$	<u>308,385</u>

As of December 31, 2020

Weighted Average Remaining Lease Term		4.3 years
Weighted Average Discount Rate		12.80%

Coronavirus – COVID-19

In early 2020, the coronavirus that causes COVID-19 was reported to have surfaced in China. The Company’s primary supply chain is located in China and other Asian-based locations. To date, the Company’s supply chain has not experienced any significant disruptions. The global spread of this virus has caused significant business disruption around the world including the United States, the primary area in which the Company operates and sells its products. The business disruption is currently expected to be temporary, however there is considerable uncertainty around the duration of the business disruption. Therefore, while the Company expects this matter to negatively impact the Company’s financial condition, results of operations, or cash flows, the extent of the financial impact and duration cannot be reasonably estimated at this time.

NOTE 11 - SUBSEQUENT EVENTS

The Company evaluates events that have occurred after the balance sheet date but before the financial statements are issued.

On January 8, 2021, the Company entered into a Warrant Amendment and Exercise Agreement (the “Amendment Agreement”) with holders (the “Holder”) of a common stock purchase warrant, dated April 4, 2019, previously issued by the Company to the Holder (the “Original Warrant”).

In consideration for each exercise of the Original Warrant that occurs within 45 calendar days of the date of the Amendment Agreement, in addition to the issuance of the Warrant Shares (as defined in the Original Warrant) on or prior to the Warrant Share Delivery Date (as defined in the Original Warrant), the Company has agreed to deliver to the Investor a new warrant to purchase a number of shares of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”), equal to the number of Original Warrants that the Holder has exercised pursuant to the terms of the Original Warrant, at an exercise price of \$1.525 per share, which represents the average Nasdaq Official Closing Price of the Common Stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the date of the Amendment Agreement (the “New Warrants”). The Investor currently holds Original Warrants exercisable for up to 2,469,136 shares of Common Stock, and, therefore, may receive up to an equivalent number of New Warrants. The Investor may continue to exercise the Original Warrants after 45 calendar days of the date of the Amendment Agreement, but the Investor will not receive any New Warrants in consideration for the exercise of any Original Warrants exercised thereafter.

Nxt-ID, Inc. and Subsidiaries
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 11 - SUBSEQUENT EVENTS (CONTINUED)

The Amendment Agreement contains customary representations, warranties and covenants by each of the Company and the Investor.

The New Warrants, if issued, are exercisable for up to the original expiration dates of the Original Warrants, which is April 4, 2024. The exercise price and number of shares issuable upon exercise of the New Warrants are subject to traditional adjustment for stock splits, combinations, recapitalization events and certain dilutive issuances. The New Warrants are required to be exercised for cash; however, if during the term of the New Warrants there is not an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), covering the resale of the shares of Common Stock issuable upon exercise of the New Warrants, then the New Warrants may be exercised on a cashless (net exercise) basis pursuant to the formula provided in the New Warrants.

The Company intends to use the proceeds of any exercise of the Original Warrants for working capital purposes, the launch of new products and to reduce its debt outstanding.

On January 14, 2021, the Company issued 2,073,687 shares of common stock in connection with the cashless exercise of 3,749,000 warrants.

On January 21, 2021, the Company and LogicMark, LLC, a wholly-owned subsidiary of the Company filed their respective applications for forgiveness of the loans pursuant to the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act.

On January 29, 2021, the Company received proceeds of \$525,000 in connection with the exercise of 500,000 warrants to purchase common stock at an exercise price of \$1.05.

On February 1, 2021, the Company received proceeds of \$4,000,004 in connection with the issuance 1,476,016 shares of Series E preferred stock.

On February 1, 2021, 738,008 shares of Series E Preferred stock were converted into 1,476,016 shares of common stock.

On February 4, 2021, the Company issued 132,826 shares of common stock to certain employees under the 2018 and 2019 management incentive plans.

On February 8, 2021, the Company received proceeds of \$2,067,593 in connection with the exercise of 1,969,136 warrants to purchase common stock at an exercise price of \$1.05.

On February 8, 2021, 450,000 shares of Series E Preferred stock were converted into 900,000 shares of common stock.

On February 8, 2021, the Company's wholly-owned subsidiary, LogicMark, LLC, entered into a second amendment (the "Second Amendment") to the senior Secured Credit Agreement, dated as of May 3, 2019, as amended (the "Credit Agreement"), with each financial institution from time to time party thereto as lender (the "Lenders"), and a senior secured lender, as administrative agent and collateral agent for the Lenders (the "Agent"). Pursuant to the Second Amendment, LogicMark made a \$5,000,000 voluntary prepayment (the "Prepayment") on its \$16,500,000 aggregate principal amount term loan originally made by the Lenders to LogicMark pursuant to the Credit Agreement (the "Term Loan") and the Agent agreed to accept (i) LogicMark's payment of a prepayment premium in the amount of \$125,000, which is equal to 2.5% of the Prepayment, rather than 5% of the Prepayment as required by the Credit Agreement, and (ii) an extension of the maturity date of the Term Loan to May 22, 2023.

On February 9, 2021, 288,008 shares of Series E Preferred stock were converted into 576,016 shares of common stock.

On February 17, 2021, the Company received proceeds \$1,230,000 in connection with the exercise of 1,000,000 warrants to purchase common stock at an exercise price of \$1.23.

On February 17, 2021, the Company received proceeds \$2,847,902 in connection with the exercise of 1,898,601 warrants to purchase common stock at an exercise price of \$1.50.

On February 17, 2021, the Company issued 2,165,642 shares of common stock in connection with the cashless exercise of 2,530,303 warrants.

On March 2, 2021, the Company's wholly-owned subsidiary, LogicMark, LLC received notification from the Small Business Administration that its loan under the Paycheck Protection Program in the amount of \$301,390 plus accrued interest of \$2,320 has been forgiven.

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (the "Lease") is made and entered into as of this 2ND day of JUNE, 2020 by and between Moorman Properties, LLC, a Kentucky limited liability company (the "Landlord"), and Logicmark, LLC, a Kentucky limited liability company (the "Tenant").

ARTICLE 1 – LEASE OF PREMISES

Section 1.01 LEASE OF PREMISES. Landlord, in consideration of the rents and covenants specified herein, does hereby lease to Tenant, and Tenant does hereby lease from Landlord, on the terms and conditions set forth herein, the following described leased premises (the "Premises"), for the term specified herein.

Section 1.02 TERMS AND DEFINITIONS.

- (a.) **Leasable Area:** 9,660 square feet.
- (b.) **Premises Address:** 2801 Diode Lane, Louisville, Kentucky 40299.
- (c.) **Permitted Use:** The Premises shall be used as a warehouse and distribution facility for electronics equipment assembly and storage.
- (d.) **Security Deposit:** \$6,500.00
- (e.) **Commencement Date:** June 15, 2020
- (f.) **Lease Term:** Five (5) years, Two (2) months, and Sixteen (16) days.
- (g.) **Base Rent:**

<u>Commencement</u>	<u>Termination</u>	<u>Monthly Rental Payments</u>
June 15, 2020	to August 31, 2020	\$0.00
September 1, 2020	to August 31, 2021	\$6,000.00
September 1, 2021	to August 31, 2022	\$6,200.00
September 1, 2022	to August 31, 2023	\$6,400.00
September 1, 2023	to August 31, 2024	\$6,600.00
September 1, 2024	to August 31, 2025	\$6,800.00

(h.) **Addresses for Notices and Payments:**

Landlord:	Moorman Properties, LLC 7316 New LaGrange Road Louisville, Kentucky 40222
With Payments to:	Moorman Properties, LLC 7316 New LaGrange Road Louisville, Kentucky 40222
Tenant:	Logicmark, LLC Attn: Mr. Kevin O'Connor, President 2801 Diode Lane Louisville, KY 40299

Landlord [Signature] Tenant [Signature]

Section 1.03 THE PREMISES. The Premises, containing the number of leaseable square feet specified in Section 1.02 (a.), is known by the address specified in Section 1.02 (b.), and is depicted on Exhibit A which is attached hereto and made part of this Lease.

ARTICLE 2 – TERM AND POSSESSION

Section 2.01 TERM. The Commencement Date and Lease Term shall be as set forth in Section 1.02 (e.), Section 1.02 (f.) and Section 1.02 (g.) above, respectively. Landlord shall not be liable to Tenant if Landlord does not deliver possession of the Premises to Tenant on the Commencement Date and the obligations of Tenant under this Lease shall not be affected thereby, except that the Commencement Date shall be delayed until Landlord delivers possession of the Premises to Tenant, and the Lease Term shall be extended by a period equal to the number of days of delay in delivery of possession of the Premises to Tenant, plus the number of days necessary to end the Lease on the last day of the month. The Lease Term may also be referred to herein as the "Term".

Section 2.02 CONSTRUCTION OF TENANT IMPROVEMENTS. Landlord shall construct and install all leasehold improvements to the Premises (collectively, the "Tenant Improvements") not later than the date that is Thirty (30) days following the Commencement Date and in accordance with Exhibit B attached hereto and made part hereof. Promptly following the Commencement Date and installation of the Tenant Improvements, Tenant shall execute Landlord's Letter of Understanding in substantially the form attached hereto as Exhibit C and made a part hereof, acknowledging among other things that Tenant has accepted the Premises for occupancy and that the condition of the Premises and the building was at the time satisfactory and in conformity with the terms, covenants and conditions of this Lease in all respects, except for any defects which are set forth on a list attached to said Exhibit C. Landlord shall promptly thereafter correct all such defects. If Tenant takes possession of the Premises, Tenant shall be deemed to have accepted the Premises in the manner described herein.

Section 2.03 SURRENDER OF THE PREMISES. Upon the expiration or other termination of this Lease, or upon the exercise by Landlord of its right to re-enter the Premises without terminating this Lease as provided in Section 15.02, Tenant shall immediately surrender the Premises to Landlord in broom clean condition and in good order, condition and repair, except for ordinary wear and tear. Upon such expiration or termination, Tenant shall have the right to remove its personal property and trade fixtures (as described in Section 6.04), and Tenant shall promptly repair any damage caused by such removal. If Tenant should fail to properly restore such damage, then Landlord may restore the Premises at Tenant's sole cost and expense. Any merchandise, material, or waste left in the Premises or adjacent interior or exterior areas by Tenant after the end of the Term may be removed by Landlord without notice to Tenant and without incurring any liability to Tenant, and Tenant shall reimburse Landlord for the cost of such removal, as Additional Rent (as hereinafter defined).

Section 2.04 HOLDING OVER. In the event Tenant holds over and remains in possession of the Premises without the consent of Landlord after the expiration or other termination of this Lease, then Tenant shall be deemed to hold the Premises as a tenant from month-to-month, and all of the terms, conditions and covenants of this Lease shall be applicable during the holdover period except that the Base Rent for each month or fraction thereof during such holdover period shall be an amount equal to 1.5 times the monthly installment of the Base Rent payable at the time of such expiration or other termination; and Tenant shall continue to be obligated to pay all other amounts which are to become due and owing pursuant to the terms, covenants and conditions of this Lease. Notwithstanding the foregoing, (a) no holding over by Tenant shall operate to extend this Lease, (b) Tenant shall be liable for all damages to Landlord both direct and consequential attributable to such holding over, and (c) Tenant shall vacate and surrender the Premises to Landlord upon Tenant's being given thirty (30) days prior written notice from Landlord to vacate.

ARTICLE 3 – RENT

Section 3.01 BASE RENT. Tenant shall pay, as base rent for the Premises, the Monthly Rental Payments as specified in Section 1.02 (g.). The monthly installments are payable in advance, without deduction or offset, on or before the first (1st) day of each and every calendar month during the Term of the Lease; provided, however, that monthly installments for partial months shall be prorated. Tenant shall be responsible for delivering the monthly installments to the payment address set forth in Section 1.02 (h.).

Section 3.02 SERVICE CHARGE. If any monthly installment of the Base Rent or any payment of Additional Rent (as hereinafter defined) provided for in this Lease is not paid within five (5) days of the date said amount is due, a service charge in an amount equal to ten percent (10%) of the unpaid amount shall be payable to Landlord.

Section 3.03 ADDITIONAL RENT. Any other monetary obligation owed by Tenant to Landlord set forth herein shall be deemed Additional Rent.

Section 3.04 RENT. Base Rent and Additional Rent shall collectively at times herein be referred to as "Rent".

ARTICLE 4 – USE OF PREMISES

Section 4.01 COVENANTS REGARDING USE. In connection with its use of the Premises, Tenant agrees to the following:

(a.) Safe Manner: Tenant shall use the Premises and conduct its business thereon, for the purpose specified in Section 1.02 (c.), in a safe, careful, reputable, and lawful manner, conforming to good practice in Tenant's trade or industry and to reasonable recommendations of Landlord's insurance underwriters.

(b.) No Waste: Tenant shall not commit, nor allow to be committed, in, on or about the Premises, any act of waste, including, without limitation, any act which might defect, damage, or destroy the Premises or any part thereof.

(c.) Signs: Tenant shall not inscribe, paint, affix, or display any signs, advertisements, or notices on the building or in the windows of the Premises unless Landlord shall first consent to the same in writing. Upon surrender of the Premises to Landlord, Tenant shall remove all signs and shall repair any damage caused by such removal all at its sole cost and expense.

Section 4.02 PARKING. Tenant, its employees, agents, customers, and invitees shall have the exclusive right to use the parking lot adjacent to the building. Tenant, its employees, agents, customers, and invitees shall not store any vehicles, boats, recreational vehicles, etc., including wrecked or immobilized vehicles which are not in condition to be used on a daily basis in, on or about the Premises.

Section 4.03 ACCESS TO AND INSPECTION OF THE PREMISES. Landlord, its employees and agents, and any mortgagee of the Premises, shall have the right to enter any part of the Premises at reasonable times for the purposes of examining or inspecting the same, showing the same to prospective purchasers, mortgagees, or tenants, and making such repairs, alterations or improvements to the Premises or the building as Landlord may deem necessary or desirable. Landlord shall incur no liability to Tenant for such entry, nor shall such entry constitute an eviction of Tenant or a termination of this Lease or entitle Tenant to any abatement of Rent. During the last six (6) months of the Term, Landlord is permitted to display a "For Lease" sign on the exterior of the Premises.

Section 4.04 COMPLIANCE WITH LAWS. Tenant shall comply with all laws, statutes, ordinances, rules, regulations, and orders of any federal, state or municipal government or other authority having jurisdiction over and relating to the use and occupancy of the Premises.

ARTICLE 5 – UTILITIES AND OTHER BUILDING SERVICES

Section 5.01 RESPONSIBILITY FOR UTILITIES AND SERVICES. Tenant shall be solely responsible for and shall pay for gas and electric usage, water usage, sewer and drainage services, telephone and alarm services, janitorial and dumpster services/trash disposal services, snow removal and lawncare, with respect to its use and occupancy of the Premises, and Tenant shall be responsible for making all necessary arrangements to obtain such services, including, without limitation, the payment of the required security deposits.

ARTICLE 6 – REPAIRS, MAINTENANCE, ALTERATIONS, IMPROVEMENTS AND FIXTURES

Section 6.01 REPAIR AND MAINTENANCE BY LANDLORD. Landlord shall maintain the parking lot, roof, exterior walls (except any doors, door hardware, or windows), plumbing and drain lines to the point of entry to the Premises, electrical lines to the point of entry to the Premises and any structural portions of the Premises, making any repairs thereto becoming necessary during the Term; unless occasioned by an act or negligence of Tenant, its agents, employees, customers or invitees in which event such damage shall be promptly repaired at Tenant's sole cost and expense. Landlord's obligations hereunder shall be subject to Section 8.01.



Section 6.02 REPAIR AND MAINTENANCE BY TENANT. Tenant shall: (a) keep and maintain the Premises free from dirt and refuse, and in good order, condition, and repair; (b) promptly make all repairs or replacements becoming necessary during the Term including, without limitation, repairs or replacements of windows, doors, glass (which shall be replaced with glass of the same size and quality), electrical fixtures and outlets, electrical line installed by Tenant for its equipment, plumbing and plumbing fixtures, trade fixtures, interior walls, interior surface of exterior walls, floor covering, ceiling and all appliances and mechanical equipment within the Premises; (c) keep and maintain all dock levelers, overhead doors, overhead door tracks, and related hardware; and (c) keep and maintain all items not required to be maintained by Landlord pursuant to Section 6.01. Replacement lamps, bulbs, ballasts and starters for all light fixtures shall be at the sole cost and expense of Tenant. Tenant shall make all repairs and replacements, including normal maintenance, on all parts of the HVAC systems(s) servicing the Premises without limitation. To that end, Tenant shall contract for a semi-annual service maintenance agreement satisfactory to Landlord with a reputable and qualified HVAC servicing company acceptable to Landlord all in its reasonable discretion. Tenant will return the HVAC system(s) servicing the Premises to Landlord in as good a condition as received at the end of the Term, reasonable wear and tear expected. Notwithstanding anything herein to the contrary, Landlord shall be responsible for any and all repairs or replacements to the HVAC systems(s) servicing the Premises that are of a cost in excess of \$500.00 for any single repair or replacement unless occasioned by an act or negligence of Tenant, its agents, employees, customers or invitees in which event such damage shall be promptly repaired at Tenant's sole cost and expense. Additionally, Tenant shall be responsible for maintaining and repairing all its trade equipment and/or trade fixtures in a condition to meet any and all applicable governmental standards and requirements. Landlord shall and does have the right to make reasonable inspections of the Premises to ensure same.

Section 6.03 ALTERATIONS OR IMPROVEMENTS. Tenant may make, or may permit to be made, alterations or improvements to the Premises, but only if Tenant obtains the prior written consent of the Landlord. Tenant shall make the same in accordance with all applicable laws and building codes, in a good and workmanlike manner and in quality equal to, or better than, the original construction of the building and shall comply with such requirements as Landlord considers necessary or desirable, including, without limitation, requirements as to the manner in which, and the times at which, such work shall be done and the contractor or subcontractor to be selected to perform such work. Tenant shall promptly pay all costs attributable to such alterations and improvements and shall indemnify Landlord against any mechanic's liens or other liens or claims filed or asserted as a result thereof, as provided in Article 11 and Section 8.01, and against any cost or expenses which may be incurred as a result of building code violations attributable to such work. Tenant shall promptly repair any damage to the Premises or the building caused by any such alterations or improvements, and shall, at the sole cost and expense of Tenant but subject to Landlord's approval, make all additions to or changes in location of heating, plumbing, or electrical equipment in the Premises made necessary by such alterations or improvements. At the expiration or other termination of this Lease, Tenant shall, at its sole cost and expense, if Landlord so elects, remove all alterations and improvements erected by Tenant and restore the Premises to its original condition; otherwise such alterations and improvements shall be delivered up to the Landlord with the Premises, and shall become the absolute property of Landlord without payment or offset.

Section 6.04 TRADE FIXTURES. Any fixtures and/or equipment installed on the Premises by Tenant may, and at the request of Landlord, shall be removed on the expiration or other termination of this Lease; provided that Tenant is not then in default, that Tenant bears the costs of such removal, and that Tenant repairs at its sole cost and expense any and all damage to the Premises resulting from such removal. If Tenant fails to remove any and all such trade fixtures and/or equipment from the Premises on the expiration or other termination of this Lease, then the same shall become the property of Landlord unless Landlord elects to require their removal, in which case Tenant shall promptly remove same at its expense and restore the Premises to its prior condition.

ARTICLE 7 – FIRE OR OTHER CASUALTY; CASUALTY INSURANCE

Section 7.01 CASUALTY DAMAGE. If the Premises shall, without fault or neglect on Tenant's part, be damaged or destroyed by fire or other casualty covered by Landlord's fire and extended coverage insurance, and such damage or destruction could be repaired within one hundred and fifty (150) days, then Landlord shall proceed to repair such damage or destruction and to restore the Premises as nearly as practicable to its condition immediately preceding such damage or destruction. If the Premises cannot reasonably be restored within one hundred and fifty (150) days, then Landlord may, but shall not be required to, restore the Premises in accordance with the foregoing, and Landlord shall give Tenant prompt written notice of its decision. If Landlord elects not to restore the Premises, then this Lease shall terminate as of the date of such damage or destruction, and both parties shall be released from further liability hereunder, without prejudice, however, to any rights accruing to either party prior to date of such damage or destruction. In no event shall Landlord be required to repair or replace Tenant's inventory, fixtures, furnishing, equipment, or improvements located in, or installed on, the Premises.

If Landlord elects, or is required to, restore the Premises and promptly commences and thereafter diligently pursues such restoration, this Lease shall not terminate, notwithstanding that the actual time required for such repairs or restoration may exceed that contemplated by the parties. If Landlord elects or is required to restore the Premises as provided for herein, the Base Rent shall be abated during the period from the day following the casualty until completion of the restoration in the same proportion as the untenable portion of the Premises bears to the former rentable area thereof. Further, in the event that Landlord elects or is required to restore the Premises as provided for herein, and fails to substantially complete such restoration thereof prior to the expiration of two (2) years from the date of such election or requirement, then Tenant, at Tenant's option, may terminate this Lease and neither Tenant nor Landlord shall have any further obligation to the other.

Section 7.02 CASUALTY INSURANCE. Landlord shall carry fire and extended coverage insurance which insures the Premises against loss or damage, fire or other casualty; provided, however, that Landlord shall not be responsible for, and shall not be obligated to insure against any loss of or damage to any personal property or trade fixtures of Tenant or any additional improvements which Tenant may construct on the Premises. If any alterations or improvements made by Tenant result in an increase in the premiums charged during the Term on such fire and extended coverage insurance carried by Landlord on the Premises, then the cost of such increase shall be borne by Tenant, who shall be separately billed therefore and shall reimburse Landlord for the same, as Additional Rent. If the fire and extended coverage insurance increase during the Term after January 1, 2021, then the cost of such increase shall be borne by Tenant, who shall be separately billed therefore and shall reimburse Landlord for the same, as Additional Rent.

Section 7.03 PERSONAL PROPERTY, TRADE FIXTURES, AND ADDITIONAL IMPROVEMENTS. Landlord shall have no responsibility for the care or safety of trade fixtures, merchandise or other property kept on the Premises by Tenant, or any additional improvements which Tenant may construct on the Premises, and shall not be liable for any damage caused directly or indirectly by acts or omissions of others, by theft, or by water or steam leaking, escaping or bursting from any water, steam or other pipes, wash stands, tanks, water closets or sewers in, above, under, upon or about the Premises, or by water, snow or ice being upon or coming through the roof, windows or otherwise. Any such damage to the Premises, caused by the acts or neglect of Tenant may be repaired by Landlord, at its option, and Tenant shall reimburse Landlord for the cost thereof, as Additional Rent.

ARTICLE 8 – INDEMNIFICATION AND TENANT'S INSURANCE

Section 8.01 INDEMNIFICATION.

(a.) **By Landlord:** Landlord shall indemnify and save harmless Tenant, its agents and employees, from and against any and all claims, losses, demands and expenses (including, without limitation, reasonable attorney's fees and legal costs), whether for injuries to persons or loss of life, or damage to property related to or arising out of Landlord's obligations under this Lease as it relates to the Premises, except for those caused by the intentional misconduct or gross negligent acts or omissions of Tenant. Notwithstanding anything contained herein to the contrary, this indemnity shall survive the expiration or other termination of this Lease. Landlord's obligation to indemnify Tenant shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees, and expenses, including, without limitation, attorney's fees, incurred in connection therewith.

(b.) **By Tenant:** Tenant shall assume the risk of, be responsible for, have the obligation to insure against, any and all liability for any loss of or damage or injury to person (including death resulting therefrom) or property occurring in, on or about the Premises, except for that caused by the gross negligence of Landlord, its agents and employees, and Tenant hereby releases Landlord and Landlord's management agent from any and all liability for the same. Tenant shall indemnify and save harmless Landlord, its agents and employees, from and against any and all claims, losses, demands and expenses (including, without limitation, reasonable attorney's fees and legal costs), whether for injuries to persons or loss of life, or damage to property related to or arising in any manner whatsoever out of this Lease, except for those caused by the intentional misconduct or gross negligent acts or omissions of Landlord. Notwithstanding anything contained herein to the contrary, this indemnity shall survive the expiration or other termination of this Lease. Tenant's obligation to indemnify Landlord and Landlord's management agent hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees, and expenses, including, without limitation, attorney's fees, incurred in connection therewith.

Section 8.02 TENANT'S INSURANCE. Tenant, in order to enable it to meet its obligation to insure against the liabilities specified in this Lease, shall at all times during the Term carry, at its sole cost and expense, for the protection of Tenant, Landlord,

and Landlord's management agent, as their interests may appear, insurance, issued by one or more insurance companies acceptable to Landlord as follows:

- (a.) Workmen's Compensation Insurance covering all persons employed, directly or indirectly, in connection with any work performed by Tenant, in the minimum statutory amount;
- (b.) Commercial General Liability Insurance for not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence, including Blanket Combined Single Limit for both bodily injury and property damage, Contractual Liability, Broad Property Damage, Personal Injury, Completed Operation, Products Liability, and Fire Damage;
- (c.) Fire and Extended Coverage, Vandalism and Malicious Mischief for the full cost of replacement of Tenant's personal property, furniture, equipment, furnishings and trade fixtures located in the Premises; and
- (d.) Business Interruption Insurance covering Tenant's obligations under this Lease.

The Commercial General Liability Insurance policy shall name Landlord and Landlord's management agent as additional insured, as their interests may appear, and shall provide that it may not be canceled or amended without thirty (30) days prior written notice to Landlord. Tenant shall furnish Landlord with Certificates of Insurance evidencing all required coverages. If Tenant fails to carry such insurance or to furnish Landlord with all such certificates after a request to do so, then Landlord shall have the right to obtain such insurance and collect the cost thereof from Tenant, as Additional Rent.

Landlord makes no representation that the minimum coverages specified above are adequate to protect Tenant against Tenant's obligation under this Lease, and it is Tenant's responsibility to provide additional coverage as it deems necessary, or as Landlord and Tenant may, from time to time, mutually agree upon.

ARTICLE 9 – WAIVER OF SUBROGATION

Section 9.01 WAIVER OF SUBROGATION. Landlord and Tenant shall each obtain from their respective insurers under all policies of insurance maintained by either of them at any time during the Term insuring or covering the Premises or any portion thereof, property or operations therein, a waiver of all rights of subrogation which the insurer of one party might have against the other party. Landlord and Tenant shall each indemnify the other against any loss or expense, including, without limitation, reasonable attorney's fees, resulting from the failure to obtain such waiver.

ARTICLE 10 – EMINENT DOMAIN

Section 10.01 EMINENT DOMAIN. If all or any part of the Premises shall be taken for public or quasi-public use by a governmental or other authority having the power of eminent domain, or shall be conveyed to such authority in lieu of such taking, and if such taking or conveyance shall cause the remaining part of the Premises to be untenable and inadequate for use by Tenant for the purpose for which it is leased, then Tenant may, at its option, terminate this Lease as of the date Tenant is required to surrender possession of the Premises by giving Landlord written notice of such termination. If a part of the Premises shall be taken or conveyed but the remaining part is tenable and adequate for Tenant's use, then (a) this Lease shall be terminated only as to the part taken or conveyed as of the date Tenant surrenders possession; (b) Landlord shall make such repairs, alterations and improvements as may be necessary to render the part not taken or conveyed tenable; and (c) the Base Rent shall be reduced in proportion to the part of the Premises so taken or conveyed. All compensation awarded for any such taking or conveyance shall be the property of Landlord without deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all of its right, title, and interest in and to any such award. Tenant may pursue its own claim for compensation for its moving expenses and cost of tenant improvements, so long as such compensation shall not diminish the compensation due to Landlord.

ARTICLE 11 – LIENS

Section 11.01 MECHANICS LIENS. If, because of any act or omission of Tenant or any person claiming by, through or under Tenant, any mechanic's lien or other lien is filed against the Premises or the building, or against other property of Landlord (whether or not such lien is valid or enforceable as such), Tenant shall, upon Landlord's request and at Tenant's sole cost and expense, cause the same to be bonded off or otherwise discharged of record within fifteen (15) days after the date of filing, and shall also indemnify Landlord and hold it harmless from any and all claims, losses, damages, judgments, settlements, cost and expenses, including,

without limitation, attorney's fees, resulting therefrom or by reason thereof. Landlord may, but shall not be obligated to, pay the claim upon which such lien is based so as to have such lien released of record; and, if Landlord does so, then Tenant shall pay to Landlord, as Additional Rent, upon demand, the amount of such claim, plus all other costs and expenses incurred in connection therewith, plus interest thereon at the rate of one and one-half percent (1 ½ %) per month (or such lesser amount as may be the maximum amount permitted by law) until paid.

Section 11.02 Intentionally Left Blank

ARTICLE 12 – TAXES

Section 12.01 REAL ESTATE TAXES. During the Term, Landlord shall pay all real estate taxes and assessments for the Premises. If any of the real estate taxes or assessments increase during the Term after January 1, 2021, then the cost of such increase shall be borne by Tenant, who shall be separately billed therefore and shall reimburse Landlord for the same, as Additional Rent. Notwithstanding anything to the contrary, this provision shall in no way alter or affect Tenant's obligations as provided in Section 12.02 hereof.

Section 12.02 PERSONAL PROPERTY TAXES. Tenant shall pay, before delinquency, any and all taxes, assessments, fees or charges, including, without limitation, any sales, gross income, rental, business occupation or other taxes, levied or imposed upon Tenant's business operations in the Premises and any personal property, or similar taxes levied or imposed upon Tenant's trade fixtures, leasehold improvements or personal property located in, on or about the Premises. In the event any such taxes, assessments, fees or charges are charged to the account of, or are levied or imposed upon the property of Landlord, Tenant shall reimburse Landlord for the same upon demand as Additional Rent.

ARTICLE 13 – ASSIGNMENT AND SUBLETTING

Section 13.01 ASSIGNMENT AND SUBLETTING.

(a.) **In General:** Tenant shall not assign all or any part of its interest in this Lease, or sublease all or any part of its interest in the Premises, without the prior written consent of Landlord which shall not unreasonably be withheld. If Tenant is a corporation, partnership or joint venture, then any transfer of this Lease by merger, sale, consolidation, liquidation or any change in the ownership of, or power to vote the majority of its outstanding voting stock, shall constitute an assignment for the purpose of this Article. If written consent is once given by Landlord to any such assignment or subletting, such consent shall not operate as a waiver of the necessity for obtaining Landlord's written consent to any subsequent assignment or subletting.

(b.) **Tenant's Liability:** If Landlord consents to an assignment or subletting, then Tenant shall nevertheless remain fully responsible and liable for the payment of the Rent and the performance of all of Tenant's obligations under this Lease; provided, however, that in the event of a default under this Lease, Landlord may, at its option, collect the Rent directly from the assignee or subtenant, and such action shall not be construed as a novation or release of Tenant.

ARTICLE 14 – TRANSFER BY LANDLORD

Section 14.01 SALE AND CONVEYANCE BY LANDLORD. Landlord shall have the right to sell and convey the Premises at any time during the Term, subject only to the rights of the Tenant hereunder. Such sale and conveyance shall operate to release Landlord from liability hereunder after the date of such conveyance.

Section 14.02 SUBORDINATION. Landlord shall have the right to subordinate this Lease to any future ground lease or any mortgage hereafter placed upon the Premises, and recording such ground lease or mortgage shall make it prior and superior to this Lease regardless of the date of execution of recording of either document; provided, however, that said subordination is conditioned upon the ground lessor or mortgagee entering into a non-disturbance and attornment agreement with Tenant so that Tenant's occupancy of the Premises will not be disturbed as long as Tenant is not in default under this Lease. Tenant shall, at Landlord's request, execute and deliver to Landlord, without cost, any instrument which may be necessary to confirm the subordination of this Lease. Notwithstanding the foregoing, no default by Landlord under any such mortgage shall affect Tenant's rights hereunder so long as Tenant is not in default under this Lease. Tenant shall, in the event any proceedings are brought to foreclosure of any such mortgage, attorn to the purchaser upon any such foreclosure and recognize such purchaser as landlord under this Lease.

ARTICLE 15 – DEFAULT AND REMEDIES

Section 15.01 DEFAULT BY TENANT. The occurrence of any one or more of the following events shall be a default and breach of this Lease by Tenant:

- (a.) Tenant shall fail to pay any monthly installment of the Base Rent or Additional Rent within ten (10) days after same is due and payable;
- (b.) Tenant shall fail to perform or observe any term, condition, covenant or obligation under this Lease, other than payment of the Rent, and the failure is not cured within thirty (30) days after notice thereof from Landlord;
- (c.) Tenant shall vacate or abandon the Premises or any substantial portion thereof;
- (d.) A trustee or receiver is appointed to take possession of substantially all of Tenant's assets or Tenant's interest in this Lease; Tenant makes an assignment for the benefit of creditors; or substantially all of Tenant's assets in, on or about the Premises or Tenant's interest in this Lease are attached or levied upon under execution; or
- (e.) A petition of bankruptcy, insolvency, or for reorganization or arrangement is filed by or against Tenant pursuant to any federal or state statute, and Tenant fails to secure a stay of discharge thereof within sixty (60) days after the filing of the same.

Section 15.02 REMEDIES OF LANDLORD. Upon the occurrence of any event of default set forth in Section 15.01, Landlord shall have the following rights and remedies, in addition to those allowed by law, any one or more of which may be exercised without further notice to or demand upon Tenant:

- (a.) Landlord may apply the security deposit or re-enter the Premises and cure any default of Tenant, in which event Tenant shall reimburse Landlord on demand, as Additional Rent for any cost and expenses which Landlord may incur to cure such default. Landlord shall not be liable to Tenant for any loss or damage which Tenant may sustain by reason of Landlord's action, caused by Landlord's negligence or otherwise.
- (b.) Landlord may terminate this Lease as of the date of such default, and Tenant shall immediately surrender the Premises to Landlord. Upon failure of Tenant to surrender the Premises, Landlord may enter the Premises and dispossess Tenant, or any other occupants, of the Premises by force, summary proceedings, ejectment or otherwise, and may remove their effects without prejudice to any other remedy which Landlord may have for possession or arrearage in the Rent. Notwithstanding the termination of this Lease, Landlord may declare all of the Rent which would have been due under this Lease for the balance of the Term to be immediately due and payable, whereupon Tenant shall be obligated to pay the same to Landlord, together with all loss or damages which Landlord may sustain by reason of such termination.
- (c.) Landlord may, without terminating this Lease, enter upon the Premises and re-let all or any part of the Premises for a term different from that which would otherwise have constituted the balance of the Term and on terms, covenants and conditions different from those contained herein. Whereupon tenant shall be obligated to pay to Landlord as liquidated damages the difference between the Rent and that provided for in any lease covering a subsequent re-letting of the Premises, for the period which would otherwise have constituted the balance of the Term, together with all of Landlord's cost and expenses for preparing the Premises for re-letting, including, without limitation, all repairs, tenant finish improvements, broker's and attorney's fees, and all other loss or damage which Landlord may sustain hereby.

Section 15.03 LIMITATION OF LANDLORD'S LIABILITY. Landlord shall not be personally liable for any judgment or deficiency after execution thereon, which arose due to any default by Landlord hereunder. In the event that Tenant shall have a claim, suit or judgment against Landlord, its agents or employees arising out of this Lease, then Tenant shall look solely to the equity of Landlord in the Premises for the satisfaction of its claim, suit or judgment. The references to "Landlord" in this Lease shall be limited to mean and include only the owner or owners, at the time, of the fee simple interest in the Premises, it being intended hereby that the terms, conditions, covenants and obligations of this Lease shall be binding upon Landlord, its successors and assigns, only during, and in respect to, their successive periods of ownership during the Term.

Section 15.04 NON-WAIVER OF DEFAULTS. The failure or delay by either party to enforce or exercise at any time any of the rights or remedies or other provisions of this Lease shall not be construed to be a waiver thereof, nor affect the validity of any part of this Lease or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of this Lease shall be held to be a waiver of any other default and breach. A waiver by Landlord of any rights or remedies, or other provisions of this Lease shall not be valid unless in writing and signed by Landlord. The receipt by Landlord of less than the full amount of the Rent due shall not be construed to be other than a payment on account of the Rent then due, nor shall any statement on Tenant's check, or any letter accompanying Tenant's check be deemed an accord and satisfaction, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of the Rent due or to pursue any other remedies provided in this Lease. No act or omission by Landlord or its employees or agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such a surrender shall be valid unless in writing and signed by Landlord.

Section 15.05 ATTORNEY'S FEES. In the event that either party defaults in the performance or observance of any of the terms, conditions, covenants or obligations of this Lease, then the prevailing party shall be entitled to recover from the non-prevailing party any and all reasonable attorney's fees and expenses resulting therefrom. The parties agree that reasonable attorney's fees shall be an amount equal to that actually incurred by the prevailing party, except that when Tenant's default relates to nonpayment of money owed to Landlord, then an amount equal to twenty percent (20%) of the balance owed shall constitute reasonable attorney's fees.

ARTICLE 17 – SECURITY DEPOSIT

Section 17.01 PAYMENT. Tenant deposited with Landlord the amount specified in Section 1.02 (d.), which amount shall be held by Landlord as a security deposit during the Term. If Tenant performs all its duties and obligations hereunder, then the security deposit, or balance thereof then held by Landlord, shall be returned, without interest, to Tenant at the expiration of the Term and after Tenant has vacated the Premises. In the event of a default by Tenant in the payment of the Rent or the performance or observance of any of the other terms, conditions or covenants of this Lease, then Landlord may, at its option and without notice, apply all or any part of the security deposit in payment of Rent or to cure any other such default. If Landlord uses all or some portion of the security deposit, then Tenant shall, upon request, deposit with Landlord the amount so applied so that Landlord will have on hand at all time during the Term the full amount of the security deposit. Landlord shall not be required to hold the security deposit in a separate account and may commingle it with Landlord's other funds.

Section 17.02 TRANSFER OF INTEREST IN LEASE. In the event of a sale of the Premises, Landlord shall have the right to transfer the security deposit to its purchaser, and Landlord shall thereupon be released by Tenant from all responsibility for the return of the security deposit; and Tenant shall look solely to the new purchaser for the return of the security deposit. In the event of an assignment of this Lease by Tenant, the security deposit shall be deemed to be held by Landlord as a security deposit made by assignee and Landlord shall have no further responsibility for the return of the security deposit to assignor.

ARTICLE 18 – NOTICE AND PLACE OF PAYMENT

Section 18.01 NOTICES. Any notice or demand which is or may be required by this Lease or by law shall be in writing and shall be deemed to have been given if delivered in person or mailed by certified mail, postage prepaid, to the party who is to receive such notice at the address specified in Section 1.02 (h.). When so mailed, the notice shall be deemed to have been given as of the date it was mailed. The address specified in Section 1.02 (h.) may be changed by given written notice thereof to the other party.

Section 18.02 PLACE OF PAYMENT. All Rent and other payments required to be made by Tenant to Landlord shall be delivered or mailed to the address specified in Section 1.02 (h.), or any other address Landlord may specify from time to time by written notice given to Tenant.

ARTICLE 19 – MISCELLANEOUS GENERAL PROVISIONS

Section 19.01 CONSENTS AND APPROVALS. Whenever Landlord's approval or consent is expressly required under this Lease, then Landlord shall not unreasonably withhold or delay such approval or consent (except as to matters affecting the value, external appearance, structure, safety or security of the Premises, or as may be specified to the contrary in this Lease – in which events, approval or consent may be withheld in Landlord's sole discretion); provided that Tenant's sole recourse shall be to seek such declaratory or injunctive relief that may be available to Tenant, and Landlord shall under no circumstance be held liable for damages, either direct, consequential or otherwise.

Section 19.02 ESTOPPEL CERTIFICATE. Tenant shall, within twenty (20) days following receipt of a written request from Landlord, execute, acknowledge and deliver to Landlord or to any lender or purchaser, or prospective lender or purchaser, a written statement certifying: (a) that this Lease is in full force and effect and unmodified (or, if modified, stating the nature of such modification); (b) the date to which the Rent has been paid; and (c) that there are not, to Tenant's knowledge, any uncured defaults (or specifying such defaults, if any are claimed). Tenant's failure to deliver such statement within such period shall be conclusive upon Tenant that this Lease is in full force and effect and unmodified, and that there are no presently existing defaults on the part of Landlord hereunder.

Section 19.03 REAL ESTATE COMMISSION. Tenant represents and warrants to Landlord that it has not engaged any broker, finder or other person who will be entitled to any commission or fee with respect to the negotiation, execution or delivery of this Lease or any assignment, sublease or renewal thereof, and shall indemnify Landlord against any loss, cost, liability or expenses legally imposed by Landlord as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Tenant.

Section 19.04 COMPLETE AGREEMENT; AMENDMENTS. This Lease, including, without limitation, all Exhibits, riders and Addenda, constitute the entire agreement between the parties, if any, and no oral or implied representation or understanding shall vary its terms. This Lease may not be amended except by a written instrument executed by both parties hereto.

Section 19.05 BINDING EFFECT. This Lease, and the respective rights and obligations of the parties hereto, shall inure to the benefit of, and be binding upon, the successors, heirs, legal representatives and assigns of the parties hereto; provided, however, that Landlord, its successors, heirs, legal representatives and assigns shall be obligated to perform Landlord's covenants under this Lease only during and in respect to their successive periods of ownership during the Term; and provided, further, that an assignment by Tenant in violation of the provisions of this Lease shall not vest any right, title or interest in the assignee.

Section 19.06 SEVERABILITY OF INVALID PROVISIONS. If any provision of this Lease shall be held to be invalid, void or unenforceable, then the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

Section 19.07 NO PARTNERSHIP OR JOINT VENTURE. Landlord shall not, by virtue of the execution of this Lease, or the leasing of the premises to Tenant, become or be deemed a partner of, or joint venture with, Tenant in the conduct of Tenant's business on the Premises or otherwise.

Section 19.08 CERTAIN WORDS, GENDER AND HEADINGS. As used in this Lease, the word "person" shall mean and include, where appropriate, an individual, corporation, partnership or other entity. The plural shall be substituted for the singular and the singular for the plural, where appropriate. Words of any gender shall include any other gender. The section headings are inserted only as a matter of convenience and reference, and do not affect, define, limit or describe the scope or intent of this Lease.

Section 19.09 QUIET ENJOYMENT. As long as tenant pays the Rent and performs or observes all of the terms, conditions, covenants and obligations of this Lease, Tenant shall have the peaceable and quiet enjoyment, possession, occupancy and use of the Premises without any interference from Landlord or any person or persons claiming under or through Landlord.

Section 19.10 WAIVER OF JURY. Landlord and Tenant agree that to the extent permitted by law and by applicable policies of insurance, each shall and hereby does waive trial by jury in any action, proceeding or counterclaim brought by either against the other on any matter arising out of or in any way connected with this Lease.

Section 19.11 HAZARDOUS SUBSTANCES; INDEMNITY.

(a.) **Representation and Warranty of Landlord:** Landlord represents and warrants to Tenant that, to the best of Landlord's knowledge as of the date hereof, Landlord has complied with, and will continue to comply with, all federal, state, county and municipal environmental laws, rules, regulations and statutes applicable to the Premises, or the use thereof.

(b.) **Representation and Warranty of Tenant:** Tenant represents and warrants that it shall not cause or permit any "Hazardous Substance" (as defined in Section 19.11 (e.)) to be brought upon, kept, stored, generated, manufactured, disposed of, or used in or about the Premises by Tenant, its agents, employees, contractors or invitees, except for such

Hazardous Substance as is necessary to operate the business of Tenant; provided that Tenant has notified Landlord it will be bringing, keeping or using such Hazardous Substance on or about the Premises.

(c.) **Use in the Premises:** Any Hazardous Substance permitted in the Premises as provided in this Section 19.11, and all containers therefore, shall be used, kept, stored and disposed of in a manner that complies with all federal, state, county and municipal laws, rules, regulations and statutes applicable to that Hazardous Substance.

(d.) **Other Harmful Materials:** Tenant shall not discharge, leak or admit, or permit to be discharged, leaked or admitted, any material or substance into the atmosphere, ground, sewer system or any body of water, if that material (as is reasonably determined by Landlord or any governmental authority or agency) does or may pollute or contaminate the same, or may adversely affect (i) the health, welfare or safety of persons, whether located on the Premises or elsewhere, or (ii) the condition, use or enjoyment of any building or other real property or personal property.

(e.) **Definition of Hazardous Substance:** "Hazardous Substance" shall mean any and all hazardous substances, toxic materials, pollutants, contaminants, hazardous or toxic wastes defined in any federal, state, county or municipal law, rule, regulation or ordinance, including, without limitation, asbestos, PCBs, oil petroleum products and their by products.

(f.) **Indemnification:** Tenant shall be fully liable for any and all costs and expenses related to the generation, manufacture, use, storage or disposal of a Hazardous Substance in, on or about the Premises by Tenant, its agents, employees, contractors and invitees. Tenant shall give immediate written notice to Landlord of any violation or potential violation of this Section 19.11. Tenant shall defend, indemnify and hold harmless Landlord and its agents, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, consultants' fee, court costs and litigation expenses) of whatever kind or nature known or unknown, contingent or otherwise, arising out of or in any way related to (i) the use, storage, disposal, generation, manufacture, presence, release or threatened release of any such Hazardous Substance that is on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (ii) any personal injury (including, without limitation, wrongful death), or damage to real property or personal property arising out of or related to that Hazardous Substance, (iii) any lawsuit brought or threatened, settlement reached or government order relating to that Hazardous Substance, or (iv) any violation of any law, rule, regulation or ordinance applicable thereto. The terms, covenants and conditions of this Section 19.11 shall be in addition to any other obligation and liability that Tenant may have to Landlord at law or in equity, and shall survive the expiration or other termination of this Lease.

Section 19.12 JURISDICTION AND VENUE. The parties hereto agree that any suit, action or proceeding with respect to this Lease may only be brought in or entered by, as the case may be, (a) the courts of the Commonwealth of Kentucky, sitting in Jefferson County, Kentucky, or (b) the United State District Court for the Western District of Kentucky and the parties hereby submit to the nonexclusive jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgment and waive any other preferential jurisdiction by reason of domicile. The parties hereby irrevocably waive any objection that they may now have or hereafter have to the laying of venue to any suit, action or proceeding arising out of or related to this Lease brought in the courts of the Commonwealth of Kentucky, sitting in Jefferson County, Kentucky or the United States District Court for the Western District of Kentucky, and also hereby irrevocably waive any claim that any such suit, action or proceeding brought in any one of the above-described courts has been brought in an inconvenient forum.

Section 19.13 ADDITIONAL PROVISIONS. Additional provisions of this Lease, if any, are set forth in an Addendum to the Lease which is attached hereto and made a part hereof.

Section 19.14 Intentionally Left Blank

Section 19.15 SURVIVAL. Section 8 and Section 19.11 shall specifically survive this Lease.

IN WITNESS WHEREOF, Landlord and Tenant, acting by and through their duly authorized representatives, duly executed this Lease as of the date first set forth above.

LANDLORD:

Moorman Properties, LLC, a Kentucky limited liability company

By: 

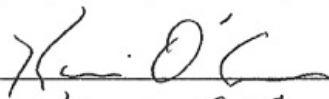
Printed: TODD MOORMAN

Title: MEMBER

Date: 6-2-2020

TENANT:

Logicmark, LLC, a Kentucky limited liability company

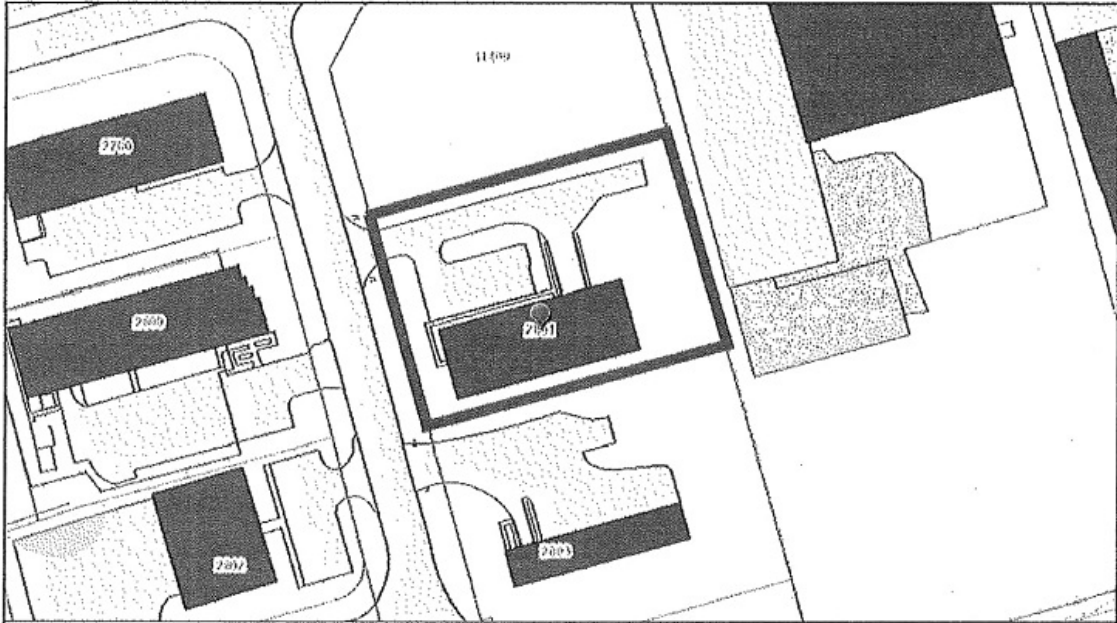
By: 

Printed: KEVIN O'CONNOR

Title: PRESIDENT

Date: 6/1/20

EXHIBIT A - THE PREMISES



2801 Diode Lane

12/20/2019, 9:16:51 AM

LOJIC
Layton Metro, HES, LLC & PIA © 2019
This map is not a legal document and should only be used for general reference and information.

0 50 100ft

N

Landlord *[Signature]* Tenant *[Signature]*

EXHIBIT B – TENANT IMPROVEMENTS

Tenant Improvements are to be constructed in accordance with the following:

1. Finish painting exterior of building.
2. Install cabinets and sink along rear wall of warehouse restroom.

DM

KO

EXHIBIT C - ACCEPTANCE OF PREMISES AND LEASE COMMENCEMENT DATE AGREEMENT

This AGREEMENT is made and entered into as of JUNE 26, 2020, pursuant to Section 2.02 of the Lease, by and between **Moorman Properties, LLC**, a Kentucky limited liability company (the "Landlord"), and **Logicmark, LLC**, a Kentucky limited liability company (the "Tenant").

Landlord and Tenant hereby agree as follows:

1. The Commencement Date of the Lease is JUNE 15, 2020.
2. The Expiration Date of the Lease is AUGUST 31, 2025.
3. Except for those unfinished items or defects shown on the attached "punch list", which Landlord will remedy within SIXTY (60) days hereof, Landlord has fully completed the construction work to the Premises as required pursuant to the Lease.
4. The Premises is tenantable, and Tenant acknowledges that the building and the Premises are satisfactory in all respects, except as indicated in Paragraph 3 above, and Tenant accepts the Premises for its use and occupancy. All other terms, covenants and conditions of the Lease are hereby ratified and acknowledged to be unchanged.

IN WITNESS WHEREOF, Landlord and Tenant, acting by and through their duly authorized representatives, duly executed this Lease as of the date first set forth above.

LANDLORD:

Moorman Properties, LLC, a Kentucky limited liability company

By: [Signature]
Printed: TOOS MOORMAN
Title: MEMBER
Date: 6-26-2020

TENANT:

Logicmark, LLC, a Kentucky limited liability company

By: [Signature]
Printed: KEW HOSKINS
Title: VICE PRES
Date: 6/26/20

Landlord [Signature] Tenant [Signature]

PUNCH LIST

Holes in Deck Doors - Landlord To Have Plugged

Exhaust Fan - Landlord To Put In Good Working Order

8 Floor Bolts - Landlord To Sawcut

Side Warehouse Main Door - Landlord To

Pay Tenant When Tenant Has Repaired

Master Key - Landlord To Reimburse

Tenant To Have Received





June 2, 2020

LOGICMARK, LLC
ATTN: Mr. Kevin O'Connor, President
2801 Diode Lane
Louisville, KY 40299

Re: Lease Agreement by and between Logicmark, LLC (as "Tenant") and Moorman Properties, LLC (as "Landlord") for Premises identified as 2801 Diode Lane, Louisville, Jefferson County, Kentucky, dated June 2, 2020 (hereinafter, the "Lease")

Logicmark, LLC:

Landlord hereby gives consent as required by Section 13.01 (a) of the Lease, to that certain sublease agreement between Tenant and EZ Watch Acquisition, LLC, a Delaware limited liability company ("Sublessee") dated June 15, 2020, for partial occupation and use of the Premises as set forth therein (the "Sublease"); a complete and accurate copy of which is attached hereto as Exhibit A. Any extension or alteration of the Sublease shall require the written consent of Landlord. Pursuant to Section 13.01 (b) of the Lease, Tenant shall remain fully responsible and liable for the payment of Rent and performance of all Tenant's obligations under the Lease. This consent shall not affect the Lease and all terms, covenants, and conditions contained therein shall remain in full force and effect.

Sincerely,

MOORMAN PROPERTIES, LLC

A handwritten signature in blue ink, appearing to read "Todd Moorman", is written over the printed name.

Todd Moorman
Member

Exhibit A attached: Copy of Sublease

EXHIBIT A - Copy of Sublease

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into and made as of the 15th day of June 2020, by and between LogicMark, LLC, a Delaware limited liability company ("Logicmark"), and EZ Watch Acquisition, LLC, a Delaware limited liability company ("EZ Watch").

Whereas, Logicmark has entered into a Lease Agreement between Logicmark, as tenant, and Moorman Properties, LLC, as landlord ("Landlord"), a copy of which has been delivered to EZ Watch (as amended from time to time, the "Lease Agreement"), for the lease of approximately 9,660 square feet located at 2801 Diode Ln., Louisville, Kentucky 40299 (the "Total Premises"), and EZ Watch and Logicmark desire to enter into this Agreement for the sublease of a portion of the Total Premises to EZ Watch,

1. Logicmark hereby subleases to EZ Watch, and EZ Watch hereby subleases from Logicmark, approximately 2,000 rentable square feet of warehouse space.


2. The term of this Agreement (the "Term") shall commence on June 15th, 2020, and shall expire on December 31, 2021 but can be canceled by either party during the term of the lease with a 30 day written notice.

3. EZ Watch agrees to pay to Logicmark \$1,000 per month as rent and utilities for the premises, starting on September 1st, 2020. Monthly installments thereof shall be due and payable on the 1st of each calendar month and not later than 10 days after the first day of each and every calendar month during the Term.


4. EZ Watch acknowledges and agrees that this Agreement is subject and subordinate to the Lease. EZ Watch hereby agrees to be bound by and to assume and perform in all respects the terms and covenants of the Lease applicable to Logicmark and the Premises during the Term and all such provisions are hereby incorporated as additional terms and covenants of this Agreement as if they were recited herein. In each case, EZ Watch shall have all the duties and obligations of Logicmark under the Lease applicable to the Premises, and Logicmark shall have all of the rights, privileges and remedies of Landlord under the Lease.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

LogicMark, LLC

By: 
Name: Kevin O'Connor
Title: President

EZWatch LLC

By: 
Name: Ben Cornett
Title: President

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statement of Nxt-ID, Inc. on Form S-3 [File Nos. 333-228624, 333-226116, 333-222452, and 333-206955] of our report dated April 15, 2021, with respect to our audits of the consolidated financial statements of Nxt-ID, Inc. as of December 31, 2020 and 2019 and for the years ended December 31, 2020 and 2019, which report is included in this Annual Report on Form 10-K of Nxt-ID, Inc. for the year ended December 31, 2020.

/s/ Marcum LLP

Marcum LLP

New York, NY

April 15, 2021

**CERTIFICATION
OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Vincent S. Miceli, certify that:

1. I have reviewed this annual report on Form 10-K of Nxt-ID, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 15, 2021

By: /s/ Vincent S. Miceli
Vincent S. Miceli
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION
OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Vincent S. Miceli, certify that:

1. I have reviewed this annual report on Form 10-K of Nxt-ID, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 15, 2021

By: /s/ Vincent S. Miceli
Vincent S. Miceli
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION
OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF
THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Nxt-ID, Inc. (the "Company") on Form 10-K for the period ended December 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Vincent S. Miceli, Chief Executive Officer of Nxt-ID, Inc., certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 15, 2021

By: /s/ Vincent S. Miceli
Vincent S. Miceli
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION
OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF
THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Nxt-ID, Inc. (the "Company") on Form 10-K for the period ended December 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Vincent S. Miceli, Chief Financial Officer of Nxt-ID, Inc., certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 15, 2021

By: /s/ Vincent S. Miceli
Vincent S. Miceli
Chief Financial Officer
(Principal Financial Officer)